

Division of Corporation Finance

Financial Reporting Manual

Disclaimer: This Manual was originally prepared by the staff of the Division of Corporation Finance to serve as internal guidance. In 2008, in an effort to increase transparency of informal staff interpretations, the Division posted a version of the Manual to its website. Because of its informal nature, the Manual does not necessarily contain a discussion of all material considerations necessary to reach an accounting or disclosure conclusion. Such conclusions about a particular transaction are very fact dependent and require careful analysis of the transaction and of the relevant authoritative accounting literature and Commission requirements. The information in this Manual is non-authoritative. If it conflicts with authoritative or source material, the authoritative or source material governs. The information presented also may not reflect the views of other Divisions and Offices at the Commission. The guidance is not a rule, regulation or statement of the Commission and the Commission has neither approved nor disapproved this information. The information included in this Manual may be updated from time to time and positions may change. As a result, the information in this manual may not be current.

Summary of Changes in Current Update

Sections of the Financial Reporting Manual have been updated as of June 30, 2025. These sections have been marked with the date tag, “*Last updated: 6/30/2025,*” to identify the changes. Previous updates are marked using a similar convention and represent the last revision to the respective section(s). We include/update a date tag when the change is significant. Changes that are administrative in nature (for example, section reference updates or grammatical improvements) are not considered to be significant.

The chart below provides a summary of the significant changes included in this update. Note that this update does not include changes for the following rulemakings: [Qualifications of Accountants](#), [Management’s Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information](#) and [Special Purpose Acquisition Companies, Shell Companies, and Projections](#). For questions related to these amendments and rules, please contact the individual(s) listed within the related rulemaking.

Topic/Section	Comment
2000, 2305, 2310, 2315, 2320, 2325, 2330, 2335	Sections and sub-sections have been removed. Relevant content has been updated and/or reflected within 2900.
2540.6 , 2640.2 , 2640.4 , 2640.5	Additional revisions for March 2, 2020 amendments to Rules 3-10 and 3-16 of Regulation S-X in SEC Release No. 33-10762 , “ Financial Disclosures about Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant’s Securities ”.
2900 , Topic 3 , 5320	Revisions for May 20, 2020 amendments to the S-X Acquisition Rules (S-X 3-05, S-X 3-14, S-X 8-04, and S-X 8-06) and S-X Article 11 Rules (Pro Forma) in SEC Release No. 33-10786 , “ Amendments to Financial Disclosures about Acquired and Disposed Businesses ,” which were effective January 1, 2021. Note: There are other sections throughout the FRM that require revision to reflect updates made in 2900. These will be included in a future FRM update. Sub-sections reflect the last updated dates.

Communications with the Division of Corporation Finance's Office of Chief Accountant (CF-OCA)

(Last updated: 6/30/2025)

CF-OCA performs the following functions that may result in communications with companies and their advisors:

- Acts on behalf of the Commission to grant relief under Rule 3-13 of Regulation S-X. The staff has authority, where consistent with investor protection, to permit registrants to omit, or substitute for, required financial statements. Requests for this relief should be submitted via the [online form](#). Call 202-551-3400 for questions about Rule 3-13 relief requests.
- Answers interpretive request letters and provides informal interpretive advice about the form and content of financial statements and other financial information required to be included in Commission filings. Requests for interpretive letters should be submitted via the [online form](#). Call 202-551-3400 for questions related to interpretive letters.
- Helps identify and explain the applicable rules, regulations, forms, and guidance that affect the form and content of financial statements and other financial information required to be included in Commission filings. Requests for this assistance may be submitted via this separate [online form](#) or by calling 202-551-3400. While the statements made by the staff on the telephone are intended to be helpful to the persons making the inquiries, due to their informal nature they are not binding on the staff, the Division of Corporation Finance or the Commission.

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16600 Auditor Independence

Explanation of Abbreviations

Acronym	Definition
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

Acronym	Definition
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
S-X Acquisition Rules	S-X 3-05, S-X 3-14, S-X 8-04, and S-X 8-06

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: 10/30/2020)

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	n/a
Statement of Comprehensive Income	2 years	3 years	Can be presented in a single continuous financial statement or in two separate but consecutive financial statements, composed of the income statement and a separate statement of comprehensive income [ASC 220-10-45-1B]. 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].
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 statement of comprehensive income, as required by ASC 230-10-15-3.

¹ See Topic 5 for eligibility criteria of Smaller Reporting Companies.

1110.2 Exceptions and Special Cases

- a. Unaudited fiscal year-end data may be provided under certain circumstances. [SAB Topic 1C]
- b. A statement of comprehensive income 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: 10/30/2020)

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.
Statement of Comprehensive Income	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.
Cash Flow	Same as statement of comprehensive income.	Same as statement of comprehensive income.
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.

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	<p>Financial statements of the target are required.</p> <ul style="list-style-type: none"> • 3 years + interims if target is Other Reporting Company. • 2 years + interims if target is Smaller Reporting Company. <p>A non-reporting target may provide only 2 years + interims if it would otherwise meet the definition of a Smaller Reporting Company.</p> <p>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.</p> <p>Pro forma information is required if it is material to a voting decision.</p>
Acquirer only	Exempt securities only or a combination of exempt securities and cash	<p>Financial statements of the target are required.</p> <ul style="list-style-type: none"> • 3 years + interims if target is Other Reporting Company. • 2 years + interims if target is Smaller Reporting Company. <p>A non-reporting target may provide only 2 years + interims if it would otherwise meet the definition of a Smaller Reporting Company.</p> <p>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.</p> <p>Pro forma information is required if it is material to a voting decision.</p>

Solicited Shareholders	Consideration	Financial Statements
Target only	Cash only	<p>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.</p> <p>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.</p> <p>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.</p> <p>No pro forma information is required.</p>
Target only	Exempt securities only or a combination of exempt securities and cash	<p>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.</p> <p>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.</p> <p>Pro forma information is required, if material.</p>
Acquirer and target	Cash only	<p>Financial statements of the target are required.</p> <ul style="list-style-type: none"> • 3 years + interims if target is Other Reporting Company. • 2 years + interims if target is Smaller Reporting Company. <p>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.</p> <p>Pro forma information is required if it is material to a voting decision by the acquirer's shareholders.</p>

Solicited Shareholders	Consideration	Financial Statements
Acquirer and target	Exempt securities only or a combination of exempt securities and cash	<p>Financial statements of the target are required.</p> <p>3 years + interims if target is Other Reporting Company.</p> <p>2 years + interims if target is Smaller Reporting Company.</p> <p>Financial statements of the acquirer are generally required. Only the 2 most recent fiscal years and interim periods need be provided.</p> <p>Pro forma information is required, if material.</p>

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**

(Last updated: 10/30/2020)

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]

In transactions where the registrant is a SPAC, the target's financial statements become those of the registrant upon consummation of the merger. In light of this fact and that the staff considers the transaction to be equivalent to an initial public offering of the target, the staff would expect the financial statements of the target included in either a proxy statement or Form S-4/F-4 to be audited in accordance with the standards of the PCAOB.

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 ²	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.

² Generally, a reorganization with no changes in relative interests, no leverage, and no new classes of stock.

1160 Recently Organized Registrant

1160.1 Generally

Registrant	Financial Statement
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. <i>Example:</i> 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.

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:

- no or nominal assets,
- assets consisting solely of cash and cash equivalents, or
- 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:

- 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 statement of comprehensive income 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, 2021 acquires an operating company, determined to be its predecessor, on June 25, 2021. The Newco subsequently files an IPO registration statement in the third quarter of 2022. The IPO registration statement must include audited financial statements of the predecessor for the two years ended December 31, 2020 and the period from January 1, 2021 to June 25, 2021. The Newco registrant must provide audited financial statements for the period from the inception date through December 31, 2021 (there were no operations from inception date to acquisition date) and unaudited interim financial statements for the periods ending June 30, 2021 and June 30, 2022. Financial statements of the predecessor for the period January 1, 2020 to June 25, 2020 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

(Last updated: 10/30/2020)

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 or submission. However, Section 71003 of the Fast Act (see [FAQ 1 of FAST Act](#)) and Voluntary Submission of Draft Registration Statements (see [FAQ 7](#)) provide limited exceptions for certain filed registration statements and draft submissions, respectively.

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)³ 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. 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.

³ See Section 1340 for summary of accelerated filer rule.

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 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).

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.
n/a	Form 8-A filed in connection with a 1933 Act registration statement	Automatically on the latest of: <ul style="list-style-type: none"> • 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.
n/a	Form 8-A not filed in connection with a 1933 Act registration statement	Automatically on the later of: <ul style="list-style-type: none"> • 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.
n/a	Form 8-A filed in connection with a 1933 Act registration statement	Automatically on the later of: <ul style="list-style-type: none"> • 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.
n/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: 10/30/2020)

Form	Section
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	Section
Form 10-Q (Quarterly Reports) ⁴	<p>Same as described at Section 1120 plus:</p> <ul style="list-style-type: none"> • Balance sheet as of last fiscal year-end; • Statements of comprehensive income for most recent quarter alone, and prior comparable quarter alone (a statement of cash flows for these quarters is not required); and <p>Changes in stockholders' equity and noncontrolling interests for the current and comparative year-to-date periods, with subtotals for each interim period.⁵</p>

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

⁴ 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].

⁵ The changes in stockholders' equity can be presented in a note to the financial statements.

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**

Report	Schedule
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: 11/9/2016)

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:

Registrant	Report
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 ⁶ 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** (Last updated: 10/30/2020)

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:

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

⁶ 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.

- d. It is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B), as applicable, of the “smaller reporting company” definition in Rule 12b-2.⁷

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. 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;
- b. 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;
- c. It has filed at least one annual report under Section 13(a) or 15(d) of the Exchange Act; and
- d. It is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B), as applicable, of the “smaller reporting company” definition in Rule 12b-2.

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 filer 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.

For example, a calendar year-end issuer was a non-accelerated filer as of 12/31/2021. As of June 30, 2022, the issuer’s “public float” increased to \$300 million and revenue for fiscal year 2021 was greater than \$100 million. The issuer will be an accelerated filer for its 12/31/2022 Form 10-K.

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 to the level of public float as of the last business day of the issuer’s most recently completed second

⁷ See Sections 5110 and 5120 for “smaller reporting company” definition and related transition.

fiscal quarter and annual revenues for the most recent fiscal year completed before the last business day of the 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 it will maintain this status except:

- a. A large accelerated or an accelerated filer will become a non-accelerated filer if it determines that its public float was below \$60 million as of the last business day of its most recently completed second fiscal quarter; or if it determines that it is eligible to use the requirement for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the "smaller reporting company" definition.
- b. A large accelerated filer will become an accelerated filer if it determines that its public float was below \$560 million, but not below \$60 million, as of the last business day of its most recently completed second fiscal quarter, and it is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the "smaller reporting company" definition.

Note to Section 1340.4

A registrant no longer qualifies as an EGC, and the 404(b) auditor attestation exemption, the day it becomes a large accelerated filer, which occurs on the last day of the registrant's fiscal year if the large accelerated filer criteria are met. See Topic 10 for more information. *(Last Update: 6/30/2013)*

1340.5 Recap of Accelerated Filer Rule and relationship with smaller reporting company status: Public Float and Revenue Tests and Due Dates:

Category of Filer	Annual Revenues	Public Float to Enter Status	Public Float and/or Revenues to Exit Status⁸
Non-Accelerated Filer and Smaller Reporting Company <ul style="list-style-type: none"> • 10-K is due 90 days after year-end • 10-Q is due 45 days after quarter-end • Interim F/S Updating is required 134 days after the latest balance sheet filed 	N/A	< \$75 million	N/A

⁸ A registrant may exit accelerated filer status by having < \$60 million public float or by meeting the "revenue test" for smaller reporting company status. See paragraph (2) or (3)(iii)(B) of the "smaller reporting company" definition for a description of such test. The applicable paragraph is based on whether

Category of Filer	Annual Revenues	Public Float to Enter Status	Public Float and/or Revenues to Exit Status ⁸
null	Less than \$100 million	≥ \$75 million but < \$700 million	N/A
Accelerated Filer and Smaller Reporting Company <ul style="list-style-type: none"> • 10-K is due 75 days after year-end • 10-Q is due 40 days after quarter-end • Interim F/S Updating is required 129 days after the latest balance sheet filed 	\$100 million or more	≥ \$75 million but < \$250 million	Public float test: < \$60 million becomes a non-accelerated filer and remains a smaller reporting company Revenue test: Public float < \$700 million and revenues < \$100 million becomes a non-accelerated filer and remains a smaller reporting company
Accelerated Filer (not a Smaller Reporting Company) <ul style="list-style-type: none"> • 10-K is due 75 days after year-end • 10-Q is due 40 days after quarter-end • Interim F/S Updating is required 129 days after the latest balance sheet filed 	\$100 million or more	≥ \$250 million but < \$700 million	Public float test: < \$200 million but ≥ \$60 million and revenue is ≥ \$80 million remains an accelerated filer and becomes a smaller reporting company Public float test: < \$60 million becomes a non-accelerated filer and a smaller reporting company Revenue test: Public float < \$700 million and revenues < \$80 million becomes a non-accelerated filer and a smaller reporting company
Large Accelerated Filer (not a Smaller Reporting Company) <ul style="list-style-type: none"> • 10-K is due 60 days after year-end • 10-Q is due 40 days after quarter-end • Interim F/S Updating is required 129 days after the latest balance sheet filed 	N/A	≥ \$700 million	Public float test: < \$560 million but ≥ \$200 million and revenue is ≥ \$100 million becomes an accelerated filer Public float test: < \$200 million but ≥ \$60 million and revenue is ≥ \$100 million becomes an accelerated filer and a smaller reporting company Public float test: < \$60 million becomes a non-accelerated filer and a smaller reporting company Revenue test: To become a non-accelerated filer and a smaller reporting company, public float < \$560 million AND one of the following: (1) revenues < \$100 million (if prior revenues < \$100 million) OR (2) revenues < \$80 million (if prior revenues were ≥ \$100 million).

a registrant currently qualifies as a smaller reporting company under either the “public float test” or the “revenue test” of the SRC definition. See page 54 of the [“Accelerated Filer and Large Accelerated Filer Definitions Adopting Release”](#) for examples.

1340.6 Foreign Private Issuer Implications

The definitions of 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, only an FPI that elects to file on domestic forms and provides financial statements in accordance with U.S. GAAP may apply the revenue test in paragraph (2) or (3)(iii)(B) of the “smaller reporting company” definition in determining its non-accelerated, accelerated or large accelerated filer status. An FPI electing to file on Forms 10-K and 10-Q and that meets one of the accelerated filer definitions is subject to accelerated filing deadlines. 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.

1340.7 Periodic Report Cover Page Implications

Cover pages to Forms 10-K, 10-Q, and 20-F include boxes that must be checked to indicate (1) whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer, and (2) whether an internal control over financial reporting auditor attestation is included in the filing. 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.

1340.8 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 its 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).

1340.9 Current Report Implications

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

1340.10 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 1340.10

1. 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)*

2. A registrant that qualifies as both a smaller reporting company and an accelerated (or large accelerated) filer is subject to the requirements that apply to an accelerated (or large accelerated) filer, including the timing of the filing of periodic reports and the requirement to provide the auditor’s attestation of management’s assessment of ICFR. *(Last updated: 10/30/2020)*

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 comprehensive income, cash flows, and stockholders' 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, 2023 to change its year-end to December 31, 2022. The company must file a transition report on Form 10-K that includes audited statements of comprehensive income, cash flows, and stockholders' equity for the nine-month transition period ended December 31, 2022 and for each of the two years ended March 31, 2022, as well as audited balance sheets as of March 31, 2022 and December 31, 2022.

In contrast, a company with a June 30 year-end decides on January 2, 2023 to change its year-end to December 31, 2022. The company must file a transition report on Form 10-K that includes audited statements of comprehensive income, cash flows, and stockholders' equity for the six-month transition period ended December 31, 2022, and for each of the three years ended June 30, 2022. The company must also file audited balance sheets as of December 31, 2022, June 30, 2022 and June 30, 2021.

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, 2023 to change its year-end to December 31, 2022, and files a transition report on Form 10-Q containing unaudited financial statements for the transition period from October 1, 2022 to December 31, 2022. Under the Exchange Act, audited transition-period financial statements would not need to be filed until the company files its December 31, 2023 Form 10-K. However, a registration statement declared effective after November 14, 2023 (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 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

(Last updated: 12/31/2022)

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

1440 [Reserved]

(Last updated: 10/30/2020)

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 the S-X Acquisition Rules.

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 [Reserved]

(Last updated: 7/1/2019)

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)*

* * * * *

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, where consistent with the protection of investors, permit the omission of one or more of the financial statements required by Regulation S-X or the filing in substitution therefor of appropriate statements of comparable character under Rule 3-13 and Rule 8-01(e) of Regulation S-X. Registrants may request such relief in situations where strict application of the rules and guidelines produces an anomalous result. Additionally, registrants may request CF-OCA interpretation in unusual or unclear situations. Requests for CF-OCA relief or interpretation should be made in writing and include a discussion of all relevant facts and circumstances, an analysis of the specific transaction and sufficient detail regarding the expected impact to the registrant's business. See "Communications with the Division of Corporation Finance's Office of Chief Accountant" section for additional information about requesting relief and for information regarding interpretive requests, informal advice and other assistance. Under Rule 3-13 and Rule 8-01(e) of Regulation S-X, the staff may also require, by written notice, the filing of other financial statements in addition to, or in substitution for, the statements required if such statements are (1) necessary or appropriate for an adequate presentation of the financial condition presented in the required statements or (2) otherwise necessary for the protection of investors. (Last updated 6/30/2025)

2000 [Reserved]

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;
- target is a non-reporting company and the issuer's shareholders are **not** voting;
- target is a smaller reporting company;
- acquirer is an EGC; or
- 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
- 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 comprehensive 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%	<p>No target financial statements required in the registration statement, subject to the following:</p> <p>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.</p>
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.	<p>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.</p> <p>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).</p>
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.	<p>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]</p> <p>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.</p> <p>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</p> <p>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.</p>

- 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.

In transactions where the registrant is a SPAC, the target’s financial statements become those of the registrant upon consummation of the merger. In light of this fact and the staff considers the transaction to be equivalent to an initial public offering of the target, the staff would expect the financial statements of the target to be audited in accordance with the standards of the PCAOB. *(Last updated: 10/30/2020)*

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.	<p>Latest Fiscal Year</p> <p>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.</p> <p>Fiscal years before the latest fiscal year</p> <p>Need not be audited if they were not previously audited.</p>

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 2940.3 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

Section	Description	<i>Last updated</i>
2305	[Reserved]	6/30/2025
2310	[Reserved]	6/30/2025
2315	[Reserved]	6/30/2025
2320	[Reserved]	6/30/2025

Section	Description	<i>Last updated</i>
2325	[Reserved]	<i>6/30/2025</i>
2330	[Reserved]	<i>6/30/2025</i>
2335	[Reserved]	<i>6/30/2025</i>
2340	Properties Subject to Triple Net Lease	<i>Prior to 2020</i>
2345	Properties Securing Loans, which in Economic Substance Represent an Investment in Real Estate, including Acquisition Development and Construction (ADC) Arrangements	<i>Prior to 2020</i>
2350	Properties Securing Loans that Represent an Asset Concentration [SAB Topic1I]	<i>Prior to 2020</i>
2355	[Reserved]	<i>10/30/2020</i>
2360	Proxy Statements for Acquisitions of Real Estate Operating Properties	<i>Prior to 2020</i>

2305 [Reserved]

2310 [Reserved]

2315 [Reserved]

2320 [Reserved]

2325 [Reserved]

2330 [Reserved]

2335 [Reserved]

2340 **Properties Subject to Triple Net Lease**
(Last updated prior to 2020)

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]

(Last updated prior to 2020)

2345.1 Overview

A registrant may make a loan that is secured by a real estate operating property. SAB Topic 1I 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 11]**

(Last updated prior to 2020)

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 **[Reserved]**

2360 **Proxy Statements for Acquisitions of Real Estate Operating Properties**

(Last updated prior to 2020)

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.

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 statement of comprehensive income 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 statement of comprehensive income 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 “**Financial Instruments**”, ASC 825 must disclose the information required by 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 ASC 323-10-50-3c should be provided for an equity method investment accounted for using fair value in accordance with 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 2405.3 for 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 ASC 280 [ASC 280-10-15-3]
- b. Certain disclosures about employers’ pensions and other postretirement benefits [ASC 715-20-50-5]
- c. Earnings per share under ASC 260 [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	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

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.

“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 2020, 30% in 2021, and 19% in 2022, the investee’s financial statements must be audited for 2021, but may be unaudited for 2020 and 2022 (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 **not** require separate **interim** financial statements. Instead, S-X 10-01(b)(1) requires certain summarized interim statement of comprehensive income information of the investee if it is significant. See Section 2420.

Notes to Section 2405.3

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.

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)*

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.

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 2905.3, 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 the S-X Acquisition Rules. Under the S-X Acquisition Rules, 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 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-X 4-08(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 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 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 statement of comprehensive income 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: 10/30/2020)

Using the statement of comprehensive income 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 for all investees** the registrant's equity in the earnings (or loss) of the investee from continuing operations before income taxes 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:

- The registrant is a smaller reporting company and
- 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	S-X 4-08(g)	S-X 10-01(b)(1)
Source:	3	2
Number of Significance Tests:	Exceeds 10%	Exceeds 20%
Significance Threshold:	See Sections 2420.3 to 2420.5	See Sections 2420.6 to 2420.8

Registrant	Annual Financial Statements	Interim Financial Statements
Smaller Reporting Companies	S-X 8-03	S-X 8-03
Source:	3	3
Number of Significance Tests:	Exceeds 20%	Exceeds 20%
Significance Threshold:	See Section 2420.9	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*

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. [S-X 4-08(g) and SAB Topic 6K.4.b.] 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 statement of comprehensive income 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 statement of comprehensive income 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 statement of comprehensive income 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 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 ASC 825 Fair Value Option for an Equity Method Investment and S-X 3-09 and S-X 4-08(g)

2435.1 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 ASC 323-10-50-3c. ASC 825

requires, in part, that companies electing the fair value option for an investee comply with the disclosure requirements in ASC 323-10-50-3c.

2435.2 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 ASC 825 requirement to comply with the disclosure requirements in 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 statement of comprehensive income 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 may request relief.

2435.3 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 and Issuers of Guaranteed Securities
[S-X 3-10, S-X 13-01 and S-X 8-01(c)]**

Section	Description	<i>Last Updated</i>
2510	Background	12/31/2022
2515	Eligibility Conditions and Disclosure Requirements	12/31/2022

Section	Description	Last Updated
2520	Implementation Matters	12/31/2022
2530	Recently-Acquired Subsidiary Issuers and Guarantors	12/31/2022
2540	Periodic Reporting by Subsidiary Issuers and Guarantors	6/30/2025

2510 Background

2510.1 Financial Statements of Guarantors and Issuers of Guaranteed Securities -

A debt or debt-like security (e.g., preferred stock that meets the requirements of Rule 3-10(b)(2)) that is registered or being registered may be guaranteed by one or more affiliates of the issuer (e.g., a parent company may issue debt securities that are guaranteed by one or more of its subsidiaries). A guarantee of a debt or debt-like security is a separate security under the Securities Act and, as a result, offers and sales of these guarantees, which are typically purchased together with the related debt security and are held together while outstanding, must be either registered or exempt from registration. Each issuer of a registered security that is guaranteed and each guarantor of a registered security must file the financial statements required by Regulation S-X in registration statements and Exchange Act reports, as applicable. However, in certain circumstances, as described in Section 2510.2, S-X 3-10(a) provides relief from the requirement to file separate financial statements for each issuer and guarantor.

2510.2 Conditions for Omission of Subsidiary Issuer and Subsidiary Guarantor Financial Statements

S-X 3-10(a) permits the omission of separate financial statements of subsidiary issuers and guarantors of guaranteed “debt or debt-like”, as defined in S-X 3-10(b)(2), securities when certain conditions are met, including that the “parent company”, as defined in S-X 3-10(b)(1), provides supplemental financial and non-financial disclosures about the subsidiary issuers and/or guarantors and the guarantees. S-X 3-10 specifies the conditions that must be met in order to omit separate subsidiary issuer or guarantor financial statements, these are summarized in Section 2515.2. S-X 13-01 specifies the accompanying financial and non-financial disclosure requirements, as summarized in Section 2515.3. If any of the conditions in S-X 3-10 are not met, or the disclosures in S-X 13-01 are not provided by the parent company, separate financial statements of each subsidiary issuer and guarantor may not be omitted. The requirements of S-X 3-10 and 3-16 were amended on March 2, 2020 in [SEC Release No. 33-10762](#) (the “March 2020 Amendments”), which includes an appendix that summarizes the main features of these rules, including the eligibility conditions and required disclosures.

Note to Section 2510.2

The requirements of S-X 3-10 and S-X 13-01 also apply to entities that qualify as smaller reporting companies under S-X 8-01(c) and S-X 8-03(b)(6), and to entities offering or that have offered guaranteed securities pursuant to Regulation A through the requirements of Forms 1-A, 1-K, and 1-SA.

2515 Eligibility Conditions and Disclosure Requirements

2515.1 Summarized Eligibility Conditions and Disclosure Requirements – Set forth below are tables summarizing the main features of S-X 3-10 and S-X 13-01. These tables are only a summary of certain requirements contained in the rules and regulations; they are not a substitute for the rules and regulations. Refer to the rules for the full requirements and to the description of those requirements in the March 2020 Amendments.

2515.2 Eligibility Conditions – The following table summarizes the eligibility conditions in S-X 3-10 that, if all have been satisfied, permit the omission of the separate financial statements of a subsidiary issuer or guarantor:

Eligibility Condition	Description	Rule Reference
Parent Company Financial Statements	Consolidated financial statements of the “parent company,” as defined at S-X 3-10(b)(1), have been filed.	S-X 3-10(a)
Consolidated Subsidiary	The subsidiary issuer or guarantor is a consolidated subsidiary of the parent company.	S-X 3-10(a)
Debt or Debt-Like	The guaranteed security is “debt or debt-like,” as defined at S-X 3-10(b)(2).	S-X 3-10(a)(1)
Eligible Issuer and Guarantor Structure	The issuer and guarantor structure must match one of the eligible issuer and guarantor structures. See Sections 2515.4 and .5 below for additional information.	S-X 3-10(a)(1)(i) or (ii)
Supplemental Financial and Non-Financial Disclosures	Parent company provides the supplemental financial and non-financial disclosures specified in S-X 13-01.	S-X 3-10(a)(2)

2515.3 Non-Financial and Financial Disclosures – The following tables summarize the supplemental non-financial and financial disclosures that, to the extent material, must be provided by the parent company. Refer to Section 2520 below for additional information on the application of these requirements.

The parent company may provide the disclosures in its consolidated financial statements and related footnotes or, alternatively, in MD&A. If a parent company elects to provide the disclosures in its audited financial statements, the

disclosures must be audited. If not otherwise included in the consolidated financial statements or in MD&A, the parent company must include the disclosures in its prospectus immediately following “Risk Factors,” if any, or otherwise, immediately following pricing information described in Item 105 of Regulation S-K [S-X 13-01(b)].

Non-Financial Disclosure Requirement	Description	Rule Reference
Non-Financial Disclosures	<p>Disclosures about the following:</p> <ul style="list-style-type: none"> • the issuers and guarantors; • the terms and conditions of the guarantees; and • how the issuer and guarantor structure and other factors may affect payments to holders of the guaranteed securities. <p>Disclosure of facts and circumstances specific to particular issuers and guarantors that are beyond what is specifically required in S-X 13-01(a)(1) through (3) may be necessary (see “Additional Information Required to be Disclosed” section below).</p>	S-X 13-01(a)(1) through (3)
Exhibit Listing Each Subsidiary Guarantor, Issuer, or Co-Issuer	List of each of the parent company’s subsidiaries that is a guarantor, issuer, or co-issuer of guaranteed securities registered or being registered that the parent company issues, co-issues, or guarantees.	Exhibit 22 (Item 601(b)(22) of Regulation S-K)

Financial Disclosure Requirement	Description	Rule Reference
Summarized Financial Information	<p>Summarized financial information, as specified in S-X 1-02(bb)(1), which includes select balance sheet and income statement line items, for each issuer and guarantor.</p> <p>Disclosure of additional line items of financial information beyond what is specified in S-X 13-01(a)(4) may be necessary (see “Additional Information Required to be Disclosed” section below).</p>	S-X 13-01(a)(4)
Basis of Presentation Note	An accompanying note that briefly describes the basis of presentation.	S-X 13-01(a)(4)

Financial Disclosure Requirement	Description	Rule Reference
Transactions with and Balances Due To/From Related Parties and Non-Obligated Subsidiaries	An issuer's or guarantor's amounts due from, amounts due to, and transactions with non-obligated subsidiaries and related parties must be presented in separate line items.	S-X 13-01(a)(4)(iii)
Combined Basis Presentation	<p>The summarized financial information of each issuer and guarantor consolidated in the parent company's consolidated financial statements is permitted to be presented on a combined basis with the summarized financial information of the parent company.</p> <p>However, if information provided in response to disclosures specified in S-X 13-01 (e.g., one of the non-financial disclosures) is applicable to one or more, but not all, issuers and guarantors, separate disclosure of summarized financial information for the issuers and guarantors to which the information applies is required.</p> <p>In limited circumstances (i.e., where the separate financial information applicable to those issuers and/or guarantors can be easily understood), narrative disclosure may be provided in lieu of such separate summarized financial information.</p>	S-X 13-01(a)(4)(i) and 13-01(a)(4)(iv)
Elimination of Certain Intercompany Balances and Transactions	Intercompany balances and transactions between issuers and guarantors whose information is presented on a combined basis must be eliminated in the financial disclosures.	S-X 13-01(a)(4)(ii)
Exclusion of Non-Obligated Subsidiary Information	The summarized financial information of issuers and guarantors must exclude subsidiaries that are not issuers or guarantors, even if an issuer or guarantor would otherwise consolidate such non-issuer and non-guarantor subsidiaries. An issuer's or guarantor's investment in a subsidiary that is not an issuer or guarantor shall not be presented.	S-X 13-01(a)(4)(iii)

Financial Disclosure Requirement	Description	Rule Reference
Periods to Present	The summarized financial information must be provided as of and for the most recently ended fiscal year and year-to-date interim period, if applicable, included in the parent company's consolidated financial statements.	S-X 13-01(a)(4)(v)
Non-Exclusive Scenarios Permitting Omission of Summarized Financial Information	The summarized financial information may be omitted on the basis that it is not material if one of the four non-exclusive scenarios in S-X 13-01(a)(4)(vi) is applicable and the related scenario is disclosed. See Section 2520.3 for a discussion of the second non-exclusive scenario.	S-X 13-01(a)(4)(vi)
Additional Information Required to be Disclosed	Disclose any financial and narrative information about each guarantor if the information would be material for investors to evaluate the sufficiency of the guarantee, and disclose sufficient information so as to make the financial and non-financial information presented not misleading.	S-X 13-01(a)(6) and (7)
Recently-Acquired Subsidiary Issuers and Guarantors	Disclose pre-acquisition summarized financial information specified in S-X 13-01(a)(4) for recently-acquired subsidiary issuers and guarantors in a Securities Act registration statement filed in connection with the offer and sale of the guaranteed security if the parent company has acquired a significant "business" after the date of its most recent balance sheet included in its consolidated financial statements and that acquired business and/or one or more of its subsidiaries are obligated as issuers and/or guarantors. See Section 2530 below for additional information.	S-X 13-01(a)(5)

2515.4 Eligible Issuer and Guarantor Structures Condition – Parent Company Obligation is Full and Unconditional – The ability to provide supplemental financial and non-financial disclosures in lieu of separate subsidiary issuer and guarantor financial statements is only available when the parent company's obligation is full and unconditional. The parent company's role as issuer, co-issuer, or full and unconditional guarantor with respect to the guaranteed security determines whether the issuer and guarantor structure is eligible. See eligible structures at S-X 3-10(a)(1)(i) and (ii).

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 does not, 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(b)(3)].

- 2515.5 **Subsidiary Guarantors** – The categories of eligible issuer and guarantor structures at S-X 3-10(a)(1)(i) and (ii) do not refer to subsidiary guarantors. Although one or more other subsidiaries of the parent company may guarantee the security, the eligibility of an issuer and guarantor structure depends on the role of the parent company as issuer, co-issuer, or full and unconditional guarantor with respect to the guaranteed security. Separate financial statements of consolidated subsidiary guarantors may be omitted for each issuer and guarantor structure that is eligible if the other conditions of S-X 3-10 are met.

Despite not affecting whether the issuer and guarantor structure is eligible, the role of subsidiary guarantors and nature of their guarantees affect what disclosure is required. For example, subsidiary guarantors are required to be identified pursuant to S-X 13-01(a)(1), and disclosure of the terms and conditions of the guarantees is required by S-X 13-01(a)(2), which includes but is not limited to any limitations and conditions of a subsidiary’s guarantee, whether the guarantee is joint and several with other guarantees, and any guarantee release provisions. Further, separate disclosure of summarized financial information applicable to subsidiary guarantors to which such disclosures apply is required by S-X 13-01(a)(4)(iv).

2520 Implementation Matters

- 2520.1 **Non-Issuer/Non-Guarantor Subsidiaries** – The summarized financial information required by S-X 13-01(a)(4) must exclude non-issuer/non-guarantor subsidiaries, even if an issuer or guarantor would otherwise consolidate such non-issuer/non-guarantor subsidiaries. Further, an issuer's or guarantor's investment in a non-issuer/non-guarantor subsidiary shall not be presented [S-X 13-01(a)(4)(iii)]. Similarly, equity in earnings or losses of a non-issuer/non-guarantor subsidiary shall not be presented. However, dividends that are declared and receivable from a non-issuer/non-guarantor subsidiary should be included.
- 2520.2 **Combined Basis Presentation** – S-X 13-01(a)(4) requires disclosure of summarized financial information for each issuer and guarantor. S-X 13-01(a)(4)(i) permits, but does not require, the summarized financial information of each issuer and guarantor consolidated by the parent company to be presented on a combined basis with the parent company’s summarized financial information. Additionally, S-X 13-01(a)(4)(iv) requires separate disclosure of summarized financial information for certain issuers and guarantors in some circumstances. Where summarized financial information of issuers and guarantors is presented separately:

- Intercompany balances and transactions between issuers and guarantors should not be eliminated. Such amounts should be presented in separate line items in the summarized financial information [S-X 13-01(a)(4)(iii)] and the accompanying basis of presentation note [S-X 13-01(a)(4)] should clearly explain their nature and the entities to which they relate; and
- To avoid duplicative financial information about the same issuers and guarantors being presented, the summarized financial information of an issuer or guarantor should exclude its investment in a subsidiary issuer or guarantor whose summarized financial information is presented separately, as well as any related equity in earnings (e.g., a parent company issuer should not present its investment in a consolidated subsidiary guarantor whose summarized financial information is presented separately).

2520.3 Omission of Summarized Financial Information: Non-Exclusive Scenarios – S-X 13-01(a)(4)(vi) sets forth four non-exclusive scenarios in which the required summarized financial information may be omitted on the basis that it is not material, provided the scenario is applicable and disclosed. The second scenario is that “[t]he combined issuers and guarantors, excluding investments in subsidiaries that are not issuers or guarantors, have no material assets, liabilities or results of operations”. [S-X 13-01(a)(4)(vi)(B)]. If this scenario is not applicable to a combined issuer and guarantor solely because the guaranteed debt or debt-like securities and/or related expenses (e.g., interest expense) are material, the staff will not object if, in lieu of summarized financial information, the parent company, discloses that the combined issuers and guarantors, excluding investments in subsidiaries that are not issuers or guarantors, have no material assets, liabilities or results of operations except for the guaranteed debt or debt-like securities and/or related expenses, and also discloses the nature and amount(s) of guaranteed debt or debt-like securities and/or related expenses. This disclosure should clearly indicate whether amounts of debt or debt-like securities are current or non-current.

2520.4 Trust Preferred Securities – An issuer of trust preferred securities that satisfied all conditions under S-X 3-10 and was therefore eligible to omit its separate financial statements prior to the March 2020 Amendments may not satisfy the eligibility condition in S-X 3-10(a) as currently in effect because it requires a subsidiary issuer to be consolidated by its parent company. However, for issuers with this scenario, refer to the staff [no-action letter dated November 10, 2020](#).

2530 Recently-Acquired Subsidiary Issuers and Guarantors [S-X 13-01(a)(5)]

2530.1 Pre-Acquisition Summarized Financial Information - S-X 13-01(a)(5) requires pre-acquisition summarized financial information of recently-acquired

subsidiary issuers and guarantors when a parent company has acquired a significant “business” after the date of its most recent balance sheet included in its consolidated financial statements, and that acquired business and/or one or more of its subsidiaries are obligated as issuers and/or guarantors. Pre-acquisition financial information of recently acquired subsidiary issuers and/or guarantors is **not** required for acquisitions that occur before the date of the parent company’s most recent balance sheet included in the parent company’s financial statements. S-X 13-01(a)(5) only applies to a Securities Act registration statement filed in connection with the offer and sale of the guaranteed securities.

- 2530.2 **Significance Test** - Whether a “business” has been acquired is determined in accordance with the guidance set forth in S-X 11-01(d), and acquisitions of “related” businesses are treated as a single business acquisition in a manner consistent with S-X 3-05(a)(3). An acquired business will be deemed significant using the significance tests in S-X 1-02(w), substituting 20% for 10% each place it appears therein, based on a comparison of the most recent annual financial statements of the acquired business and the parent company’s most recent annual consolidated financial statements filed at or prior to the date of acquisition. These significance tests are the same tests used to determine whether pre-acquisition financial statements are required for an acquired business pursuant to S-X 3-05.
- 2530.3 **Form and Content** - The pre-acquisition summarized financial information follows the form and content prescribed in S-X 13-01(a)(4) required for existing issuers and guarantors. Not all entities that compose an acquired business may be issuers and/or guarantors. Accordingly, the required summarized financial information is only for those entities acquired that are issuers or guarantors.
- 2530.4 **Timing Considerations** - Generally, a parent company is required to provide the pre-acquisition summarized financial information of a recently acquired issuer or guarantor in a Securities Act registration statement for those acquisitions where it will be required to provide pre-acquisition financial statements of the acquired business pursuant to S-X 3-05. However, there may be some circumstances where the pre-acquisition summarized financial information is required in advance of when pre-acquisition financial statements are required pursuant to S-X 3-05. For example, S-X 3-05(b)(4) in part permits, in certain circumstances, pre-acquisition financial statements of an acquired business to be omitted from a registration statement if significance does not exceed 50% and the registration statement is declared effective no more than 74 calendar days after consummation of the acquisition, provided the pre-acquisition financial statements are subsequently filed on Form 8-K. In those circumstances, however, the pre-acquisition summarized financial information of a recently acquired issuer or guarantor would still be required by S-X 13-01(a)(5).

There may also be some circumstances where a parent company is required to provide this pre-acquisition summarized financial information of a recently acquired issuer or guarantor, but is not required to provide pre-acquisition financial statements of the acquired business pursuant to S-X 3-05. For example, a parent company that is a foreign private issuer that acquires a significant business after the date of the most recent balance sheet presented is required to provide pre-acquisition summarized financial information of a recently acquired issuer or guarantor pursuant to S-X 13-01(a)(5), but may be able to omit the pre-acquisition financial statements of a greater than 20% but less than 50% significant acquired business from its registration statement pursuant to S-X 3-05(b)(4) and from any subsequent Exchange Act filings.

2540 Periodic Reporting by Subsidiary Issuers and Guarantors

- 2540.1 **Exchange Act Reporting Exemption** - 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 [Exchange Act Rule 12h-5]. If an issuer or guarantor of a guaranteed security has a different class of securities that is registered under Section 12 of the Exchange Act, the issuer or guarantor cannot rely on Rule 12h-5 for reporting relief until it deregisters the other class of securities [See Division of Corporation Finance Exchange Act Rules CDI, 254.01].

The conditions in S-X 3-10(a) must be met at the end of each annual and quarterly reporting period for use of the Rule 12h-5 exemption.

- 2540.2 **When Disclosure is Required** – In addition to the registration statement that registers the offer and sale of the guaranteed securities, a parent company must continue providing the financial and non-financial disclosures in its subsequent annual reports on Form 10-K and quarterly reports on Form 10-Q for so long as the subsidiary issuer or guarantor has a Section 12(b) or 15(d) reporting obligation with respect to the guarantee or guaranteed security, in order to continue to be eligible to omit the financial statements of a subsidiary issuer or guarantor. A parent company is permitted to cease providing the disclosures if the corresponding subsidiary issuer's or guarantor's Section 15(d) reporting obligation is suspended automatically by operation of Section 15(d)(1) of the Exchange Act or through compliance with Exchange Act Rule 12h-3.
- 2540.3 **Acquisition of Issuer or Guarantor of a Registered Guaranteed Debt Security** – 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(a) are met, the disclosures specified in S-X 13-01 are 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 The supplemental financial disclosures are required for the periods specified in S-X 13-01, 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 disclosures 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 supplemental financial disclosures 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 the supplemental financial disclosures about issuers and guarantors for all required annual and interim periods specified in S-X 13-01(a)(4)(v).
- 2540.6 **Shelf Registration Statements** – A shelf registration statement that registers the offer and sale of guaranteed debt securities and the related guarantees must include or incorporate by reference the financial statements of each issuer and guarantor of guaranteed securities that is identified as a registrant on the registration statement. However, subsidiary issuer or guarantor financial statements with respect to the guaranteed debt security and the related guarantee may be omitted if the conditions of S-X 3-10(a) are met, including that the parent company provides the supplemental financial and non-financial disclosures about the subsidiary issuers and/or guarantors and the guarantees specified in S-X 13-01.

Upon effectiveness of the registration statement, each issuer and guarantor will incur a reporting obligation under Section 15(d), even if securities are not yet issued under the registration statement. In order to qualify for an exemption from Exchange Act reporting under Exchange Act Rule 12h-5, subsidiary issuers or guarantors would need to be permitted by S-X 3-10 to omit their separate financial statements with respect to the guarantee or guaranteed security. One of the conditions of said omission is that the parent company provides the supplemental disclosures specified in S-X 13-01.

At the time a parent company files a shelf registration statement it may not know the actual composition of subsidiary issuers and/or guarantors that will be in place in a subsequently contemplated takedown of guaranteed debt securities. If there is an ongoing Securities Act registered offering of guaranteed debt at the time an additional subsidiary issuer or guarantor is added, the offer and sale of the related new guaranteed debt security or additional guarantee must be registered. If the offering is registered on Form S-3ASR or Form F-3ASR, the new subsidiary issuer or guarantor and related guaranteed debt security or guarantees indicated in those forms could be added to the registration statement via a POS-ASR. See General Instructions I.D.(1)(c) and IV.B of Form S-3, General Instructions I.C.1(c) and IV.B of Form F-3, and Rule 413(b). Otherwise, the offer of the guarantees would have to be registered on a separate

registration statement. In either case, the shelf registration statement must include or incorporate by reference the financial statements of each such issuer and guarantor of the guaranteed securities. The subsidiary issuer or guarantor financial statements may be omitted if the conditions of S-X 3-10(a) are met, including that the parent company provides the disclosures required by S-X 13-01 based on the new composition of issuers and guarantors. For example, summarized financial information required by S-X 13-01(a)(4) would need to be presented for the new composition of issuers and guarantors.

2600 Affiliate Securities Pledged as Collateral [S-X 3-16, S-X 13-02 and S-X 8-01(d)]

Section	Description	<i>Last Updated</i>
2610	Background and Disclosure Requirements	<i>12/31/2022</i>
2620	Implementation Matters	<i>12/31/2022</i>
2630	Recently-Acquired Affiliates Whose Securities are Pledged as Collateral	<i>12/31/2022</i>
2640	When Disclosure is Required	<i>6/30/2025</i>
2650	Collateral Release Provisions	<i>12/31/2022</i>

2610 Background and Disclosure Requirements

2610.1 **Background** – Securities that are registered or being registered may be collateralized by the securities of one or more of the registrant’s affiliate(s). In general, such affiliates are consolidated subsidiaries of the registrant, and the pledge of collateral is a residual equity interest that could potentially be foreclosed upon in the event of default. If securities registered or being registered include a pledge of affiliate securities as collateral, S-X 13-02 requires a registrant to provide supplemental financial and non-financial disclosures about the affiliate and collateral arrangement. The requirements of S-X 13-02, 3-10 and 3-16 were amended on March 2, 2020 in [SEC Release No. 33-10762](#) (the “March 2020 Amendments”). This release includes an appendix that summarizes the main features of these rules, including the required disclosures. As a result of these amendments, separate financial statements of such affiliates usually are not required (see Section 2620.3 - Unconsolidated Pledged Affiliates).

While a given security may have guarantees as well as pledges of collateral, the requirements of S-X 13-02 are separate from financial statement and disclosure requirements related to guarantees. S-X 3-10 and S-X 13-01 apply to guaranteed securities (see Section 2500) and do not apply to pledges of affiliate

securities as collateral - the concepts of full, unconditional, and joint and several obligation do not apply to collateralizations.

Note to Section 2610.1

The requirements of S-X 13-02 also apply to entities that qualify as smaller reporting companies under S-X 8-01(d) and S-X 8-03(b)(7), and to entities offering or that have offered collateralized securities pursuant to Regulation A through the requirements of Forms 1-A, 1-K, and 1-SA.

2610.2 Summarized Disclosure Requirements - Set forth below are tables summarizing the non-financial and financial disclosures specified in S-X 13-02 that must be provided, to the extent material. These tables are only a summary of certain requirements contained in the rules and regulations; they are not a substitute for the rules and regulations. Refer to the rules for the full requirements and to the description of those requirements the March 2020 Amendments. Section 2620 includes additional information on the application of these requirements.

The registrant may provide the disclosures in its consolidated financial statements and related footnotes or, alternatively, in MD&A. If a registrant elects to provide the disclosures in its audited financial statements, the disclosures must be audited. If not otherwise included in the consolidated financial statements or in MD&A, the registrant must include the disclosures in its prospectus immediately following “Risk Factors,” if any, or otherwise, immediately following pricing information described in Item 105 of Regulation S-K [S-X 13-02(b)].

Non-Financial Disclosure Requirement	Description	Rule Reference
Non-Financial Disclosures	<p>Disclosures about the following:</p> <ul style="list-style-type: none"> • The securities pledged as collateral; • the affiliates whose securities are pledged; • the terms and conditions of the collateral arrangement; and • whether a trading market exists for the pledged securities. <p>Disclosure of facts and circumstances specific to particular affiliates or the collateral arrangement that are beyond what is specifically required in S-X 13-02(a)(1) through (3) may be necessary (see “Additional Information Required to be Disclosed” section below).</p>	S-X 13-02(a)(1) through (3)

Non-Financial Disclosure Requirement	Description	Rule Reference
Exhibit Listing Each Affiliate Whose Securities Are Pledged & the Securities Pledged as Collateral	List of each of the registrant's affiliates whose securities are pledged as collateral for securities registered or being registered that also identifies the securities pledged as collateral.	Exhibit 22 (Item 601(b)(22) of Regulation S-K)

Financial Disclosure Requirement	Description	Rule Reference
Summarized Financial Information	<p>Summarized financial information, as specified in S-X 1-02(bb)(1), which includes select balance sheet and income statement line items, for each affiliate whose securities are pledged as collateral.</p> <p>Disclosure of additional line items of summarized financial information beyond what is specified in S-X 13-02(a)(4) may be necessary (see "Additional Information Required to be Disclosed" section below).</p>	S-X 13-02(a)(4)
Basis of Presentation Note	An accompanying note that briefly describes the basis of presentation.	S-X 13-02(a)(4)
Transactions with and Balances Due To / From the Registrant, Certain Subsidiaries, and Related Parties	An affiliate's amounts due from, amounts due to, and transactions with the registrant, any of the registrant's subsidiaries not included in the Summarized Financial Information of the affiliate(s), and related parties must be presented in separate line items.	S-X 13-02(a)(4)(iii)

Financial Disclosure Requirement	Description	Rule Reference
Combined Basis Presentation	<p>The summarized financial information of each affiliate consolidated in the registrant's financial statements is permitted to be presented on a combined basis.</p> <p>However, if information provided in response to disclosures specified in S-X 13-02 (e.g., one of the non-financial disclosures) is applicable to one or more, but not all, affiliates, separate disclosure of summarized financial information for the affiliates to which the information applies is required.</p> <p>In limited circumstances (i.e., where the separate financial information applicable to those affiliates can be easily understood), narrative disclosure may be provided in lieu of such separate summarized financial information.</p>	S-X 13-02(a)(4)(i) and 13-02(a)(4)(iv)
Elimination of Certain Intercompany Balances and Transactions	Intercompany balances and transactions between affiliates whose information is presented on a combined basis must be eliminated in the financial disclosures.	S-X 13-02(a)(4)(ii)
Periods to Present	The summarized financial information must be provided as of and for the most recently ended fiscal year and year-to-date interim period, if applicable, included in the registrant's consolidated financial statements.	S-X 13-02(a)(4)(v)
Non-Exclusive Scenarios Permitting Omission of Summarized Financial Information	The summarized financial information may be omitted on the basis that it is not material if one of the two non-exclusive scenarios in S-X 13-02(a)(4)(vi) is applicable and the related scenario is disclosed.	S-X 13-02(a)(4)(vi)
Additional Information Required to be Disclosed	Disclose any financial and narrative information about each affiliate if the information would be material for investors to evaluate the pledge of the affiliate's securities as collateral, and disclose sufficient information so as to make the financial and nonfinancial information presented not misleading.	S-X 13-02(a)(6) and (7)

Financial Disclosure Requirement	Description	Rule Reference
<p>Recently-Acquired Affiliates Whose Securities are Pledged as Collateral</p>	<p>Disclose pre-acquisition summarized financial information specified in S-X 13-02(a)(4) for recently-acquired affiliates whose securities are pledged as collateral in a Securities Act registration statement filed in connection with the offer and sale of the collateralized security if the registrant has acquired a significant “business” after the date of its most recent balance sheet included in its consolidated financial statements and that acquired business and/or one or more of its subsidiaries are affiliates whose securities are pledged as collateral. See Section 2630 below for additional information.</p>	<p>S-X 13-02(a)(5)</p>

2620 Implementation Matters

- 2620.1 **Subsidiaries of Affiliates whose Securities are Pledged** – S-X 13-02(a)(4) requires disclosure of summarized financial information for each affiliate whose securities are pledged as collateral. Because the securities pledged as collateral are an equity interest in a given pledgor affiliate, the financial information of all subsidiaries that would be consolidated by that affiliate must be included in that affiliate’s summarized financial information presented pursuant to S-X 13-02(a)(4), even if the securities of those subsidiaries are not pledged as collateral. This presentation is different from the disclosures applicable to issuers and guarantors of guaranteed securities, which require non-issuer and non-guarantor subsidiaries of issuers and guarantors to be excluded from the financial information of issuers and guarantors in order to distinguish the financial information of entities that are legally obligated to pay from those that are not [S-X 13-01(a)(4)(iii)].
- 2620.2 **Guaranteed & Collateralized Securities** – A registrant may register the offer and sale of its debt securities that are: (1) guaranteed by one or more of its subsidiaries; and (2) collateralized by the securities of the same guarantor subsidiaries. In these circumstances, each are separate credit enhancements for which separate and different financial and non-financial disclosures are required by each of S-X 13-01 (see Section 2500) and 13-02. In this regard, under S-X 13-01, the summarized financial information of the registrant, as the “parent company,” is required to be disclosed under S-X 13-01(a)(4). Dissimilarly, that same parent company’s summarized financial information is not required to be disclosed under S-X 13-02(a)(4), because it is not an affiliate whose securities collateralize securities registered or being registered. Disclosures provided pursuant to each of these rules in a registrant’s filing should be clearly distinguished from one another.

- 2620.3 **Unconsolidated Pledged Affiliates** – In the rare circumstances where the securities of an affiliate that is not a consolidated subsidiary of a registrant collateralize the registered securities of that registrant, S-X 13-02(a)(6) and (7) require the registrant to provide any financial and narrative information about each such affiliate if the information would be material for investors to evaluate the pledge of the affiliate’s securities as collateral and sufficient information so as to make the financial and non-financial information presented not misleading. Because the unconsolidated affiliate’s financial information is not included in the registrant’s consolidated financial statements, disclosure beyond what is specified in S-X 13-02(a)(1) through (4) may be necessary. In this regard, separate financial statements of the unconsolidated affiliate may be necessary to satisfy the requirements of S-X 13-02(a)(6) and (7).
- 2620.4 **Less than 100% of Affiliate Shares Pledged as Collateral** – Generally, a pledge of an affiliate’s securities as collateral includes all of the outstanding ownership interests in that affiliate, which are held directly or indirectly by the entity issuing the debt securities. There may be circumstances where either the pledge of collateral does not include all of the outstanding ownership interests in the affiliate held by the issuing entity, or certain ownership interests in the affiliate are held by a third party and therefore unpledged. In such cases, disclosure of these facts and circumstances are required by S-X 13-02(a)(6) and (7) if material for investors to evaluate the pledge of the affiliate’s securities as collateral, or so as to make the financial and non-financial information presented not misleading. If such circumstances are applicable to one or more, but not all, affiliates, S-X 13-02(a)(4)(iv) requires separate disclosure of Summarized Financial Information for the affiliates to which it is applicable.

2630 Recently-Acquired Affiliates Whose Securities are Pledged as Collateral [S-X 13-02(a)(5)]

- 2630.1 **Pre-Acquisition Summarized Financial Information** – In certain circumstances, disclosure of pre-acquisition summarized financial information is required for recently-acquired affiliates whose securities are pledged as collateral if their historical financial information is not yet included in the consolidated financial statements of the registrant. S-X 13-02(a)(5) requires pre-acquisition summarized financial information of recently-acquired affiliates whose securities are pledged as collateral when a registrant has acquired a significant “business” after the date of its most recent balance sheet included in its consolidated financial statements, and that acquired business and/or one or more of its subsidiaries are affiliates whose securities are pledged as collateral. Pre-acquisition financial information of recently acquired affiliates is not required for acquisitions that occur before the date of the registrant’s most recent balance sheet included in the registrant’s financial statements. S-X 13-02(a)(5) only applies to a Securities Act registration statement filed in connection with the offer and sale of the collateralized securities.

The requirements of S-X 13-02(a)(5) are similar to the requirement to provide pre-acquisition summarized financial information of recently-acquired subsidiary issuers and guarantors specified in S-X 13-01(a)(5). See related guidance at Section 2530.2 - Significance Test and Section 2530.4 – Timing Considerations.

- 2630.2 **Form and Content** – The pre-acquisition summarized financial information follows the form and content prescribed in S-X 13-02(a)(4) required for existing affiliates whose securities are pledged as collateral. Not all entities that compose an acquired business may be affiliates whose securities collateralize securities registered or being registered. Accordingly, the required summarized financial information is only for those entities acquired that are pledged affiliates.

2640 When Disclosure is Required

- 2640.1 **Registration Statements** – S-X 13-02 disclosures are required in registration statements that register the offer and sale of securities that are collateralized by securities of the registrant’s affiliate(s). S-X 13-02 disclosures are not required in registration statements that register the offer and sale of securities that are not collateralized by an affiliate’s securities, even if another collateralized security of the registrant offered and sold on a registered basis is outstanding.
- 2640.2 **Shelf Registration Statements** – An issuer of registered debt may determine whether financial and non-financial disclosures are required under S-X 13-02 at the time a takedown is contemplated, rather than when the original registration statement is filed. Any financial and non-financial disclosures required by S-X 13-02 at the time of takedown must follow the S-X disclosure location requirements specified in 13-02(b).
- 2640.3 **Periodic Reporting** – S-X 13-02 financial and non-financial disclosures are required in its annual reports on Form 10-K, and quarterly reports on Form 10-Q for so long as the registrant has a Section 15(d) reporting obligation with respect to the collateralized securities offered and sold on a registered basis.
- 2640.4 **Suspension of Reporting Obligation** – A registrant that properly suspends its reporting obligation with respect to registered collateralized securities under Section 15(d) of the Exchange Act is no longer required to provide disclosures specified in S-X 13-02.
- 2640.5 **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 annual or interim period for which S-X 13-02 disclosures would be required, S-X 13-02 disclosures are not required.

2650 Collateral Release Provisions

- 2650.1 **Collateral Release Provisions** – Prior to the March 2020 Amendments, registrants often structured debt agreements to release affiliate securities pledged as collateral if the separate financial statement requirements of S-X 3-16 would be triggered. As a transitional matter, so as not to change the amount of collateral available to investors in previously issued debt securities that include collateral release provisions, the March 2020 Amendments did not eliminate existing S-X 3-16, which continues to apply to collateralized securities offered and sold on a registered basis with collateral release provisions issued and outstanding as of January 4, 2021, the effective date of the amendments.

Accordingly, S-X 13-02 applies to collateralized debt securities issued on or after January 4, 2021, and to each security offered and sold on a registered basis issued and outstanding before January 4, 2021 for which the registrant has previously been required to provide the financial statements required by prior S-X 3-16. S-X 3-16, and not S-X 13-02, applies to each security offered and sold on a registered basis issued and outstanding before January 4, 2021 for which the registrant has not previously been required to provide financial statements pursuant to S-X 3-16.

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, 7-05 and 9-06]

(Last updated: 10/30/2020)

2810.1 Parent-only Financial Statements – Requirement

GAAP requires parent-only financial statements as a supplement to the consolidated financial statements where material. [ASC 810-10-45-11] S-X 5-04, 7-05 and 9-06 require parent-only financial statements when the restricted net assets of consolidated subsidiaries exceed 25% of consolidated net assets at the most recent fiscal year-end. In these instances, 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.

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 proportionate share of consolidated subsidiaries' net assets, after intercompany eliminations, (assets less the sum of liabilities, redeemable preferred stock, noncontrolling interests) that may not be transferred to the parent by subsidiaries in the form of loans, dividends, etc., without a third party's consent. [S-X 1-02(dd) 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 Restricted Net Asset Footnote Disclosures S-X 4-08(e)(3)

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, when material. When considering materiality, a registrant should consider its proportionate share of the net assets of its consolidated and unconsolidated subsidiaries and its equity in the undistributed earnings since the date of acquisition of the 50% or less owned persons accounted for by the equity method (i.e. the same amount required to be disclosed pursuant to S-X 4-08(e)(2)) 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.

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, ASC 280-10-50-42 requires certain financial statement footnote disclosures about major customers and ASC 275-10-50-18, *Risks and Uncertainties*, 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, 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 11 where the registrant has investment risk due to substantial asset concentration.

Note 1 to Topic 2

The staff may, where consistent with the protection of investors, permit the omission of one or more of the financial statements required by Regulation S-X or the filing in substitution therefor of appropriate statements of comparable character under Rule 3-13 and Rule 8-01(e) of Regulation S-X. Registrants may

request such relief in situations where strict application of the rules and guidelines produces an anomalous result. Additionally, registrants may request CF-OCA interpretation in unusual or unclear situations. Requests for CF-OCA relief or interpretation should be made in writing and include a discussion of all relevant facts and circumstances, an analysis of the specific transaction and sufficient detail regarding the expected impact to the registrant's business. See "Communications with the Division of Corporation Finance's Office of Chief Accountant" section for additional information about requesting relief and for information regarding interpretive requests, informal advice and other assistance. Under Rule 3-13 and Rule 8-01(e) of Regulation S-X, the staff may also require, by written notice, the filing of other financial statements in addition to, or in substitution for, the statements required if such statements are (1) necessary or appropriate for an adequate presentation of the financial condition presented in the required statements or (2) otherwise necessary for the protection of investors. (Last updated x/x/20xx)

2900 Businesses (Including Real Estate Operations) Acquired or To-Be-Acquired [S-X 3-05, S-X 3-14, S-X 8-04 and S-X 8-06 (The "S-X Acquisition Rules")]

Note to Section 2900

References throughout all subsections within 2900 to "registration statement(s)" include 1933 Act registration statements (except registration statements filed under Rule 462(b)), 1934 Act registration statements, and post-effective amendments. The filing of a Rule 424 prospectus is not included.

Overview - This Section reflects amendments to the S-X Acquisition Rules in SEC Release No. 33-10786, which were effective January 1, 2021.

In general, the S-X Acquisition Rules require the filing of separate pre-acquisition financial statements when the acquisition of a significant business has occurred or is probable. In addition, pro forma information required by S-X Article 11 should be filed at the same time the pre-acquisition financial statements of the acquired or to-be-acquired business are filed. See Sections 2930.5 and 3110.4 for additional information.

S-X 8-04 and S-X 8-06 apply only to SRCs, but have the same requirements as S-X 3-05 and S-X 3-14, respectively, except that references to S-X 3-01 and S-X 3-02 in S-X 3-05 and S-X 3-14 are replaced by S-X 8-02 and S-X 8-03 when applied to an SRC.

Section	Description	Last Updated
2905	Scope and Definitions	6/30/2025
2910	Determination of a Business	6/30/2025

Section	Description	<i>Last Updated</i>
2915	Financial Statements Used to Determine Significance	6/30/2025
2920	Measuring Significance – Basics and Individual	6/30/2025
2925	Financial Statement Periods	6/30/2025
2930	When to Present Financial Statements	6/30/2025
2935	Required Financial Statement Presentation	6/30/2025
2940	Age of Financial Statements	6/30/2025
2945	Aggregate Significance	6/30/2025

2905 Scope and Definitions

2905.1 Scope – General – The S-X Acquisition Rules are applicable when a business acquisition

- has occurred in the most recent fiscal year or subsequent interim period for which a balance sheet is required by S-X Rule 3-01, or
- has occurred or is probable to occur after the date of the most recent balance sheet filed.

2905.2 Scope – Acquisition and Acquirer – The S-X Acquisition Rules apply to an acquisition of a business by the registrant, its predecessor(s), its consolidated subsidiaries, or entities that are consolidated for accounting purposes such as voting interest entities or variable interest entities.

2905.3 Acquisition of a Business and Post-Acquisition Accounting – An acquisition of a business includes an acquisition of an interest in a business that will be:

- consolidated;
- accounted for under the equity method; or
- in lieu of the equity method, accounted for using the fair value option.

An acquisition of a business also includes the acquisition of an asset or net assets that meets the definition of a business under S-X 11-01(d), even if the acquisition will be accounted for as an asset acquisition under U.S. GAAP or IFRS as issued by the IASB.

See Section 2910 regarding the definition of a "business".

2905.4 Probable – An assessment of "probability" requires consideration of all available facts and circumstances. Consummation of an acquisition is considered probable whenever a registrant's financial statements alone would not provide investors with adequate financial information with which to make an investment decision. [Release No. 33-6413 (June 24, 1982); Release No. 33-6395 (May 17, 1982)]

2905.5 Acquiree of an Acquiree or Investee of an Acquiree - A previously acquired or to-be-acquired business of an acquiree is not in the scope of the S-X

Acquisition Rules; however, registrants should consider whether omission of financial statements of that business would render the acquiree's financial statements that are filed pursuant to the S-X Acquisition Rules misleading or substantially incomplete.

Similarly, an equity method investment (including an investment accounted for under the fair value option) of an acquiree is not in the scope of 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; however, registrants should consider whether omission of financial statements of the investee of the acquiree would render the acquiree's financial statements that are filed pursuant to the S-X Acquisition Rules misleading or substantially incomplete.

- 2905.6 **Acquisition of a Predecessor** – The S-X Acquisition Rules 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. See Section 1170 for a discussion of predecessor financial statements.
- 2905.7 **Shell Company is Legal 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 the S-X Acquisition Rules do **not** apply to the acquisition of that acquired entity. See Section 2905.6. If a shell company acquires an operating entity in a transaction accounted for as a reverse recapitalization of the operating entity (i.e., the shell company is the legal acquirer), the S-X Acquisition Rules do **not** apply. See Topic 12 for further discussion of the reporting requirements for reverse recapitalizations.
- 2905.8 **Target Company in Form S-4, Form F-4 and/or Proxy Statement** – When a to-be-acquired business is a target company in a Form S-4, Form F-4, or proxy statement, apply the requirements set forth in those forms instead of the S-X Acquisition Rules [S-X 3-05(b)(1)]. See Section 2200 “Financial Statements of Target Companies in Form S-4.”
- 2905.9 **Acquisition of a “Real Estate Operation” – General** – If the acquired or to-be-acquired business is a real estate operation, S-X 3-14 or S-X 8-06 apply instead of S-X 3-05 or S-X 8-04. A real estate operation is a business (as set forth in S-X 11-01(d)) that generates substantially all of its revenues through the leasing of real property [S-X 3-14(a)(2)(i)].

S-X 3-14 and S-X 8-06 are premised on the continuity and predictability of cash flows ordinarily associated with leasing real property. Examples include

office, apartment and industrial buildings as well as shopping centers. Real estate operations exclude the following:

- Businesses 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, and
- Businesses that generate revenues from leasing real property **and** other activities, such as property management or development, when less than substantially all of the business's revenues are from leasing.

S-X 3-05 and S-X 8-04, rather than S-X 3-14 and S-X 8-06, are applicable in the two circumstances discussed above, where the acquired or to-be-acquired business is not a real estate operation.

2910 Determination of a Business [S-X 11-01(d)]

2910.1 Reporting versus Accounting – The determination of what constitutes a business **for reporting purposes** (e.g., in the S-X Acquisition Rules and Item 2.01 of Form 8-K) is based upon the definition of a “business” in S-X 11-01(d). The determination of what constitutes a business **for accounting purposes** is based upon ASC-MG, ASC 805 and IFRS 3. A transaction could constitute an asset acquisition for accounting purposes but constitute a business for reporting purposes, depending upon the specific facts and circumstances.

2910.2 General – A “business” is identified by evaluating whether there is sufficient continuity of the acquired entity’s operations prior to and after the acquisition 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. It is generally difficult to overcome this presumption. A lesser component of an entity, such as a product line or an operating real estate property, 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 after the acquisition?
- Will the physical facilities, employee base, market distribution system, sales force, customer base, operating rights, production techniques, or trade names remain with the acquired component after the acquisition?

Note to Section 2910.2

The staff's analysis of whether an acquisition constitutes the acquisition of a business (rather than assets) for reporting purposes 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 with the acquired component 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.

2910.3 Acquisition of non-revenue-generating operations – Generating revenue is not a requirement to be a business under S-X 11-01(d) (e.g., biotech or technology companies with little to no revenue may constitute a business under S-X 11-01(d)).

2910.4 Real estate acquisitions – A registrant may acquire real property that is not generating leasing revenues at the acquisition date, even though such real property was historically leased and is intended to be leased again by the registrant in the near future. In that circumstance, the registrant should determine whether the lack of leasing revenues at the time of acquisition is substantive to the analysis under S-X 11-01(d) in light of the existence of a leasing history and the expected continuation of the leasing operation. If this fact is not substantive to the analysis under S-X 11-01(d), the registrant should conclude that the acquisition is a business that generates substantially all of its revenues through the leasing of real property and apply S-X 3-14 or S-X 8-06.

Assume the same facts as above except that upon acquisition, the property will be demolished and a new rental property will be built. In that circumstance, the acquired property is generally not considered to be a business. This interpretation does not apply to properties that will only be renovated upon acquisition.

Further, the following real estate acquisitions are generally not considered to be acquisitions of businesses:

- Newly constructed properties, and
- Previously owner-occupied and owner-operated properties. The registrant is not acquiring the previous owner's business; rather, the registrant intends to start a different revenue stream from leasing the

real estate property to either the previous owner or a new lessee upon acquisition.

2910.5 An interest in an oil and gas property - The acquisition of an interest in a producing oil and gas property is generally a business for reporting purposes. See Section 2935 for financial statement presentation considerations specific to oil and gas producing activities.

2910.6 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.

2910.7 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.

2915 Financial Statements Used to Determine Significance

2915.1 General – When determining significance for completed business acquisitions, use the registrant’s most recent annual consolidated financial statements required to be filed at or prior to the date of acquisition. For probable acquisitions, use the registrant’s most recent annual consolidated financial statements required to be filed at the filing/effective date of the registration statement or the mailing date of the proxy statement. Use the acquired or to-be-acquired business’s pre-acquisition financial statements for the same fiscal year as the registrant (except as noted in other Sections below). [S-X 11-01(b)(3)(i)]

Financial statements used for purposes of determining significance are not required to be audited. However, they must comply with U.S. GAAP or IFRS as issued by the IASB. See also Section 2915.13.

2915.2 Age of Financial Statements Used to Measure Significance - Initial Registration Statements – The registrant’s most recent annual consolidated financial statements “required to be filed” at or prior to the date of acquisition means the annual consolidated financial statements of the registrant for the most recent annual period at or prior to the date of acquisition that are required to be filed in the initial registration statement.

For example: If a calendar year-end company files an IPO registration statement in 2025 and includes audited financial statements for 2024 and 2023, the company would determine significance of an acquisition that

closed on February 5, 2024 based upon the company's 2023 financial statements, rather than the 2022 financial statements.

2915.3 Age of Financial Statements Used to Measure Significance - Form 10-K or Registration Statement Filed Subsequent to Acquisition

If a registrant files its Form 10-K for the most recent fiscal year ended prior to an acquisition **after the date of acquisition**, but **prior to** the date financial statements for the acquisition would be required to be filed on Form 8-K, the registrant may elect to use the registrant's annual consolidated financial statements included in that more recent Form 10-K for significance testing (in lieu of the annual financial statements that were filed at the time of the acquisition). [S-X 11-01(b)(3)(i)(C)] Similarly, if the financial statements for the most recent fiscal year ended prior to the acquisition are filed in a registration statement **after the date of acquisition** but **prior to** when those financial statements were required to be updated under Regulation S-X, the registrant may elect to use the more recent annual consolidated financial statements included in that registration statement for significance testing.

If an existing registrant completes an acquisition and appropriately calculates significance to determine Form 8-K requirements **prior to** filing financial statements for the most recent fiscal year ended prior to acquisition (either in a registration statement or a Form 10-K), the registrant would not be required to reassess individual significance, when filing a registration statement (e.g., Form S-1) later in the year, using the updated financial statements, (i.e., the financial statements for the most recent fiscal year at the time of the filing of the registration statement). However, the company is required to consider the acquisition in their aggregate significance test. See Section 2945.3.

For example: Assume a calendar year-end company completes an acquisition of Company A on January 8, 2024 and appropriately concludes that the acquisition is not significant based upon 2022 annual financial statements. If the company files a registration statement in June 2024, the company would not be required to reassess **individual** significance of Company A using 2023 financial statements.

2915.4 Age of Financial Statements Used to Measure Significance - Form 10-K or Registration Statement Filed Prior to Acquisition and filing "due date" –

If the registrant's most recent annual consolidated financial statements were filed on a Form 10-K **prior to or on** the date of acquisition **and** the filing date was **prior to** the "due date" of the Form 10-K, the registrant may elect to use those financial statements for significance testing, instead of the annual consolidated financial statements for the prior year. Similarly, if the financial statements for the most recent fiscal year ended prior to the acquisition are filed in a registration statement **prior to or on** the date of acquisition **and prior to** when those financial statements were required to be updated under Regulation S-X, the registrant may elect to use those more recent annual consolidated financial statements included in that registration statement for significance testing.

2915.5 Age of Financial Statements Used to Measure Significance – Numerator -
If the registrant elects to use more recent financial statements described in Sections 2915.3 and 2915.4, the financial statements of the acquired or to-be-acquired business used in the numerator may also be updated to the more recent period at the option of the registrant.

2915.6 Age of Financial Statements Used to Measure Significance – Different Fiscal Years - If the fiscal years of the registrant and the acquired or to-be-acquired business differ, use the acquired or to-be-acquired business's most recent fiscal year that would be required if that business had the same filer status as the registrant on the acquisition date. [S-X 11-01(b)(3)(i)]

Note to Section 2915.6

In this circumstance, the financial statements of the acquired or to-be-acquired business used for significance testing may be more recent than the financial statements required to be provided for the acquired or to-be-acquired business, if significance is met.

For example, if a large accelerated filer with a September 30 fiscal year end acquires a business (that would qualify as an SRC) with a December 31 fiscal year end on March 4, 2025, significance should be based upon the acquired business's financial statements as of and for the year ended December 31, 2024 (as these would be the most recent required annual financial statements on the acquisition date if the acquired business was a large accelerated filer). However, if significance is met, the registrant is only required to provide financial statements of the acquired business for the year ended December 31, 2023 (and 2022, if two years are required) and interim financial statements as of and for the nine months ended September 30, 2024 (because the acquired business would qualify as an SRC and therefore its 2024 annual financial statements would not be required as of the date of acquisition). (See Section 2940 regarding the Age Requirements)

2915.7 Pro Forma Financial Statements [S-X Article 11 and S-X 8-05] Used to Measure Significance

The registrant may evaluate significance for a new acquisition (consummated after the registrant's fiscal year end) using the registrant's pro forma financial information reflecting previous significant acquisition(s) or disposition(s) (also consummated after the registrant's fiscal year end), rather than historical pre-acquisition financial statements, provided that all of the following conditions are met:

- a. The registrant has filed (either in a Form 8-K or a publicly filed registration or proxy statement) audited financial statements for the periods required by the S-X Acquisition Rules and pro forma financial information required by S-X Article 11 or S-X 8-05 for the previous **significant** acquisition(s) or disposition(s) consummated after the registrant's latest fiscal year;

- b. The registrant continues to use pro forma amounts to determine significance of all subsequent acquisitions and dispositions through the filing date of the registrant's next annual report on Form 10-K or Form 20-F;
- c. Pro forma amounts are used in all of the required significance tests, except the Investment Test when it is based on aggregate worldwide market value (See Section 2920 for guidance on significance tests); and
- d. Pro forma amounts used for the significance test only depict the previous significant acquisition(s) or disposition(s) for which the required financial statements and information was filed AND only include the related Transaction Accounting Adjustments [S-X 11-02(a)(6)(i)]. If the pro forma financial statements filed for the previous acquisition(s) and disposition(s) were required to include other transactions that were entered into with the acquisition(s) or disposition(s), then the Transaction Accounting Adjustments for those other transactions should also be included in the pro forma amounts used for significance testing.

If the financial statements and information described in (a) above are only included in a Draft Registration Statement and **not** a public filing, such as a Form 8-K or publicly filed registration statement, then the pro forma financial information may not be used to measure significance.

Note to Section 2915.7

The pro forma balance sheet that was required to be filed for the previous significant acquisition(s) or disposition(s) may or may not have been as of the balance sheet date required for significance testing of the new acquisition, depending on when the Form 8-K or registration statement was filed. Therefore, it may be necessary to prepare an additional pro forma balance sheet for significance testing.

For example: Assume that a calendar year-end registrant publicly filed a registration statement containing a pro forma balance sheet as of March 31, 2025 giving effect to an acquisition consummated on June 15, 2025 and then made another acquisition on August 30, 2025. The pro forma balance sheet used for significance testing of the August 30, 2025 acquisition should be as of December 31, 2024 (the registrant's most recent annual consolidated financial statements required to be filed at or prior to the date of acquisition).

2915.8 Acquisition after a Reverse Acquisition

If another acquisition is made after a transaction accounted for as a reverse acquisition of the registrant is consummated but before the registrant's audited financial statements for the fiscal year in which the reverse acquisition occurred; **and** the audited financial statements for the accounting acquirer (in the reverse acquisition) are included in a filing with the SEC, then measure significance against the accounting acquirer's financial statements.

2915.9 Acquisition after a Reverse Recapitalization

If an acquisition is made after a reverse recapitalization of the legal acquiree (see Topic 12) but before the registrant's audited financial statements for the fiscal year in which the reverse recapitalization occurred **and** the audited financial statements for the legal acquiree (in the reverse recapitalization) are included in a filing with the SEC, then measure significance against the legal acquiree's financial statements.

2915.10 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 statement of comprehensive income information available to use as the denominator in the calculation of the income test. In these cases, both components of the income test should be calculated using only the results of operations of the successor company in the denominator. See Section 2920.9 for determining whether the revenue component of the income test is applicable.

If the results are anomalous, a registrant may request relief (See Note 1 to Topic 2). Registrants may include additional data in their request based upon 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 data point.

2915.11 Acquisition of a Business that is a Successor to a Predecessor Company

When the financial statements of an acquired or to-be-acquired business that are used to test significance include some combination of predecessor and successor periods, the statement of comprehensive income used to measure both components of the income test will depend on the particular facts and circumstances.

If the financial statements of the acquired or to-be-acquired business include twelve months of successor results, the statement of comprehensive income should be used in the normal fashion.

If the financial statements of the acquired or to-be-acquired business 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 statement of comprehensive income of the acquired or to-be-acquired business. Thus, the pro forma amounts are based upon the acquired or to-be-acquired business's historical financial statements – not the new basis in the registrant's financial statements. 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.

If the financial statements of the acquired or to-be-acquired business include only predecessor results, use the historical predecessor statement of comprehensive income. Pro forma information should not be used.

See Section 2920.9 for determining whether the revenue component of the income test is applicable.

2915.12 Change in Reporting Entity or Reorganization of the Registrant in Initial Registration Statement - If a change in the reporting entity or a reorganization will occur at or after effectiveness of an initial (IPO) 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.

2915.13 U.S. GAAP/IFRS Consistency – A registrant that files its financial statements in accordance with U.S. GAAP or is required to provide reconciliation to U.S. GAAP must determine significance using amounts in accordance with U.S. GAAP for both the acquired or to-be-acquired business (in the numerator) and the registrant (in the denominator). An FPI that files its financial statements in accordance with IFRS as issued by the IASB must determine significance using amounts in accordance with IFRS as issued by the IASB for the acquired or to-be-acquired business (in the numerator) and the registrant (in the denominator).

For example: If a registrant that files its financial statements in accordance with U.S. GAAP acquires, both legally and for accounting purposes, an FPI 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 if the acquired business did not reconcile its financial statements to U.S. GAAP.

2915.14 Discontinued Operations and Changes in Accounting Principle
Subsequent to filing its Form 10-K, a registrant may be required to include in (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, the S-X Acquisition Rules 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

- Businesses acquired and to-be-acquired since the date of the most recent audited balance sheet that are required to be assessed in the aggregate by S-X 3-05(b)(2)(iv) and S-X 3-14(b)(2)(i)(C). (See Section 2945 for Aggregate Significance).

Note to Section 2915.14

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 businesses acquired and to-be-acquired since the date of the most recent audited balance sheet that are required to be assessed in the aggregate), 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 change in accounting principle or (B) the registrant's filed financial statements for the most recently completed fiscal year that reflect retrospective application of the discontinued operation or change in accounting principle. 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.

2915.15 Change in Fiscal Year

If a registrant or an acquired/to-be-acquired business 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 fiscal year prior to the change or (B) financial statements for the 12 months ending on the last day of the transition period. If both the registrant and the acquired or to-be-acquired business have changed their fiscal years, registrants should measure significance using a consistent approach [either (A) or (B)] for both the registrant and the acquired or to-be-acquired business [not (A) for one and (B) for the other]. If the transition period is 9 months or greater, use the financial statements for that period.

2915.16 Acquisitions of Net Assets that Constitute a Business and Acquisitions of Businesses that Generate Substantially All of Their Revenues from Oil and Gas Producing Activities

When acquisitions meet certain qualifying conditions in S-X 3-05(e) or S-X 3-05(f), abbreviated financial statements of the acquired or to-be-acquired business may be provided. See Section 2935 for guidance. Those abbreviated financial statements may also be used in the numerator to measure significance in those circumstances. [S-X 11-01(b)(3)(i)(A)]

2915.17 Item 20.D Undertakings of Industry Guide 5

Registrants conducting continuous offerings over an extended period of time who also apply the Item 20.D. Undertakings of Industry Guide 5 (i.e., blind

pool offerings) must calculate significance using the amounts detailed in Section 2920.26.

2920 Measuring Significance – Basics and Individual

2920.1 General - Under the S-X Acquisition Rules, significance of an acquired or to-be-acquired business is measured using the following three tests prescribed in S-X 1-02(w):

- Asset test,
- Investment test, and
- Income test (includes an income component and a revenue component).

See Section 2925 for the financial statement periods required based upon the measured significance.

These tests are described in further detail in the sections below. All three tests apply, except in the following situations:

- Only the investment test is required if the acquired or to-be-acquired business is a real estate operation under S-X 3-14 or 8-06 [S-X 3-14(b)(2) and S-X 8-06]. See Section 2920.5 for a required adjustment to the numerator in the test.
- The income test does not apply if the registrant, including a REIT, is conducting a continuous offering over an extended period of time and applies the Item 20.D. Undertakings of Industry Guide 5 [S-X 11-01(b)(4)]. See Section 2920.26 for required adjustments to the denominators of the asset and investment tests.

2920.2 No Alternative Tests of Significance

The tests should be performed based on the requirements of S-X 1-02(w) and the S-X Acquisition Rules and should not be modified. See Note 1 to Topic 2 if, after performing the required significance tests, a registrant believes that the tests require financial statement periods beyond those that are necessary for the protection of investors.

2920.3 Asset Test - Compare registrant's proportionate share of the acquired or to-be-acquired business's consolidated total assets (after intercompany eliminations) to the registrant's consolidated total assets (after intercompany eliminations) as of the end of the most recently completed fiscal year. [S-X 1-02(w)(1)(ii)] Ordinary receivables and other working capital amounts not acquired should nevertheless be included as part of the total assets of the acquired or to-be-

acquired business in the asset test because that working capital is expected to be required and funded after the acquisition.

2920.4 Investment Test – Numerator - “Investments in” [S-X 1-02(w)(1)(i)]

Compare the investments in and advances to the acquired or to-be-acquired business, to the aggregate worldwide market value of the registrant’s voting and non-voting common equity. However, if the registrant does not have such aggregate worldwide market value, then compare investments in and advances to the acquired or to-be-acquired business to the registrant’s consolidated total assets as of the end of the most recently completed fiscal year. Aggregate worldwide market value must be used if it exists.

“Investments in” in the context of the investment test means the “consideration transferred” measured as of the acquisition date; or for probable acquisitions on the effective date (for registration statements) or on the mail date (for proxy statements).

Consideration transferred includes:

- 100% of the consideration transferred to acquire the business (even if the consideration was transferred from a less-than wholly owned consolidated subsidiary of the registrant. See Section 2920.23 for example.)
- the fair value of all contingent consideration if required to be recognized at fair value under U.S. GAAP or IFRS-IASB. However, if recognition of contingent consideration at fair value is not required, the consideration transferred must include all contingent consideration unless likelihood of payment is remote.
- acquisition-related costs, if U.S. GAAP or IFRS-IASB requires capitalization of such costs (e.g. related to an acquisition accounted for as an asset acquisition under U.S. GAAP or IFRS-IASB or the purchase of an equity method investment).

Consideration transferred excludes:

- acquisition-related costs, if U.S. GAAP or IFRS-IASB requires expensing such costs.
- the carrying value of assets transferred by the registrant to the acquired or to-be-acquired business that will remain with the combined entity after the acquisition.

2920.5 Investment Test – Numerator - Real Estate Operations – When this test is based on the total assets of the registrant (because the registrant does not have an aggregate worldwide market value), include any assumed debt secured by

the real properties in the “investments in” determination for the tested real estate operation. For example, if the registrant paid \$100 million in cash and assumed \$40 million of debt secured by the acquired properties, the “investments in” the acquired real estate operation for the numerator would be \$140 million.

- 2920.6 **Investment Test – Denominator - “Aggregate Worldwide Market Value”** – Determined using the average aggregate worldwide market value calculated for the last five trading days of the registrant’s most recently completed calendar month prior to the **earlier** of the registrant’s announcement date of the transaction or the date of the acquisition agreement. Alternative dates are not permitted. Use the market value from the public market, including a foreign market if that is the market where the equity is traded.

Include the market value of voting and non-voting common equity and include common equity held by affiliates. However, only the value of outstanding common equity with a market value can be included in aggregate worldwide market value. Examples of equity that **cannot** be included in aggregate worldwide market value include:

- preferred stock even if it is convertible into a class of common equity that is traded on a public market and
- common stock that is not traded on a public market but is exchangeable for a share of common stock that is traded on a public market.

Alternative valuations (e.g., valuations in anticipation of an IPO; Net Asset Value) are not permitted as a substitute for aggregate worldwide market value.

- 2920.7 **Investment Test - Reorganization of Entities Under Common Control** – Compare the net book value of the acquired or to-be-acquired business to the registrant’s consolidated total assets **and** compare the number of common shares exchanged or to-be-exchanged to registrant's total common shares outstanding at the date the combination is initiated. Significance is met when either amount exceeds the significance thresholds. [S-X 1-02(w)(1)(i)(B)]

- 2920.8 **Income Test** – Compare:

- the absolute value of the registrant’s equity in the acquired or to-be-acquired business's pre-tax income or loss⁹ to that of the registrant for the most recently completed fiscal year (“the income component”) [S-X 1-02(w)(1)(iii)(A)(1)]; and

⁹ References to “pre-tax income or loss” refer to income or loss from continuing operations before income taxes (after intercompany eliminations) attributable to the controlling interests.

- the registrant's proportionate share of the acquired or to-be-acquired business's consolidated total revenue from continuing operations (after intercompany eliminations) to that of the registrant for the most recently completed fiscal year ("the revenue component). [S-X 1-02(w)(1)(iii)(A)(2)] The revenue component applies to all acquisitions (including acquisitions of equity method investments and investments accounted for using the fair value option, in lieu of the equity method) if the screen in Section 2920.9 is met.

Note to Section 2920.8

To be significant, **both** the income component and the revenue component (when the screen in Section 2920.9 is met) of the income test must meet the significance thresholds.

2920.9 Income Test – Screen for Revenue Component – The revenue component does not apply if either the registrant or the acquired/to-be-acquired business did not have material revenue in each of the two most recently completed fiscal years. This determination should be made separately for the registrant and the acquired or to-be-acquired business (e.g., determining material revenue of an acquired/to-be-acquired business should be in the context of that business's specific facts and circumstances and not as compared with the registrant. It is reasonable to consider quantitative and qualitative factors when making this determination; however, a full SAB 99 analysis is not required.

If either or both the registrant and the acquired/to-be-acquired business are a successor to a predecessor company, the registrant should consider the activity without regard to the separation of predecessor and successor periods in determining whether there is material revenue in each of the two most recently completed fiscal years.

In addition, intercompany eliminations should be considered when determining whether either the registrant or the acquired/to-be-acquired business has material revenue in each of the two most recently completed fiscal years. For example, if 100% of the acquired business's revenues are generated from the registrant and therefore would be eliminated if consolidated, the revenue component would not apply. See Section 2920.12 for discussion of intercompany transactions.

2920.10 Income Test – Income Component—Averaging in the Denominator – If the revenue component does not apply (see Section 2920.9) and the absolute value of the registrant's pre-tax income or loss⁹ for the most recent fiscal year is at least 10% lower than the average of the absolute value of the registrant's pre-tax income or loss for the last five fiscal years, then the average of the absolute value of the registrant's pre-tax income or loss for the last five years should be used for this computation. [S-X 1-02(w)(1)(iii)(B)(2)]. The acquiree's income may not be averaged.

- 2920.11 **Denominator** – The acquired or to-be-acquired business is not considered part of the registrant's denominator in determining significance for purposes of the S-X Acquisition Rules. [S-X 1-02(w)]
- 2920.12 **Intercompany Transactions** – When measuring significance using the asset test and both components of the income test, intercompany transactions between the registrant and acquired or to-be-acquired business should be eliminated in the same way that would occur if the acquired or to-be-acquired business were consolidated.
- 2920.13 **Numerator - Less than 100% of Business Acquired or to-be-Acquired** – If less than 100% of a business is acquired or is to-be-acquired, the amounts from the acquired or to-be-acquired business's financial statements that are used in the significance tests should reflect the percentage of the business that was or is expected to be acquired. For example, if a registrant acquires 60% of a business, 60% of that business's consolidated total assets (after intercompany eliminations), should be used in the numerator of the asset test.
- 2920.14 **Numerator - Non-controlling Interest within Acquired or to-be-Acquired Business** – If 100% of a business is acquired or is to-be-acquired; however, that acquired or to-be-acquired business consolidates less-than wholly owned subsidiaries, such that there is non-controlling interest reflected in the acquired or to-be-acquired business's financial statements, use 100% of the acquired or to-be-acquired business's total assets and total revenues in the numerator to determine significance.
- 2920.15 **Rounding** - Do not round the results of the significance tests.
- 2920.16 **Denominator – Business Combinations – Measurement Period Adjustments under ASC 805 and IFRS 3**
In some circumstances, ASC 805 and IFRS 3 require adjustment of provisional amounts recognized at the acquisition date and/or the recognition of additional assets or liabilities that were not recognized at the acquisition date (“measurement period adjustments”). Registrants should reflect measurement period adjustments for completed acquisitions when determining significance for any separate subsequent acquisitions. Registrants should use their pre-acquisition financial statements for the most recently completed fiscal year and include measurement period adjustments for any prior 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 a registration statement 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.
- 2920.17 **Numerator - Business Combination Achieved in Stages or Step Acquisition of a 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, pre-tax income or loss⁹ and revenue during the year, rather than the cumulative interest to date. Note: this does not apply to target companies in Form S-4 or F-4. See Section 2200.

Step acquisitions which are part of a single plan to be completed within a twelve month period should be aggregated.

Note to Section 2920.17

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 (or, in lieu of the equity method, the fair value option) as a result of the increase in investment.

2920.18 Business Combination Achieved in Stages or Step Acquisition of a Business – Remeasurement

Under ASC 805 and IFRS 3, the acquirer's previously held equity interest in the acquired or to-be acquired business 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 is excluded from the income component as it is not included in the registrant's most recently completed fiscal year.

2920.19 Denominator - Public Offering Proceeds Received After the Balance Sheet Date

A 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.

2920.20 Significance when using Abbreviated Financial Statements of the Acquired or to-be-Acquired Business

A registrant that may present abbreviated financial statements for the acquired or to-be-acquired business in lieu of full financial statements pursuant to S-X 3-05(e) or S-X 3-05(f) should not adjust the registrant's pre-tax income or loss⁹ (i.e., the denominator in the income component) to exclude expenses (e.g., corporate overhead) even though the registrant may use the acquired or to-be-acquired business's abbreviated statement of comprehensive income for the numerator which excludes certain expenses.

2920.21 Exchange Transaction (Acquisition and Disposition)

If the transaction is an exchange transaction in which the registrant and another party each contribute businesses to a joint venture (the "Newco") in exchange for an equity interest in the Newco; measure the disposition (registrant's contributed business) and the acquisition (other party's contributed business) separately to determine significance.

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) or aggregate worldwide market value, as applicable. 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.

See also Section 2930.8 for timing considerations associated with filing financial statements and pro forma information associated with an exchange transaction scenario.

This Section could apply to other exchange transactions where a registrant acquires a business and disposes of another business in the same transaction (e.g., the consideration to acquire a business includes the transfer of another business owned by the buyer/registrar to the seller).

2920.22 In Existence for Less Than One Year

If the registrant and/or the acquired/to-be-acquired business has been in existence for less than one year, do not annualize the historical statement of comprehensive income. Measure significance using the audited historical statement of comprehensive income that complies with the age of financial statement requirements (see Section 2940 for the acquired or to-be-acquired business and Section 1200 for the registrant), regardless of the number of months it includes. Similarly, if the registrant or the acquired/to-be-acquired business has been in existence for more than one year, measure significance using income for a full 12 months; do not adjust the audited statement of comprehensive income to equal the same number of months as an acquired/to-be-acquired business or registrant that has been in existence for less than one year.

2920.23 Acquisition of a business by a less-than wholly owned consolidated subsidiary

Under certain corporate structures, the acquisition of a business ("Acquiree"), may be made by a less-than wholly owned consolidated subsidiary ("the Subsidiary") of the registrant.

Under this scenario, the denominator of the income component is required to reflect the registrant's income/loss from continuing operations, before income taxes, **attributable to controlling interest** based upon amounts recorded on the income statement. Similarly, the numerator of the income component should exclude an amount attributable to non-controlling interest in the Subsidiary. However, a non-controlling interest in the Subsidiary should not impact the amounts used in the numerator or denominator of the asset test, the investment test or the revenue component.

For example, assume that the registrant consolidates a 60%-owned Subsidiary and the Subsidiary acquires 100% of Acquiree (See Section 2920.13 for discussion if less than 100% of a business is acquired). Significance testing should be based upon the following:

Test/Component	Numerator	Denominator
Asset test	100% of Acquiree total assets (after intercompany eliminations)	100% of the registrant's total assets (after intercompany eliminations)
Investment test	100% of the consideration transferred (See Section 2920.4) by the Subsidiary	Aggregate worldwide market value of the registrant's common equity or 100% of the registrant's total assets, as applicable.
Income component	60% of Acquiree income or loss from continuing operations before income taxes (after intercompany eliminations) attributable to the controlling interests ¹⁰	The registrant's income or loss from continuing operations before income taxes (after intercompany eliminations) attributable to the controlling interests
Revenue component	100% of Acquiree total revenue from continuing operations (after intercompany eliminations)	100% of the registrant's total revenue from continuing operations (after intercompany eliminations)

2920.24 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 therefore must be grouped and assessed for significance against the accounting acquirer as a single acquisition. See Section 2920.27.

2920.25 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.

¹⁰ “Attributable to the controlling interests” in this context relates to controlling interest on the **Acquiree** financial statements as prescribed by S-X 1-02(w)(1)(iii) (i.e., if the Acquiree itself has noncontrolling interest, then the amount used in the numerator should only reflect controlling interest of the Acquiree). (See Section 2920.14) This is separate from the issue discussed in this Section 2920.23 which relates to reducing the amount in the Acquiree financial statements by the non-controlling interest in the **Subsidiary**.

2920.26 Denominator - Acquisitions when the registrant, including a REIT, is conducting a continuous offering over an extended period of time and applies the Item 20.D. Undertakings of Industry Guide 5 [S-X 11-01(b)(4)]
Registrants conducting a continuous offering over an extended period of time who also apply the Item 20.D. Undertakings of Industry Guide 5 might acquire real estate operations within the scope of S-X 3-14 or S-X 8-06, businesses within the scope of S-X 3-05 or S-X 8-04, or both.

For acquisitions of real estate operations within the scope of S-X 3-14 or S-X 8-06 by these registrants, see the bullets below to determine the denominator of the investment test when it is based on total assets of the registrant (i.e., when the registrant does not have an aggregate worldwide market value).

For acquisition within the scope of S-X 3-05 and S-X 8-04, see the bullets below to determine the denominator of (i) the investment test when it is based on total assets of the registrant (i.e., when the registrant does not have an aggregate worldwide market value) **and** (ii) the asset test.

- During the distribution period, total assets as of the acquisition date plus the proceeds (net of commissions) in good faith expected to be raised in the registered offering over the next 12 months, except that total assets must exclude the acquired business; and
- After the distribution period ends and until the next Form 10-K is filed, total assets as of the date of acquisition, except that total assets must exclude the acquired business.

Further, for acquisitions within the scope of S-X 3-05 or S-X 8-04 by these registrants, the income test (both the income and revenue components) does not apply.

After the next Form 10-K is filed, this Section 2920.26 no longer applies to these registrants' acquisitions, and significance must be determined as otherwise applicable.

Note to Section 2920.26

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.

2920.27 Related Businesses – Definition [S-X 3-05(a)(3)] - Businesses are related under the S-X Acquisition Rules if:

- they are under common control or management, or

- the acquisitions are conditioned on each other or a single common event.

2920.28 **Related Businesses – Significance**

The S-X Acquisition Rules require that acquisitions 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) be treated as the acquisition of a single business when measuring significance. [S-X 3-05(a)(3)]

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.

See Section 2935.17 for financial statement presentation of related businesses.

2920.29 **Related Businesses – Asset and Investment Tests**

The asset test and the investment test should first be performed for each related business on an individual basis. Significance under the asset test and investment test for the related business group is then determined as the sum of each related business's asset test and the sum of each related business's investment test, respectively. The aggregate worldwide market value (when applicable) is calculated separately for each related business. There may be circumstances when the aggregate worldwide market value would be the same for each of the related business in the group (e.g., if the acquisitions have the same announcement date) and circumstances where it will be different.

For example: Assume that Businesses A, B and C are related businesses. The investment test for the single related business group is calculated as follows:

Business	Date acquired	Investment In	AWMV	Investment Test Significance
Business A	4/1/2025	\$23	\$125	18%
Business B	5/1/2025	\$20	\$132	15%
Business C	7/1/2025	\$26	\$136	19%
Total related business group				52%

2920.30 **Related Businesses – Income Test**

The income test is a single calculation combining the amount used in the numerator for all of the related businesses compared with the registrant's results. The numerator of the income component is calculated by combining the pre-tax income or loss⁹ for each related business. The numerator of the revenue component (including the revenue screen described in Section 2920.9) is calculated by combining revenue for each related business. The combined pre-tax income or loss and revenue should be used to measure income test

significance irrespective of whether some of the related businesses have losses while others have income and whether any of the related businesses are under common control or management.

2925 Financial Statement Periods

- 2925.1 See the table below for general requirements for acquired and to-be-acquired (probable) acquisitions. See Section 2945 for acquisitions that are significant in the aggregate.

See also Section 1140.8 for discussion of S-X 3-06 which permits, in certain circumstances, filing financial statements covering a period of 9 to 12 months to satisfy a requirement for filing financial statements for a period of 1 year.

If the Greatest of the Three Tests Described in Section 2920.1	S-X 3-05/8-04	S-X 3-14/8-06
Does not exceed 20%	No financial statements required.	No financial statements required.
Exceeds 20% but not 40%	Financial statements for at least the most recent fiscal year (audited) and the latest required year-to-date interim period (unaudited) that precedes the acquisition for completed acquisitions or that precedes the effective date of the registration statement for probable acquisitions. See Section 2940 for age requirements.	Financial statements for at least the most recent fiscal year (audited) and the latest required year-to-date interim period (unaudited) that precedes the acquisition for completed acquisitions or that precedes the effective date of the registration statement for probable acquisitions. See Section 2940 for age requirements.

If the Greatest of the Three Tests Described in Section 2920.1	S-X 3-05/8-04	S-X 3-14/8-06
Exceeds 40%	Financial statements for at least the two most recent fiscal years (audited) and the latest required year-to-date interim period (unaudited) that precedes the acquisition for completed acquisitions or that precedes the effective date of the registration statement for probable acquisitions and the corresponding year-to-date interim period of the preceding year (unaudited). See Section 2940 for age requirements.	Financial statements for at least the most recent fiscal year (audited) and the latest required year-to-date interim period (unaudited) that precedes the acquisition for completed acquisitions or that precedes the effective date of the registration statement for probable acquisitions. See Section 2940 for age requirements.

- 2925.2 **Acquired or to-be-Acquired Business recently formed and/or has a Predecessor** - If the business has been in existence for fewer than the periods detailed in Section 2925.1 and the business does not have a predecessor, provide the financial statements starting at inception date. If the business has a predecessor, provide the business and predecessor financial statements to cover the periods in Section 2925.1.

2930 When to Present Financial Statements

- 2930.1 **Item 2.01 Form 8-K - Reporting the Acquisition of a Business** – An Item 2.01 Form 8-K reporting the transaction is required within 4 business days after the consummation of acquisitions of businesses (including real estate operations) that exceed 20% significance.

Notes to Section 2930.1

Note 1: 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.

Note 2: There is no specific Item in Form 8-K that requires a registrant to report probable acquisitions. There is also no requirement in Form 8-K to report acquisitions that are significant in the aggregate unless they are related businesses, related real estate operations or related funds.

Note 3: An Item 2.01 Form 8-K may also be required for an asset acquisition that does not meet the definition of a business. Such acquisitions are not in the scope of Section 2900. See Form 8-K for guidance on reporting requirements.

- 2930.2 **Item 9.01 Form 8-K (excluding a shell company registrant)** – If the financial statements of the acquired business and related pro forma financial information required by Item 9.01 of Form 8-K are not filed with the initial Form 8-K, they must be filed by amendment within 71 calendar days after the date that the initial Form 8-K **must** be filed (the “grace period”).

If the financial statements and pro forma financial information required by Item 9.01 of Form 8-K are not filed within the grace period for a non-shell company registrant, the Form 8-K will be considered materially deficient and, therefore, not filed in a timely manner for purposes of Form S-3 eligibility.

- 2930.3 **Item 9.01 Form 8-K – Financial Statements - Shell Company Registrant** – 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 financial statements and related S-X Article 11 pro forma information required by Item 2.01(f) and Item 9.01(c) of Form 8-K with the initial Form 8-K reporting the acquisition. The 71 calendar day extension (the grace period described in Section 2930.2) is not available.

If the financial statements and pro forma financial information required by Form 8-K are not filed within 4 business days for a shell company registrant, the Form 8-K will be considered materially deficient and, therefore, not filed in a timely manner for purposes of Form S-3 eligibility.

- 2930.4 **Registration or Proxy Statement** – The financial statements of acquired and to-be-acquired businesses required by the S-X Acquisition Rules must be included in the registration or proxy statement either directly or, if permitted by the form, incorporated by reference into the registration or proxy statement. See Section 2930.10 for additional registration and proxy statement considerations.

- 2930.5 **S-X Article 11 Pro Forma Information** – The financial statements required by the S-X Acquisition Rules should not be filed separately from the related pro forma information required by S-X Article 11 because presentation of those financial statements without the accompanying pro forma information can be misleading. See Topic 3 for additional information.

- 2930.6 **Omitting Acquired Business Balance Sheet** – A balance sheet of the acquired business is **not** required when the **audited** annual balance sheet of the registrant is as of a date after consummation of the acquisition. [S-X 3-05(b)(4)(iv)]

2930.7 **Omitting Financial Statements When Acquiring an Additional Interest in a Consolidated Entity** – When a registrant increases its investment in a company that is already reflected as a **consolidated** subsidiary in the financial statements of the registrant, historical financial statements of the acquired or to-be-acquired investment are not required if the subsidiary is consolidated for the periods specified in S-X 3-05(b)(4)(iii). See Section 2930.9.

While S-X 11-01(c) states that pro forma effects of a business combination need not be presented if the acquired business's 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.

Note: this Section 2930.7 does not apply to the acquisition of an additional interest in an **unconsolidated** entity.

2930.8 **Exchange Transaction (Acquisition and Disposition)** – Section 2920.21 discusses scenarios where a registrant acquires a business and disposes of another business in the same transaction (e.g., the registrant and another party each contribute businesses to a joint venture or the consideration transferred by the registrant for the acquisition of a business includes the transfer of another business).

If reporting of both the disposition and the acquisition are required by Form 8-K, pro forma financial statements depicting a significant disposition are ordinarily required to be filed within 4 business days of the disposition while financial statements and pro forma information related to the acquisition may be filed during the grace period (see Section 2930.2). A registrant may be unable to present a pro forma statement of comprehensive income depicting both the disposition and acquisition within 4 business days because financial statements of the business acquired from the other party may not be available until later in the grace period. In these circumstances, we would not object to filing the complete pro forma information depicting the effects of the exchange of interests (both the disposition and acquisition) at the time that the audited financial statements of the acquired business are filed. However, the initial Form 8-K reporting the transaction should include a narrative description of the effects of the disposition, quantified to the extent practicable.

2930.9 **Omitting Financial Statements – Post-Acquisition Periods**– Separate financial statements of an acquired business (that is not a real estate operation in the scope of S-X 3-14) are not required once the operating results of the acquired business have been reflected in the **audited** annual consolidated financial statements of the registrant for at least:

- nine months if the significance of the acquired business is 40% or less;
or

- a complete fiscal year if the significance of the acquired business is greater than 40%.
[S-X 3-05(b)(4)(iii)]

For an acquired real estate operation, separate financial statements are not required once the operating results of the acquired real estate operation have been reflected in the **audited** annual consolidated financial statements of the registrant for at least nine months (regardless of significance). [S-X 3-14(b)(3)(iii)]

2930.10 **Registration or Proxy Statement – Financial Statements**

Financial statements of a significant acquired business, that have not previously been filed, may be omitted from registration statements not subject to the provisions of Securities Act Rule 419 and from proxy statements if:

- significance is less than or equal to 50% (evaluated both individually and in the aggregate¹¹, if applicable); **and**
- either of the following, as applicable, is no more than 74 days after the acquisition is consummated:
 - the date of the final prospectus or prospectus supplement relating to an offering as filed pursuant to Securities Act Rule 424(b); or
 - the date proxy statement is mailed

After the 74th day following the acquisition, financial statements of a significant acquired business must be included in the registration or proxy statement.

Financial statements of a to-be-acquired business may be omitted from registration and proxy statements if significance is less than or equal to 50% (evaluated both individually and in the aggregate¹¹ if applicable).

“Blank check companies,” as defined in Securities Act Rule 419, are not permitted to omit financial statements in these circumstances.

If financial statements of a significant acquired or to-be-acquired business are omitted from a registration or proxy statement based upon these provisions, the registrant must subsequently file those financial statements and related pro forma information in a Form 8-K no later than 75 days after the consummation of the acquisition. However, note that FPIs who file on foreign forms use Form 6-K rather than Form 8-K. Form 6-K does not include a requirement to file financial statements required by the S-X Acquisition Rules. Therefore, such FPIs are not required to subsequently file

¹¹ See Section 2945 for discussion of Aggregate Significance.

the omitted financial statements of the acquired or to-be-acquired business in order to rely on this provision.

If significance exceeds 50% (individually or in the aggregate), financial statements required by the S-X Acquisition Rules of an acquired or to-be-acquired business must be included in a registration or proxy statement at the effective date (or proxy statement mailing date).

Note to Section 2930.10

Is “no more than 74 days” in S-X 3-05(b)(4) and S-X 3-14(b)(3) the same as no more than “four business days” plus “71 calendar days” in Items 2.01 and 9.01 of Form 8-K?

The S-X Acquisition Rules include the following three different filing requirements:

1. The filing requirements of Form 8-K are based on 4 business days (Item 2.01 of Form 8-K) plus 71 calendar days (Item 9.01 of Form 8-K).
2. The exception in S-X 3-05(b)(4)(i) and S-X 3-14(b)(3)(i) for financial statements of a significant acquired business that does not exceed 50% significance relates to registration statements with a final prospectus or prospectus supplement dated (or a proxy statement mailed) no more than 74 calendar days after consummation of the acquisition.
3. Financial statements omitted pursuant to S-X 3-05(b)(4)(i) or S-X 3-14(b)(3)(i) must be filed on Form 8-K no later than 75 days after consummation of the acquisition pursuant to S-X 3-05(b)(4)(ii) or S-X 3-14(b)(3)(ii).

In some circumstances, the sum of 4 business days plus 71 calendar days may exceed 75 calendar days (and it will always exceed 74 calendar days). Given the substantial equivalence of these concepts, the staff would not object to the registrant using 4 business days plus 71 calendar days to determine any of the three different requirements above, as applicable, when evaluating:

- Whether financial statements of an acquired business (for which the registrant timely filed an Item 2.01 Form 8-K) may be omitted from a registration or proxy statement; and
- Whether a continuous or delayed offering must be suspended (see sections below).

2930.11 1933 Act Registration Statement — 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 including financial statements required by the S-X Acquisition Rules upon effectiveness.

2930.12 Continuous and Delayed Offerings – Acquisitions after the Effective Date

After effectiveness, a registrant undertakes to file a post-effective amendment to update the disclosure in the registration statement if there is a “fundamental change” to the registrant’s business or operations [Item 512(a)(1)(ii) of Regulation S-K]. It is the responsibility of management to determine whether an acquisition of an individual or group of acquired and/or to-be-acquired businesses constitutes a fundamental change. Additionally, as noted in Sections 2930.15 and 2930.16, even if a post-effective amendment is not required to be filed, the consummation of certain acquisitions may require registrants to file the financial statements required by the S-X Acquisition Rules earlier than otherwise required in order to make offerings on effective registration statements.

2930.13 Continuous and Delayed Offerings - Acquisitions after the effective date – Post-effective amendment filed

Post-effective amendments are generally considered to be new filings and must include the financial statements required by the S-X Acquisition Rules in that post-effective amendment (or in a Form 8-K, if applicable). However, an amendment to a registration statement to provide an exhibit does not amend the prospectus. Additionally, 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 the post-effective amendment is triggered solely by Undertaking 20.D. of Industry Guide 5. See Sections 1220.10 and 1220.11.

2930.14 Continuous and Delayed Offerings - 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, Item 9.01 of Form 8-K and S-X 3-05(b)(4)(i)/3-14(b)(3) permit 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.

2930.15 Continuous and Delayed Offerings - Securities Offerings During the Grace Period Using a Registration Statement that became Effective Prior to Acquisition – Significance Exceeds 50%

If significance of a completed acquisition (or a group of related completed acquisitions – see Section 2920.27) exceeds 50% and the financial statements of the acquired business have not been filed, registrants **cannot** make offerings pursuant to effective registration statements, or pursuant to Rule 506 of Regulation D if any purchasers are not accredited investors under Rule 501(a) of that Regulation, until the financial statements required by the S-X Acquisition Rules (and related pro forma financial information) 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.

2930.16 Continuous and Delayed Offerings – 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 Rule 506 of Regulation D if any purchasers are not accredited investors under Rule 501(a) of that Regulation, until the financial statements required by the S-X Acquisition Rules (including pro forma financial information, if applicable) are filed or the registrant has filed its audited financial statements that include the post-acquisition results of operations of the acquired business for the periods described in Section 2930.9; 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 non-affiliates of the acquired business for which financial statements are not provided;** and
- e. sales of securities pursuant to Rule 144.

Notes to Section 2930.16

Note 1: Registrants should also consider Securities Act Rules C&DI 198.02 and 198.03 and Securities Act Forms C&DI 115.03, as applicable, when determining registration form eligibility and the appropriateness of offerings.

Note 2: During the grace period provided by Item 9.01 of Form 8-K, secondary offerings may proceed notwithstanding that financial statements required by the S-X Acquisition Rules (and related pro forma information) have not been filed (see 2930.15). In addition, subsequent to the grace period, the staff will not object if secondary offerings proceed notwithstanding that financial statements required by the S-X Acquisition Rules (and related pro forma information) have not been filed and audited financial statements that include the post-acquisition results of operations of the acquiree business for the period described in Section 2930.9 have not been filed, as long as all of the selling stockholders are unaffiliated with the acquired business.

2930.17 **Reorganization of Entities Under Common Control** – If the accounting for the acquisition is a reorganization of entities under common control and the registrant’s financial statements have already been restated to reflect the reorganization, then the acquired business’s financial statements are not required to be filed.

2935 Required Financial Statement Presentation

2935.1 **General** – Financial statements of the acquired or to-be-acquired business are required to be prepared in accordance with Regulation S-X.

2935.2 **Supplemental schedules** (S-X Article 12) are not required to be filed.

2935.3 **Audit requirements – General** - See Section 4110.5 for audit requirements of annual financial statements filed under the S-X Acquisition Rules. Interim financial statements filed under the S-X Acquisition Rules are not required to be audited or reviewed.

2935.4 **Audit requirements – Independence standards** – Audits should comply with independence standards in Rule 2-01 of Regulation S-X or, alternatively if the acquired or to-be-acquired business is not a registrant, the applicable independence standards.

2935.5 **Acquire Substantially All of an Entity** – If the registrant acquires substantially all of an entity's key operating assets, the staff would not object to the registrant filing full audited financial statements of the entity. In these circumstances, elimination of specified assets and liabilities not acquired or assumed by the registrant are reflected as Transaction Accounting Adjustments in pro forma financial statements [S-X 11-02(a)(6)(i)]. For acquisitions of real estate operations, see Sections 2935.13 through 2935.15.

2935.6 **Acquire Less than Substantially All of an Entity – Carve-out Financial Statements** - In some circumstances, a registrant does not acquire 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 now be owned by an entity other than the registrant.

In that case, audited carve-out financial statements usually should be presented for the acquired or to-be-acquired business. Carve-out financial statements should generally reflect **all** assets, liabilities, revenues and expenses of the acquired and to-be-acquired business and exclude the operations not acquired or not to-be-acquired by the registrant. See Section 2935.16 for applicability of SAB Topic 1B.1.

In some cases, if certain conditions are met, abbreviated financial statements may be provided. See Sections 2935.7 through 2935.12.

For acquisitions of real estate operations, see Sections 2935.13 through 2935.15.

2935.7 Acquire Less than Substantially All of an Entity – Abbreviated Financial Statements – Applicability – A registrant may provide abbreviated financial statements to satisfy the requirements in the S-X Acquisition Rules for an acquisition of net assets (that constitutes a business under S-X 11-01(d)), if they meet all of the following qualifying conditions [S-X 3-05(e)(1)].

- The total assets and total revenues (both after intercompany eliminations) of the acquired or to-be-acquired business are 20% or less of the corresponding amounts of the seller and its subsidiaries as of and for the most recently completed fiscal year;
- Separate financial statements of the acquired or to-be-acquired business have never been prepared;
- The acquired or to-be-acquired business was not a separate entity, subsidiary, operating segment or division during the periods for which the acquired or to-be-acquired business financial statements would be required;
- The seller has not maintained the distinct and separate accounts necessary to present financial statements of the acquired or to-be-acquired business and it is impracticable to prepare such financial statements.

Sections 2935.8 through 2935.10 provide details about the abbreviated financial statements that may be provided if the conditions above are met.

Notes to Section 2935.7

1. In order to determine whether total assets and total revenue of the acquired or to-be-acquired business are 20% or less of the corresponding amounts of the seller, it may be appropriate to consider the total assets and revenues of the seller on a consolidated basis rather than the specific subsidiary of the seller that owns the business being acquired.
2. In order to determine whether the acquired or to-be-acquired business was not a separate operating segment, the registrant should consider whether the acquired or to-be-acquired business would have qualified as an operating

segment under US GAAP or IFRS as issued by the IASB (“IFRS-IASB”), as applicable, even if the acquired or to-be-acquired business was not required to assess its operating segments under US GAAP or IFRS-IASB.

2935.8 **Abbreviated Financial Statements – Statements of Assets Acquired and Liabilities Assumed** – If the conditions in Section 2935.7 are met, the balance sheet may be a statement of assets acquired and liabilities assumed (“Abbreviated Balance Sheet”) that is presented on the basis of seller’s historical GAAP carrying value.

2935.9 **Abbreviated Financial Statements – Abbreviated Statement of Comprehensive Income** - If the conditions in Section 2935.7 are met, the abbreviated statement of comprehensive income may exclude corporate overhead expense, interest expense for debt that will not be assumed and income tax expense. **All** expenses incurred by or on behalf of the acquired or to-be-acquired business during the pre-acquisition financial statement periods to be presented must be reflected in the statement, including but not limited to **all** related costs of sales or services, selling, distribution, marketing, general and administrative, depreciation and amortization, and research and development. The title of the statement must be appropriately modified to indicate that it omits certain expenses.

2935.10 **Abbreviated Financial Statements – Disclosures** – Include the following in the notes to the abbreviated financial statements [S-X 3-05(e)(2)(iii)]:

- A description of the type of omitted expenses and the reason(s) why they were omitted.
- An explanation of the impracticability of preparing financial statements that include the omitted expenses.
- A description of how the financial statements presented are not indicative of the financial condition or results of operations of the acquired or to-be-acquired business going forward because of the omission of various expenses.
- Information about the operating, investing and financing cash flows, to the extent available.

2935.11 **Financial Statements of a Business that includes Oil and Gas Producing Activities** – The financial statements required by the S-X Acquisition Rules may consist of **only** statements of revenues and expenses that exclude expenses not comparable to the proposed future operations (e.g., depreciation, depletion and amortization, corporate overhead, income taxes and interest for debt not assumed by the registrant) if the following conditions are met:

- The acquired or to-be-acquired business generates substantially all of its revenues from oil and gas producing activities (defined in S-X 4-10(a)(16)).
- The conditions described in Section 2935.7 are met.

Companies meeting these criteria may omit a historical balance sheet but are required to include the disclosures described in Section 2935.10 and 2935.12.

2935.12 Financial Statements of a Business that includes Oil and Gas Producing Activities – Additional Disclosures – Disclosures about oil and gas producing activities must be provided for each full year of operations presented for an acquired or to-be-acquired business that includes significant oil and gas producing activities. These disclosures are required regardless of whether the business meets the conditions in Section 2935.11 as long as the business includes “significant oil and gas producing activities” (even if the business is not a publicly-traded company). Include the supplementary disclosures described in ASC 932-235-50-3 through 50-11 and ASC 932-235-50-29 through 50-36 which may be unaudited. If prior year reserve studies were not made, they may be computed 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 must be disclosed in a footnote. [S-X 3-05(f)]

2935.13 Financial Statements of a Real Estate Operation (as defined in S-X 3-14(a)(2)) – The financial statements may be only statements of revenues and expenses excluding expenses not comparable to the proposed future operations such as mortgage interest, leasehold rental, depreciation, amortization, corporate overhead and income taxes.

2935.14 Financial Statements of a Real Estate Operation (as defined in S-X 3-14(a)(2)) – Disclosures – If the financial statements in Section 2935.13 are presented, include the following in the notes to the financial statements [S-X 3-14(c)(2)]:

- The type of omitted expenses and the reason(s) why they are excluded from the financial statements;
- A description of how the financial statements presented are not indicative of the results of operations of the acquired or to-be-acquired real estate operation going forward because of the omitted expenses; and
- Information about the real estate operation's operating, investing and financing cash flows, to the extent available.

- 2935.15 **Financial Statements of a Real Estate Operation (as defined in S-X 3-14(a)(2)) – Supplemental Information** – The material factors considered by the registrant in assessing the real estate operation must be described with specificity in the filing. Such factors include sources of revenue (including, but not limited to, competition in the rental market, comparative rents, and occupancy rates) and expense (including, but not limited to, utility rates, property tax rates, maintenance expenses, and capital improvements anticipated). The disclosure must also indicate that the registrant is not aware of any other material factors relating to the specific real estate operation that would cause the reported financial statements not to be indicative of future operating results. When the financial statements are presented in Form S-11, the discussion of material factors considered should supplement the disclosures required by Item 15 of Form S-11.
- 2935.16 **Expenses, assets and liabilities not specifically identifiable** – If certain expenses are not specifically identifiable to the acquired or to-be-acquired business, such as indirect expenses not directly involved in the revenue producing activity, the allocation of those expenses in the required financial statements should comply with the guidance in SAB Topic 1B.1. Similarly, if certain assets and/or liabilities are not specifically identifiable to the acquired or to-be-acquired business, such as debt, it still may be appropriate to include those assets and/or liabilities in the required financial statements of the acquired business, if there is a reasonable basis.
- 2935.17 **Related Business Considerations** – If significance is met for a related business group (see Section 2920.28 through 2920.30), 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 the S-X Acquisition Rules for which the businesses are under common control or management.
- 2935.18 **Accounting Standards – General** – Financial statements of the acquired or to-be-acquired business must be prepared in accordance with U.S. GAAP (applicable to public business entities) unless the business is an FPI (financial statements should be consistent with those already filed as an FPI), a foreign business (see Section 2935.21) or would be an FPI if it were a registrant (see Section 2935.22).
- 2935.19 **Accounting Standards – Nonpublic Entity** – An acquired or to-be-acquired business that is a **nonpublic entity**, as that term is defined in U.S. GAAP, need not include disclosures if specifically excluded from the scope of a FASB standard. Examples include:
- a. Segment information under ASC 280 [ASC 280-10-15-3],

- b. Certain disclosures about employers' pensions and other postretirement benefits [ASC 715-20-50-5]
- c. Earnings per share under ASC 260 [ASC 260-10-05-1]

See Section 6410.6(d) for foreign business considerations relative to the use of IFRS for Small and Medium-sized Entities.

2935.20 Financial Statements of a Non-reporting Acquired or to-be-Acquired Business - SRC Requirements - If the registrant/acquirer is subject to S-X 3-05, the non-reporting acquired or to-be-acquired business's financial statements must comply with S-X reporting requirements applicable to entities that are not SRCs. If the registrant/acquirer is subject to S-X 8-04, the non-reporting acquired or to-be-acquired business's financial statements may comply with scaled reporting requirements in Article 8 of Regulation S-X for a SRC. These requirements apply to registration statements and Form 8-K reporting, 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](#)).

2935.21 Acquired or to-be-Acquired Business is a Foreign Business – The financial statements of an acquired or to-be-acquired foreign business [as defined in S-X 1-02(l)] meeting the requirements of Item 17 of Form 20-F comply with the S-X Acquisition Rules.

If the financial statements of a foreign business are prepared in accordance with IFRS-IASB, they need not be reconciled to U.S. GAAP (regardless of the significance of the business acquired or to-be-acquired). However, compliance with IFRS-IASB must be unreservedly and explicitly stated in the notes to the financial statements and the auditor's report must include an opinion on whether the financial statements comply with IFRS-IASB.

The financial statements of a foreign business may be prepared on a comprehensive basis other than U.S. GAAP or IFRS-IASB (e.g., home country GAAP). If significance is less than 30%, financial statements of an acquired or to-be-acquired foreign business prepared on a comprehensive basis other than U.S. GAAP or IFRS-IASB may omit a reconciliation to U.S. GAAP. If significance is greater than 30%, note the following:

- If the registrant is a domestic issuer or an FPI that prepares its financial statements in accordance with U.S. GAAP, financial statements of an acquired or to-be-acquired foreign business that are prepared using home country GAAP must be reconciled to U.S. GAAP.
- If the registrant is an FPI that prepares its financial statements in accordance with IFRS-IASB, financial statements of an acquired or to-

be-acquired foreign business that are prepared using home country GAAP may be reconciled to IFRS-IASB (in lieu of U.S. GAAP). The reconciliation must generally follow Item 17(c) of Form 20-F; however, accommodations in Item 17(c)(2) of Form 20-F that would be inconsistent with IFRS-IASB (e.g., removing the effects of inflation accounting when conditions of IAS 29 are not met or to not reconcile the effects of proportionate consolidation in joint ventures) may not be applied. Additionally, IFRS 1 will be applicable.

Reconciliation and Form 20-F updating requirements are described in Topic 6.

Note to Section 2935.21

A foreign business under S-X 3-05(c) may apply other accommodations in Form 20-F that are not available to a would-be FPI. For example, foreign businesses under S-X 3-05(c) may apply the age of financial statement requirements in Item 8 of Form 20-F (see Section 2940), and may apply the accommodation in Item 17(c)(2)(v) of Form 20-F that allows them to not reconcile their financial statements to U.S. GAAP if the significance of the foreign business is below 30%.

2935.22 Acquired or to-be-Acquired Business is not a Foreign Business, but would be an FPI (see Section 6110.2) – The financial statements of an acquired or to-be-acquired business that is not a foreign business but would be an FPI if it were a registrant (“a would-be FPI”) presented to comply with the S-X Acquisition Rules may be prepared as follows:

- If financial statements of a would-be FPI are prepared in accordance with IFRS-IASB they need not be reconciled to U.S. GAAP. However, compliance with IFRS-IASB must be unreservedly and explicitly stated in the notes to the financial statements and the auditor’s report must include an opinion on whether the financial statements comply with IFRS-IASB.
- If the registrant is a domestic issuer or an FPI that prepares its financial statements in accordance with U.S. GAAP, financial statements of a would-be FPI that are prepared using home country GAAP must be reconciled to U.S. GAAP and must follow the form and content requirements in Item 18 of Form 20-F.
- If the registrant is an FPI that prepares its financial statements in accordance with IFRS-IASB, financial statements of a would-be FPI that are prepared using home country GAAP may be reconciled to IFRS-IASB (in lieu of U.S. GAAP). The reconciliation must generally follow Item 17(c) of Form 20-F; however, accommodations in Item 17(c)(2) of Form 20-F that would be inconsistent with IFRS-IASB (e.g., not remove the effects of inflation accounting when conditions of

IAS 29 are not met or to not reconcile the effects of proportionate consolidation in joint ventures) may not be applied. Additionally, IFRS 1 will be applicable.

Reconciliation requirements are described at Topic 6.

- 2935.23 **Acquired or to-be-Acquired Business is a Foreign Business and a would-be FPI** – If the acquired or to-be-acquired business meets the definition of a foreign business but would also be an FPI if it were a registrant, the requirements for financial statements of a foreign business in S-X 3-05(c) must be applied (see 2935.21).
- 2935.24 **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 Item 1400 of Regulation S-K and various additional disclosures outlined in Question 3 of SAB 1:K, where reasonably available. [SAB Topic 1K]

2940 Age of Financial Statements

2940.1 Registration Statements– General

The registrant should comply with the financial statement age requirements for all acquired or to-be-acquired businesses 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 includes unaudited financial statements for the 3 months ended March 31. If a registration statement is subsequently filed after August 12, the financial statements of the acquired business must be updated through June 30 so that the acquired business's financial statements meet the financial statement age requirements of Regulation S-X. If the acquisition was consummated on or prior to June 30, updated financial statements would not be required.

- 2940.2 **Registration Statement – 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 financial statement age requirements with respect to all acquired and to-be-acquired businesses at the time of effectiveness.

2940.3 **Registration Statement – Age of Annual Financial Statements**

Note 1 to Section 2940.3

Age of financial statements is based, primarily on the **acquired or to-be-acquired business's** filer status (see Section 1340), including its qualification as an FPI (see Section 6110.2) and/or its qualification as a Foreign Business (see Section 6110.4).

An acquired or to-be-acquired business that is not a registrant or an acquired or to-be-acquired business that would be an FPI if it were a registrant will generally follow the “Not an Accelerated Filer and Not a Large Accelerated Filer” guidance below unless the business qualifies as a foreign business in which case it will follow the guidance for foreign businesses.

If an acquired or to-be-acquired business meets the Accelerated Filer definition and the SRC definition, the registrant must apply the age requirements for Accelerated Filers.

Note 2 to Section 2940.3

For purposes of evaluating the financial statement updating requirements relating to a significant acquired or 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.

Acquired or to-be-Acquired Business's Reporting/Filer Status	Effective date of Registration Statement	Age of Acquired or to-be-Acquired Business's 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 acquired or to-be-acquired business's fiscal year end	Updating requirement dependent on the registrant's (not the acquired or to-be-acquired business's) eligibility for relief under S-X 3-01(c) ¹² . 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.
	Registrant's filing is effective after 89th day after acquired or to-be-acquired business's fiscal year end	Required to include the acquired or to-be-acquired business's financial statements for the most recently completed fiscal year end.
Accelerated Filer	Registrant's filing is effective after 45 days but not more than 74 days after the acquired or to-be-acquired business's fiscal year end	Updating requirement dependent on the registrant's (not the acquired or to-be-acquired business's) eligibility for relief under S-X 3-01(c) ¹² . 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.
	Registrant's filing is effective after 74th day after acquired or to-be-acquired business's fiscal year end	Required to include the acquired or to-be-acquired business's financial statements for the most recently completed fiscal year.

¹² That is, if the **registrant** (not the acquired or to-be-acquired business) is eligible for relief under S-X 3-01(c), they do not need to update the acquired or to-be-acquired business's audited financial statements for the most recently completed fiscal year end. See Section 1220.3 which summarizes the three criteria in S-X 3-01(c).

Acquired or to-be-Acquired Business's Reporting/Filer Status	Effective date of Registration Statement	Age of Acquired or to-be-Acquired Business's Financial Statements
Large Accelerated Filer	Registrant's filing is effective after 45 days but not more than 59 days after the acquired or to-be-acquired business's fiscal year end	Updating requirement dependent on the registrant's (not the acquired or to-be-acquired business's) eligibility for relief under S-X 3-01(c) ¹² . 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.
	Registrant's filing is effective after 59th day after acquired or to-be-acquired business's fiscal year end	Required to include the acquired or to-be-acquired business's financial statements for the most recently completed fiscal year.
FPI or Foreign Business [S-X 3-01(h), S-X 3-02(d), S-X 3-05(c), Item 8.A.4 of Form 20-F]	Registrant's filing is effective within 3 months after the acquired or to-be-acquired business's fiscal year end	Updating the acquired or to-be-acquired business's financial statements for the most recently completed fiscal year is not required. See also Section 6220.4.
	Filing is effective more than 3 months after the acquired or to-be-acquired business's fiscal year end	Required to include the acquired or to-be-acquired business's financial statements for the most recently completed fiscal year.

2940.4 Registration Statement – Requirement to File Acquired or to-be-Acquired Business's Annual Financial Statements that are More Recent than Registrant's Financial Statements – In limited circumstances a registrant required to update the acquired or to-be-acquired business's annual financial statements after the 45th day after that business's fiscal year end may be required to file audited financial statements of that business as of a date more recent than is required for the registrant, particularly if the acquired or to-be-acquired business has a different fiscal year end.

For example: A registrant with a December 31, 2024 year end is required under S-X 3-01(c) to update its audited financial statements after February 14, 2025 in a registration statement. The registrant is acquiring a business with a November 30, 2024 year end. The acquired business is not an accelerated filer, a large accelerated filer, an FPI or a foreign business. If the registration statement is effective February 3, 2025, the registration statement would require the registrant's audited financial statements for

the year ended December 31, 2023 and unaudited financial statements for the nine months ended September 30, 2024. Unless relief is obtained, the acquired business's audited financial statements would be required for the year ended November 30, 2024 since February 3 is beyond 45 days after the acquired business's year end and the registrant is not eligible for relief under S-X 3-01(c).

- 2940.5 Registration Statement – Age of Interim Financial Statements – Acquired or to-be-Acquired Business is not a Foreign Business or FPI** – Similar to the age requirements included in Section 2940.3 for annual financial statements, interim financial statement age requirements are, in part, based upon the acquired or to-be-acquired business's filer status (See Note 1 to Section 2940.3).

Financial statements of an acquired or to-be-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 the S-X Acquisition Rules 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.

- 2940.6 Registration Statement – Age of Interim Financial Statements – Acquired or to-be-Acquired Business is a Foreign Business or FPI** –

If an acquisition is completed in the first half of the fiscal year (i.e., the omitted period would be less than 6 months), interim financial statements generally are not required unless the registrant has published interim information of the acquired or to-be-acquired business that covers a more current period (e.g., the first quarter).

If an acquisition is completed in the second half of the fiscal year, interim financial statements (covering at least the first six months of the year) are required if the registration statement is declared effective more than nine months after the end of the last audited fiscal year. For a calendar year-end entity, this means that if a registration statement were to become effective prior to October 1 financial statements for any interim period would not be required under the S-X Acquisition Rules for a foreign business or FPI.

- 2940.7 Registration Statement – Age of Interim Financial Statements – Updating Form 8-K** - In some cases, the financial statements of the acquired or to-be-acquired business initially 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 acquired business have calendar fiscal year ends. The Form 8-K includes the acquired business's interim financial statements as of March 31. The staff generally will not accelerate the effective date of a registration statement filed in December of the same year unless the acquired business's financial statements are updated through at least June 30.

2940.8 **Proxy Statements – General** - For purposes of proxy statements, the staff interprets the updating requirements for financial statements required by the S-X Acquisition Rules similar to the updating requirements for registration statements except to substitute proxy statement mailing date for effective date. [S-X 3-12].

2940.9 **Form 8-K– 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.

2940.10 **Form 8-K - Age of Annual Financial Statements -**

- **Acquired Business is Not an Accelerated Filer or Large Accelerated Filer:** The staff would not require audited statements for the acquired business's most recently completed fiscal year unless the Form 8-K reporting the acquisition was filed 90 days or more after the acquired business's fiscal year-end.
- **Acquired Business is an Accelerated Filer:** The staff would not require audited statements for the acquired business's most recently completed fiscal year unless the Form 8-K reporting the acquisition was filed 75 days or more after the acquired business's fiscal year-end.

If an acquired business meets the Accelerated Filer definition and the SRC definition, the registrant must apply the age requirements for Accelerated Filers.

- **Acquired Business is a Large Accelerated Filer:** The staff would not require audited statements for the acquired business's most recently completed fiscal year unless the Form 8-K reporting the acquisition was filed 60 days or more after the acquired business's fiscal year-end.

- **Acquired Business is an FPI or a Foreign Business:** The staff would not require audited statements for the acquired business's most recently completed fiscal year unless the Form 8-K reporting the acquisition was filed more than three months after the acquired business's fiscal year-end. [S-X 3-01(h), S-X 3-02(d), S-X 3-05(c), Item 8.A.4 of Form 20-F]

2940.11 **Form 8-K - Age of Interim Financial Statements –**

- **Acquired Business is Not an Accelerated Filer or Large Accelerated Filer:** 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 Business is an Accelerated Filer or a Large Accelerated Filer:** 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.

If an acquired business meets the Accelerated Filer definition and the SRC definition, the registrant must apply the age requirements for Accelerated Filers.

- **Acquired Business is an FPI or a Foreign Business:** 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 business's most recently completed fiscal 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), S-X 3-05(c), Item 8.A.5 of Form 20-F]

2940.12 **Form 8-K - 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 acquired business are not required in Form 8-K if they were previously filed by the registrant. Examples of when the staff will **not** consider the previously filed financial statements of the acquired business to be "**substantially the same**" pursuant to this instruction include:

- the previously filed financial statements of the acquired business 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 financial statements of the acquired business are interim financial statements and the Form 8-K requires filing of updated audited annual financial statements of the acquired business. See Example 2 below.
- the previously filed financial statements of the acquired business were prepared in accordance with the requirements for SRCs in S-X Article 8 but the registrant is not an SRC. See Example 3 below.

Example 1: Form S-4 included unaudited financial statements for the three months ended March 31 for a to-be-acquired business. The acquisition of the business 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 acquired business. However, if the acquisition of the business 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 to-be-acquired business for the nine months ended September 30. Updated audited financial statements of the acquired business are required in a Form 8-K if the acquisition of the business 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 business 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). See Section 2940.3 regarding the requirements to provide audited financial statements of an acquired entity.

Example 3: If a non-SRC registrant included financial statements of a previously nonpublic SRC-eligible acquired business in a Form S-4 and those financial statements complied with SRC reporting requirements instead of S-X reporting requirements for companies other than SRCs (see Section 2200.2), those financial statements would not be deemed “substantially the same” pursuant to Gen. Instruction B.3 to Form 8-K. Financial statements of the acquired business that comply with S-X for non-SRCs would need to be filed in a Form 8-K if the S-X Acquisition Rules significance threshold is met.

2945 Aggregate Significance

Note to Section 2945

The percentage calculations within the examples below may include rounding for illustrative purposes only.

2945.1 **Scope** – The S-X Acquisition Rules require aggregating the significance of the following acquisitions (“aggregate significance”) which did not require historical financial statements described in Sections in 2925 and 2930 based upon individual significance but may require the disclosures in Section 2945.9 if aggregate significance exceeds 50%:

- a. any consummated acquisitions whose significance does not exceed 20% (determined as of the acquisition date) 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% (determined as of the acquisition date), but does not exceed 50%, for which financial statements are:
 - (1) not yet required because of the 74 day rule in S-X 3-05(b)(4) and/or S-X 3-14(b)(3)(i) and
 - (2) not yet filed.

If a group of businesses meets the definition of related businesses described in Section 2920.27 and financial statements are not required by the S-X Acquisition Rules when treated and tested as a single acquisition, that related business group of acquisitions should also be included in the Aggregate Significance assessment.

Note to Section 2945.1

A registrant may not circumvent the disclosure requirements described in Section 2945.9 by voluntarily filing financial statements of one or more of the acquisitions described in (a) and (b) above and then testing aggregate significance of only the remaining acquisitions within the scope.

2945.2 **Applicability** – The requirement to file financial statements due to aggregate significance is applicable only to registration statements and proxy statements.

2945.3 **Financial Statements Used to Measure Aggregate Significance**

The financial statements described in Section 2915 at the registration statement **effective date** (or proxy statement mailing date) should be used to determine aggregate significance for acquisitions that fall within the scope of Section 2945.1. Measuring significance using the financial statements described in Section 2915 at the registration statement effective date (or proxy statement mailing 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 subsequently been retrospectively adjusted after the acquisition

date for a change in accounting principle or a discontinued operation (see Section 2915.14).

Notes to Section 2945.3

Note 1: An **existing reporting company's** appropriate conclusion that an acquisition was not individually significant when determining the Item 2.01 and 9.01 Form 8-K requirements at the date of acquisition is not changed by the subsequent measurement of aggregate significance. For example, measuring the aggregate significance using the financial statements described in Section 2915 at the registration statement effective date may cause an individual acquisition that was appropriately determined to be insignificant at the time of acquisition to now have significance in excess of 20% when measuring aggregate significance. This updated calculated significance is only required to be used in the aggregate significance calculation; it does not change the individual significance conclusion at the time of acquisition. Therefore, in this example, financial statements for that acquisition would not be required to be filed in the existing reporting company's registration statement because individual significance at the time of acquisition was appropriately determined to be insignificant. However, if the registration statement is for an **initial public offering by a company that is not already a reporting company**, updating the assessment of individual significance as of the effective date is required and, in this example, financial statements for that acquisition would be required.

Note 2: If an **existing reporting company elects** to reassess individual significance in conjunction with a registration statement using financial statements for a more recent annual period (see Section 2915.3) or using financial statements that were retrospectively adjusted giving effect to a discontinued operation or change in accounting principle (see Note to Section 2915.14), the registrant must also use those reassessed individual significance results in its aggregate significance testing to determine any disclosure requirements in Section 2945.9.

2945.4 Applicable Aggregate Significance Tests

Registrants are required to provide the disclosures described in Section 2945.9 if any of the applicable S-X 1-02(w) significance tests exceed 50%. Depending on the type of acquired or to-be-acquired businesses (i.e., real estate operations or non-real estate operations) included in the assessment, apply the asset, investment and income (including the revenue and income components) tests as follows:

Scenarios	Asset Test	Investment Test	Income Test
Only non-real estate operations	Applicable	Applicable	Applicable

Only real estate operations	N/A	Applicable (modified test – see Section 2920.5)	N/A
Both real estate operations & non-real estate operations	Applicable only for the non-real estate operations	Applicable (modified test for real estate operations – see Section 2920.5)	Applicable only for the non-real estate operations

2945.5 Asset and Investment Test

Add the significance results for each individual business required to be included based on Sections 2945.1 and 2945.4 to determine whether either the asset test or the investment test exceeds 50%.

Regarding the investment test (when the registrant has an aggregate worldwide market value), the aggregate worldwide market value (see Section 2920.6) used in the aggregate significance test will likely be different for each individual business acquired as the aggregate worldwide market value determination depends upon the timing of each of the acquisitions.

For example: Aggregate significance is calculated as follows based upon the assumed completed acquisitions below (example assumes no probable acquisitions):

Businesses	Date acquired	Investment In	AWMV¹³	Investment Test Significance
Business A	4/1/2025	\$23	\$125	18%
Business B	5/1/2025	\$20	\$132	15%
Business C	7/1/2025	\$26	\$136	19%
Total aggregate significance				52%

2945.6 Income Test - General

Add the revenue of each individual business required to be included in the aggregate significance determination based upon Sections 2945.1, 2945.4 and 2945.7 to determine whether there is material revenue for the revenue screen (see Section 2920.9).

Add the significance results (separately for each income test component) for each individual business required to be included based on Sections 2945.1, 2945.4 and 2945.7 to determine whether the revenue component (if applicable based on the revenue screen) or the income component of the income test exceeds 50%. The revenue component includes revenue from each of the aggregated businesses, including businesses with immaterial individual

¹³ For purposes of the table in this section, a aggregate worldwide market value is referred to as “AWMV”.

revenue. The lower of the two aggregated components is the aggregate significance of the income test.

2945.7 Income Test – Acquired and to-be-acquired Businesses with Pre-Tax Loss¹⁴ versus Pre-Tax Income - For purposes of both the revenue component and the income component of the income test, acquired and to-be-acquired businesses reporting losses should not be aggregated with acquired and to-be-acquired businesses reporting income. Therefore, significance under both components must be determined separately for the group of businesses with income and the group of businesses with losses. The revenue screen discussed in Section 2920.9 should be applied to each group separately (e.g., businesses reporting losses might not have material revenue after aggregating the revenue reported for each business reporting a loss and therefore that group would not be able to utilize the revenue component).

If the income test significance (considering both the income and revenue components) of either the aggregated businesses reporting losses or the aggregated businesses reporting income exceeds 50%, the disclosures in Section 2945.9 will be required for all of the businesses in Section 2945.1 (i.e., the disclosure requirements are not limited to just the businesses reporting losses or those reporting income).

For example: Assume registrant has \$100 of pre-tax income and \$600 of revenue for the year ended December 31, 2023. Registrant made the following acquisitions (none of which are real estate operations) in 2024 and files a registration statement in December 2024.

¹⁴ References throughout this section to “pre-tax income” or “pre-tax loss” refer to income or loss from continuing operations before income taxes (after intercompany eliminations) attributable to the controlling interests.

Businesses	Date Acquired	Pre-tax Income (Loss)	Pre-tax Income (Loss) Significance	Revenue	Revenue Significance
Business A	1/18/2024	\$(8)	8%	\$50	8%
Business B	2/5/2024	\$9	9%	\$90	15%
Business C	3/18/2024	\$(13)	13%	\$65	11%
Business D	6/13/2024	\$16	16%	\$110	18%
Business E	7/3/2024	\$(11)	11%	\$45	8%
Business F	8/5/2024	\$10	10%	\$95	16%
Probable G	N/A	\$22	22%	\$150	25%

Assume the registrant concluded that they passed the revenue screen and therefore they assessed significance using both components of the income test as follows:

Components	Income component		Revenue component	
Businesses	Aggregate Businesses with Income	Aggregate Businesses with Loss	Aggregate Businesses with Income	Aggregate Businesses with Loss
Business A	N/A	8%	N/A	8%
Business B	9%	N/A	15%	N/A
Business C	N/A	13%	N/A	11%
Business D	16%	N/A	18%	N/A
Business E	N/A	11%	N/A	8%
Business F	10%	N/A	16%	N/A
Probable G	22%	N/A	25%	N/A
Aggregate	57%	32%	74%	27%

Because some acquired or to-be acquired businesses have income and some have losses, significance must be determined separately for the group of acquired or to-be acquired businesses with income and the group with losses. In this example because the aggregate significance of both the income and revenue components for the acquired or to-be acquired businesses with income is greater than 50%, the applicable disclosures in Section 2945.9 must be provided for all Businesses (A through G); including historical S-X 3-05 financial statements for Business G.

- 2945.8 **Using Pro Forma Financial Statements** - The S-X Acquisition Rules [S-X 3-05(b)(3) and S-X 11-01(b)(3)(i)(B)] permit a registrant to evaluate significance of acquirees using the registrant's pro forma financial information reflecting previous **significant** acquisition(s) or disposition(s) consummated after the registrant's fiscal year end when certain criteria are met (See Section 2915.7). Using pro forma financial statements does not impact the Investment test if it is based upon the registrant's aggregate worldwide market value. If a registrant has filed financial statements required by the S-X Acquisition Rules and pro forma financial information for a previous **significant** acquisition

(consummated after their fiscal year end), the aggregate significance test may be applied against the pro forma information filed consistent with 2915.7.

For example: A registrant files a registration statement on July 15, 2024 that includes audited financial statements for the year ended December 31, 2023 and interim period statements for the three months ended March 31, 2024. The registrant had aggregate worldwide market value of \$1,000 at the measurement date for each acquisition, total assets of \$1,000 at December 31, 2023 and reported pre-tax income¹⁵ of \$100 for the year then ended. (Assume that the revenue component of the income test does not apply per the revenue screen in Section 2920.9). The registrant had, or expects to have, the following acquisitions (none of which are real estate operations) subsequent to December 31, 2023.

Significant acquisitions:

Business	Date Acquired	Investment		Assets		Income		Highest Significance
		\$	%	\$	%	\$	%	
Business A	4/8/2024	\$210	21%	\$100	10%	\$30	30%	30%

Insignificant acquisitions:

Business	Date Acquired	Investment		Assets		Income		Highest Significance
		\$	%	\$	%	\$	%	
Business B	2/5/2024	\$30	3%	\$20	2%	9	7%	N/A
Business C	3/18/2024	\$50	5%	\$40	3%	13	10%	N/A
Business D	6/13/2024	\$130	13%	\$80	7%	15	12%	N/A
Business E	7/3/2024	\$40	4%	\$20	2%	11	9%	N/A
Probable F	N/A	\$170	17%	\$100	8%	18	14%	N/A
Aggregate	N/A	\$420	42%	\$260	22%	66	52%	52%

This example assumes that audited financial statements and pro forma financial information were filed for Business A on 6/17/2024. Significance percentages for the “Insignificant acquisitions” are based on the registrant’s election to measure significance using pro forma financial information giving effect to the acquisition of Business A. Assume the pro forma financial information as of and for the year ended December 31, 2023 reflects Transaction Accounting Adjustments as follows:

Transaction	Assets	Income
Registrant historical	\$1,000	\$100
Adjustments	210	25
Pro forma	\$1,210	\$125

¹⁵ References throughout this section to “pre-tax income” or “pre-tax loss” refer to income or loss from continuing operations before income taxes (after intercompany eliminations) attributable to the controlling interests.

In this example, the income test yields the highest aggregate significance test (52%). The registration statement must include the disclosures described in Section 2945.9 to meet the S-X 3-05 requirement. Had the aggregate significance under each test been less than 50% using pro forma information, the financial disclosures described in Section 2945.9 would not be required in the registration statement for any of the individual acquired or to-be-acquired businesses.

2945.9 Required Disclosures – If the aggregate significance (based on the applicable significance tests as described in 2945.4) of the acquisitions described in Section 2945.1 (including the Note to Section 2945.1) exceeds 50%, the following disclosures must be provided:

- S-X 11-01 and 11-02 pro forma financial information that shows the aggregate impact of the acquisitions described in Section 2945.1, in all material respects; and
- Financial statements covering at least the most recent fiscal year and most recent interim period for any acquisition described in Section 2945.1(b) that is significant at more than 20% or any acquisition described in Section 2945.1(c).

* * * * *

Topic 3

Pro Forma Financial Information

Regulation S-X Article 11

This Topic describes the circumstances in which pro forma financial information should be presented, the form of their presentation, and guidance to be considered in their preparation. S-X 8-05, which applies to Smaller Reporting Companies and certain forms such as Reg. A Offering Statements, requires application of S-X Article 11.

(Last Updated: June 30, 2025)

3100 Circumstances Requiring Pro Forma Financial Information

3110 Significant Business Acquisition [S-X 11-01(a)(1) through (3)]

- 3110.1 S-X Article 11 pro forma financial information is required if a significant business acquisition (including real estate operations) has occurred in the latest fiscal year or subsequent interim period or is probable (see Section 2905.4). See Topic 2 for definition of a business (including the definition of a real estate operation) and tests of significance. Pro forma presentation is not required if the transaction is already fully reflected in historical statements for the entire period for which pro forma financial information is required.
- 3110.2 Acquisition of a business encompasses the acquisition of an interest in a business accounted for by the registrant under the equity method or, in lieu of the equity method, the fair value option. [S-X3-05(a)(2)(ii)] Therefore, S-X Article 11 pro forma requirements apply to the acquisition of such interests if significant.
- 3110.3 Additional S-X Article 11 pro forma financial information may be necessary if an acquirer of the registrant consummated a significant business acquisition of its own during the year, if that information would be material to an understanding of the registrant or a vote on a transaction.
- 3110.4 S-X Article 11 pro forma financial information is not required for business acquisitions that are not individually significant unless they are significant in the aggregate at over the 50% level as determined in S-X 3-05(b)(2)(iv) or S-X 3-14(b)(2)(i)(C). In this circumstance, these rules require presentation of S-X Article 11 pro forma financial information that depicts the aggregate impact of the acquired or to be acquired businesses, including real estate operations, that are included in the aggregate test in all material respects.
- 3110.5 S-X Article 11 pro forma financial information 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 financial information can be misleading.

- 3110.6 Pro-forma financial information may be required to be presented in a Form 8-K for a significant acquisition made after a previously reported significant acquisition. When such pro-forma financial information is included in a 1933 Act filing (e.g., Registration Statement) pursuant to S-X Article 11 and S-X 8-05, it is required to include the effects of both acquisitions. However, Form 8-K relates to current reporting of significant transactions outside the ordinary course of business; therefore, it does not explicitly contemplate previously reported transactions. For example, Form 8-K Item 9.01(b)(1) requires for any transaction required to be described in response to Item 2.01 of Form 8-K that the registrant file any pro forma financial information that would be required pursuant to S-X Article 11 or S-X 8-05. The staff encourages registrants to present both acquisitions in the pro forma financial information included in the Form 8-K because it results in more comprehensive disclosure and the pro forma financial information could be misleading without them. Companies with questions about individual fact patterns may contact CF-OCA.

3120 Disposition of a Significant Portion of a Business [S-X 11-01(a)(4)]

- 3120.1 S-X Article 11 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. The requirement to provide S-X Article 11 pro forma financial information is not dependent on the disposition meeting the ASC 205-20 criteria of a discontinued operation.
- 3120.2 Audited financial statements of the disposed business generally are not required in the Form 8-K reporting the disposition, however Form 8-K General Instruction B.1 requires S-X Article 11 pro forma financial information to be filed under Item 9.01(b) within 4 business days after the disposition. The 71-day extension set forth in Item 9.01(a)(3) for filing financial statements and S-X Article 11 pro forma financial information for acquisitions is not available for dispositions except for the exchange transactions described in Section 2930.8. See the Division of Corporation Finance's C&DIs for Exchange Act Form 8-K, Question 129.01. See also further discussion about when financial statements of the disposed business are required in Section 2120.

3130 [Reserved]

3140 Roll-Up Transaction [S-K 914 and S-X 11-01(a)(6)]

- 3140.1 In connection with a transaction subject to S-K 914, S-X Article 11 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 financial 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 [S-X 11-01(a)(7)]

- 3150.1 S-X Article 11 pro forma financial information is required if the registrant previously was a part of another entity, and such presentation is necessary to reflect operations and financial position of the registrant as an autonomous entity. See Section 3246.

3160 Other [S-X 11-01(a)(8)]

- 3160.1 S-X Article 11 pro forma financial information is required if transactions have occurred or are probable for which disclosure of pro forma financial information would be material to investors. Possible examples might include, but are not limited to, the following:
- a. Termination or revision of tax or other cost sharing agreements in a spin-off. See Section 3246.2.
 - b. Declaration of dividends by a subsidiary after the balance sheet date. [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 3241 and 3304.

- e. Issuance of new debt to fund a significant business acquisition for which pro forma financial information is required.
 - f. Repayment of debt.
 - g. Emerging from bankruptcy and registering securities under the 1934 Act coupled with fresh start accounting, reorganization, changes in capital structure, or other transactions.
 - h. In a de-SPAC transaction, all material transactions, including the merger agreement, PIPE issuance, new financing arrangement, forward purchase agreement or subscription agreement (if applicable), other significant acquisitions/dispositions, and redemption scenarios.
- 3160.2 The reference to “other transactions” in S-X 11-01(a)(8) encompasses other “events.” [See Release No. 33-10786 (May 20, 2020) at FN 313]
- 3160.3 **Acquiring an Additional Interest in a Consolidated Entity** – A registrant may increase its investment in an entity that is already reflected as a consolidated subsidiary. In this circumstance, notwithstanding S-X 11-01(c), which states that pro forma financial information giving effect to a business acquisition need not be presented if the acquired business’ financial statements are not presented, pro forma financial information giving effect to the additional investment in the entity would be required pursuant to S-X 11-01(a)(8) if it would be material to the registrant’s investors.

3200 Preparation Requirements – Form and Content

3210 General

- 3210.1 S-X Article 11 pro forma financial information depicts the effect of consummated or probable (see Section 2905.4) transaction(s) on the registrant’s historical financial statements.
- 3210.2 Domestic registrants should prepare their pro forma financial information in accordance with U.S. GAAP. Foreign private issuers should prepare their pro forma financial information in accordance with U.S. GAAP, IFRS as issued by the IASB, or home-country GAAP reconciled to U.S. GAAP depending on the comprehensive basis of accounting in the primary financial statements. See Topic 6.
- 3210.3 S-X Article 11 pro forma financial information should follow the age of financial statement requirements for the registrant. There may be unique circumstances relating to pro forma presentations (e.g., reverse acquisitions) in which the legal and accounting acquirer are subject to different reporting requirements or have different fiscal year ends. In these cases, registrants are encouraged to consult the staff.

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 condensed balance sheet is not required if the acquisition or disposal is already reflected in a historical balance sheet.
- 3220.2 Pro forma condensed balance sheet adjustments should be computed assuming the transaction was consummated on the date of the latest balance sheet included in the filing.

3230 Pro Forma Condensed Statement of Comprehensive Income

- 3230.1 **Periods to Present** - Pro forma condensed statements of comprehensive income must be filed for **only** the most recent fiscal year, except as noted in Section 3230.2, and for the period from the most recent fiscal year end to the most recent interim date for which a balance sheet is required. A pro forma condensed statement of comprehensive income may be filed for the corresponding interim period of the preceding fiscal year. A pro forma condensed statement of comprehensive income must not be filed when the historical statement of comprehensive income reflects the transaction for the entire period. [S-X 11-02(c)].

Note: After a registrant's change in fiscal year end in which the transition report has been filed on Form 10-K, the registrant may present pro forma financial information for the transition period *and* most recent fiscal year (and interim period). Alternatively, the registrant may present a pro forma condensed statement of comprehensive income 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 acquired or to be acquired business should be identical to the period of the registrant.

- 3230.2 **Periods to Present** - For transactions required to be accounted for under U.S. GAAP or, as applicable, IFRS–IASB by retrospectively revising the historical statements of comprehensive income (e.g., combination of entities under common control and discontinued operations), pro forma condensed statements of comprehensive income must be filed for all periods for which historical financial statements of the registrant are required. [S-X 11-02(c)(2)(ii)]

Example 1: 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 condensed statements of comprehensive income are required for each fiscal year for which the registrant's historical financial statements are provided and the registrant's subsequent interim period between its latest audited balance sheet and the date of its most recent interim balance sheet being filed.

Example 2: 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 ASC 205-20 for the three years presented in the registrant's most recent Form 10-K. Pro forma condensed statements of comprehensive income are required for the three most recent fiscal years required to be filed and the subsequent year-to-date interim period.

- 3230.3 **Registrant's Fiscal Year** – Pro forma condensed statements of comprehensive income must be presented using the registrant's fiscal year end. [S-X 11-02(c)(3)]
- 3230.4 **Length of Periods** – The length of the historical period for any business included in pro forma financial information should generally be identical to the historical period of the registrant's financial statements used to present the pro forma period depicted (or in a reverse acquisition the length of the accounting acquirer's financial statements).
- 3230.5 **Nonrecurring Items** – All revenues, expenses, gains and losses and their tax effects must be included in the pro forma condensed statement of comprehensive income. Any such items that will not recur in the income of the registrant beyond 12 months after the transaction must also be disclosed in the explanatory notes of the pro forma financial information. [S-X 11-02(a)(11)(i)] An example of a nonrecurring expense is a transaction expense in a business acquisition. See Section 3250.

3240 Form

- 3240.1 **Financial Statements** – S-X Article 11 pro forma financial information must consist of a pro forma condensed balance sheet, pro forma condensed statements of comprehensive income, and accompanying explanatory notes. In certain circumstances (i.e., where a limited number of pro forma adjustments are required and those adjustments are easily understood), a narrative description of the pro forma effects of the transaction may be disclosed in lieu of the statements described herein. [S-X 11-02(a)(1)]
- 3240.2 **Introductory Paragraph** – S-X Article 11 pro forma financial information should be preceded by an introductory paragraph which briefly describes: [S-X 11-02(a)(2)]
- a. Each transaction for which pro forma effect is being given;
 - b. The entities involved;
 - c. The periods for which the pro forma financial information is presented; and
 - d. An explanation of what the pro forma presentation shows.

- 3240.3 **Condensed Form** – Pro forma financial information need only include major captions (i.e., the numbered captions) prescribed by the applicable sections of Regulation S-X. Any balance sheet caption less than 10% of total assets may be combined with others; any statement of comprehensive income caption less than 15% of average net income attributable to the registrant for the most recent three fiscal years (excluding loss years unless losses were incurred in each of the most recent three years, in which case the average loss must be used) may be combined with others. Notwithstanding these tests, de minimis amounts need not be shown separately. [S-X 11-02(a)(3)]

Note: The thresholds in S-X 11-02(a)(3) used to present condensed pro forma financial information differ from the thresholds in S-X 10-01(a)(3) used to present condensed interim financial statements.

- 3240.4 **Columnar Form** - Pro forma statements should be presented in columnar form showing condensed historical statements, pro forma adjustments, and the pro forma results. [S-X 11-02(a)(4)]
- 3240.5 **Continuing Operations** - The historical statement of comprehensive income used in the pro forma financial information must only be presented through income from continuing operations (or the appropriate modification thereof). [S-X 11-02(b)(1)]
- 3240.6 **Income Attributable to the Controlling Interest** - The pro forma condensed statement of comprehensive income must disclose income (loss) from continuing operations and income or loss from continuing operations attributable to the controlling interest [S-X 11-02(a)(5)] because these amounts are used to calculate earnings per share.
- 3240.7 **Range of Possible Results** - 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. [S-X 11-02(a)(10)] The introductory paragraph should clearly outline the range of possible results depicted in the pro forma financial information, including transparent disclosure about the possible scenarios and the requirements that must be met for the transaction to consummate.
- 3240.8 **Range of Possible Results** - Both the form and the appropriate prominence of the additional pro forma presentations necessary to depict the range of possible results depends on the facts and circumstances. For example, presenting pro forma financial information depicting minimum required issuances of securities or acceptance of tender offers along with pro forma financial information depicting the maximum issuance or acceptance may be sufficient to depict the possible results of the transaction for which pro forma effect is being given. Further, if the outcome of minimum or maximum participation does not have a pervasive impact on the financial statements, it may be acceptable to discuss possible outcomes and their impacts in an explanatory

note to the pro forma financial information. As another example, if the minimum or maximum outcome will only affect the balance sheet, it may be acceptable for the registrant to only present an additional pro forma condensed balance sheet.

3240.9 Range of Possible Results - If the number of tender offer acceptances or other factors in a proposed business acquisition may determine the accounting to be applied to the transaction, pro forma financial information should generally be presented depicting 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, pro forma financial information should be presented depicting each accounting method.

3240.10 Range of Possible Results - Providing pro forma presentations that only show minimum and maximum scenarios may not be appropriate to comply with the pro forma requirement to show the range of possible results if other materially different outcomes are possible. Similarly, providing pro forma presentations of scenarios that do not meet the conditions of the transaction for which pro forma effect is being given would not be appropriate as those scenarios are not possible results.

For example, in some fact patterns there may be both cash redemption requirements (e.g., like those that can exist in de-SPAC transactions) and concurrent business acquisitions that are conditioned on the registrant having a minimum amount of post-acquisition cash. In such circumstances, additional pro forma presentation should be shown to depict the maximum amount of cash that can be redeemed pursuant to the cash redemption requirements that meets the post-acquisition cash minimum requirement of the concurrent business acquisition. If a transaction provides the possibility that the minimum post-acquisition cash requirement may be waived, additional pro forma presentation should be shown to reflect the impact of the possible waiver.

Similarly, if a transaction requires that the net tangible assets of the post-merger entity exceed a minimum amount, pro forma presentations generally should not be given to scenarios that do not meet the conditions necessary to consummate the transaction. However, if shareholders are also being asked to vote on proposals that would eliminate the minimum net tangible asset requirement, additional pro forma presentations should give effect to the elimination of the net tangible asset requirement to appropriately reflect the range of possible results.

3240.11 Range of Possible Results - The total column of the pro forma financial information should not show negative cash. Similarly, reclassifying negative cash to a liability would not be appropriate if the terms of the transaction for which pro forma effect is being given do not provide for such a liability as such a scenario would not be a possible result.

3240.12 **Range of Possible Results** - When the terms of the transaction for which pro forma effect is being given include one or more variables, additional pro forma presentation may be necessary to depict the range of possible results.

Example 1: A registrant issues variable rate debt. See Section 3260.

Example 2: A registrant files a proxy statement requesting shareholder approval of an acquisition. The number of common shares the registrant will issue in the acquisition 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 an acquisition 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.

3240.13 **Multiple Transactions** – When a business acquisition occurs other transactions may also be consummated. For example, debt may be issued to finance the business acquisition. In these circumstances, registrants must look to S-X 11-01(a) to identify each transaction for which pro forma effect is required to be given. S-X 11-01(a)(8) indicates that pro forma financial information must be disclosed for a transaction when that information would be material to investors.

3240.14 **Multiple Transactions** - When consummation of more than one transaction has occurred, or is probable, the pro forma financial information must present in separate columns each transaction for which pro forma presentation is required. [S-X 11-02(b)(4)(i)] However, there may be narrow circumstances when transactions are both entered into at the same time and executed in contemplation of each other where the staff would not object to a singular column presentation that retains the transparency and ease of understanding objectives otherwise provided through a separate column requirement. For example, when one of the transactions can be reflected through a single, easily understood journal entry such as an adjustment giving effect to debt issued to finance a significant business acquisition for which pro forma financial information is also required.

3240.15 **Multiple Transactions** – If the pro forma financial information is presented in a proxy or information statement for purposes of obtaining shareholder approval of one of the transactions, the effects of that transaction must be clearly set forth. [S-X 11-02(b)(4)(ii)]

3240.16 **Audit Report** - An auditor's report on pro forma financial information is not required. However, any auditor's 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.

3241 Pro Forma Earnings Per Share

- 3241.1 Historical and pro forma basic and diluted per share amounts based on continuing operations attributable to the controlling interests and the number of shares used to calculate such per share amounts must be presented on the face of the pro forma condensed statement of comprehensive income and only give effect to Transaction Accounting Adjustments and Autonomous Entity Adjustments. [S-X 11-02(a)(9)]
- 3241.2 The number of shares used in the calculation of the pro forma per share amounts must be based on the weighted average number of shares outstanding during the period adjusted to give effect to the number of shares issued or to be issued to consummate the transaction, or if applicable whose proceeds will be used to consummate the transaction as if the shares were outstanding as of the beginning of the period presented. [S-X 11-02(a)(9)]
- 3241.3 Calculate the pro forma effect of potential common stock being issued in the transaction (*e.g.*, a convertible security), or the proceeds of which will be used to consummate the transaction, on pro forma earnings per share in accordance with U.S. GAAP or IFRS–IASB, as applicable, as if the potential common stock were outstanding as of the beginning of the period presented. [S-X 11-02(a)(9)] See Section 3308.3 for guidance if the conversion of outstanding securities will occur after the latest balance sheet date.
- 3241.4 If a registrant meets the requirements in Section 3304 to give effect to the receipt of offering proceeds in the pro forma financial information presented, it may depict the pro forma effects on the EPS denominator of those shares whose proceeds are indicated for general corporate purposes (*i.e.*, incremental to the number of shares whose proceeds will be used for the material transaction for which such pro forma financial information is required) provided such pro forma effect is depicted separately from the material transactions for which proceeds will be used. For example, a company may present “additional” EPS data reflecting the issuance of all shares offered if it considers this information meaningful. If this additional EPS data is shown on the face of the pro forma condensed statement of comprehensive income, it should be labeled appropriately.

- 3241.5 The explanatory notes of the pro forma financial information should make the computation(s) of pro forma EPS transparent to investors.

3242 Prohibitions

- 3242.1 A registrant must not present pro forma financial information on the face of the registrant's historical financial statements or in the accompanying notes, except where such presentation is required by U.S. GAAP or IFRS–IASB, as applicable [S-X 11-02(a)(12)]. IPO-triggered transactions, such as convertible securities that automatically convert to common stock upon an IPO, do not meet the exception (i.e., they are not subsequent events as defined in ASC 855). The IPO-triggered transactions would be depicted in S-X Article 11 pro forma financial statements, but they would not be presented in a separate column presented on the face of the registrant's historical financial statements.
- 3242.2 A registrant must not present pro forma financial information, or summaries of such information, elsewhere in a filing that excludes material transactions for which pro forma effect is required to be given [S-X 11-02(a)(12)]. As a result, amounts depicted in a filing that are labeled as pro forma should give effect to all material transactions for which pro forma effect is required to be given pursuant to S-X 11-01(a). For example, an amount labeled as pro forma EPS should include all material transactions for which pro forma effect is required to be given in each place it is presented in a filing.
- 3242.3 A registrant must not present pro forma amounts depicting Management's Adjustments (see Section 3248) elsewhere in a filing without also presenting with equal or greater prominence the pro forma amounts to which they are required to be reconciled and a cross-reference to that reconciliation. [S-X 11-02(a)(12)] For example, if a registrant presents pro forma net income attributable to the controlling interests after management's adjustments outside of the pro forma financial information explanatory notes, it must also present, with equal or greater prominence, pro forma net income attributable to the controlling interests before Management's Adjustment and a cross-reference to the reconciliation of those two amounts included in the explanatory notes of the pro forma financial information.
- 3242.4 A registrant must not give pro forma effect to the registrant's adoption of an accounting standard in pro forma financial information required by S-X [11-01](#) through [11-03](#) [S-X 11-02(a)(12)]. Instead, a registrant should describe the potential effects of its adoption of an accounting standard in accordance with the disclosure requirements discussed in SAB 11:M.
- 3242.5 A registrant must not present non-GAAP financial measures on the face of any pro forma financial information required to be disclosed by S-X Article 11. [S-K 10(e)(1)(ii)(D)] Alternative measures of performance or liquidity and the effect of pro forma adjustments thereon may be disclosed in the explanatory

notes of S-X Article 11 pro forma financial information provided the requirements of S-K 10(e) are met.

3243 Pro Forma Adjustments

- 3243.1 If pro forma effect of a transaction is required by S-X 11-01(a), such effect is given through Transaction Accounting Adjustments, unless the transaction meets the autonomous entity condition in S-X 11-01(a)(7) in which case effect is given through Autonomous Entity Adjustments. Management's Adjustments may also be presented if the conditions for their presentation are met. See S-X 11-02(a)(6) and (a)(7).
- 3243.2 Pro forma adjustments should be referenced to explanatory notes which clearly explain the assumptions involved. [S-X 11-02(a)(8)]
- 3243.3 Generally, pro forma adjustments should be presented gross on the face of the pro forma financial information. Alternatively, a more detailed explanation of the components of the adjustments may be presented in the explanatory notes of the pro forma financial information.

3244 Transaction Accounting Adjustments

- 3244.1 Transaction Accounting Adjustments are the most common type of pro forma adjustments. They are presented on the face of the pro forma financial information and give effect to all the transactions for which pro forma financial information is required with the exception of the autonomous entity condition described in S-X 11-01(a)(7) and Section 3246.
- 3244.2 Transaction Accounting Adjustments to the pro forma condensed balance sheet depict the accounting required by U.S. GAAP or, as applicable, IFRS-IASB for the transactions that the pro forma financial information give effect.
- 3244.3 Calculate pro forma adjustments using the measurement date and method prescribed by the applicable accounting standards. For a probable transaction, calculate and disclose pro forma adjustments using the most recent practicable date prior to the effective date (for registration statements), qualification date (for offering statements under SAR 251 to 263 (Regulation A)), or the mail date (for proxy statements). [S-X11-02(a)(6)(i)(A)]

Note: What constitutes the “most recent practicable date” is a facts and circumstances determination. In addition to disclosing the most recent practicable date, when the acquisition consideration includes issuance of the registrant's stock, the explanatory notes of the pro forma financial information should include 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 the acquirer's stock price volatility.

3244.4 Transaction Accounting Adjustments to the pro forma condensed statements of comprehensive income depict the effects of the pro forma condensed balance sheet Transaction Accounting Adjustments assuming those adjustments were made as of the beginning of the fiscal year presented, not the interim period presented. Such adjustments must be made whether or not the pro forma condensed balance sheet is presented (see Section [3220.1](#)). If the transaction does not have a balance sheet effect, then depict the accounting for the transaction required by U.S. GAAP or IFRS–IASB, as applicable. [S-X 11-02(a)(6)(i)(B)]

For example, if the business acquired is required to be accounted for as a business combination under U.S. GAAP, then the Transaction Accounting Adjustments on the pro forma condensed balance sheet reflect the recognition of the identifiable assets acquired and liabilities assumed (i.e., acquisition accounting) as prescribed by U.S. GAAP. The Transaction Accounting Adjustments on the pro forma condensed statement of comprehensive income reflect the effects of acquisition accounting on the registrant’s statement of comprehensive income as if the acquisition were consummated on the first day of the fiscal year presented. A common transaction accounting adjustment to the pro forma condensed statement of comprehensive income will be depreciation and amortization.

3244.5 **Disposition** - Transaction Accounting Adjustments giving effect to the disposition of a business must not decrease historically incurred compensation expense for employees who were not, or will not be, transferred or terminated as of the disposition date. [S-X 11-02(b)(3)] Such terminations might be depicted as Management’s Adjustments if they meet the requirement for presenting such adjustments.

3244.6 **Disclosure** – The explanatory notes that accompany pro forma financial information must disclose the following for Transaction Accounting Adjustments [S-X 11-02(a)(11)(ii) and 11-02(a)(6)(i)(A)]:

- A table showing the total consideration transferred or received including its components and how they were measured.
- A description of the contingent consideration arrangement(s), if any, and the basis for determining the amount of payment(s) or receipt(s). Include an estimate of the range of outcomes (undiscounted) for the contingent consideration arrangements or, if a range cannot be estimated, that fact and the reasons why.
- For probable transactions, the most recent practicable date used to calculate pro forma adjustments. See Section 3244.3.

- For transactions when the accounting is incomplete:
 - o A prominent statement to this effect;
 - o The incomplete items;
 - o A description of the information that the registrant requires, including, if material, the uncertainties affecting the pro forma financial information and the possible consequences of their resolution;
 - o An indication of when the accounting is expected to be finalized; and
 - o Other available information that will enable a reader to understand the magnitude of any potential adjustments to the measurements depicted.

3244.7 **Examples** – The following transactions that often occur upon an IPO would be depicted using Transaction Accounting Adjustments:

- Conversions of outstanding equity instruments into common stock.
- Vesting of share-based payment awards (e.g., performance condition is satisfied upon IPO).
- Change in tax status.

3245 **Transaction Accounting Adjustments – Application**

3245.1 **Terminating Employees** – The termination of employees made redundant by a business acquisition is an example of a cost synergy. Synergies from acquisitions and dispositions are Management’s Adjustments rather than Transaction Accounting Adjustments. See Section 3248.1.

3245.2 **Acceleration of Stock-based Compensation Vesting** - Some share-based payment awards fully vest upon successful completion of an IPO. Successful completion of an IPO is a performance condition under ASC 718 that is not recognized until probable, which often may be when the IPO occurs. Under S-X Article 11, pro forma adjustments are required to give effect to material transactions triggered by the IPO. The adjustment to record additional compensation expense in this example would be a Transaction Accounting Adjustment.

3245.3 **Goodwill Impairment** - An accounting acquirer or an accounting acquiree may have a goodwill impairment in the historical periods presented in the pro forma financial statements. Goodwill impairments related to an accounting

acquirer should not be eliminated. However, goodwill impairment of an accounting acquiree should be eliminated through a Transaction Accounting Adjustment. Because the pro forma condensed balance sheet gives effect to the accounting required by U.S. GAAP and U.S. GAAP requires the elimination of an accounting acquiree's goodwill, the pro forma condensed statement of comprehensive income should also include a Transaction Accounting Adjustment to eliminate an acquiree's historical goodwill impairment. For clarity, this only applies to goodwill impairment of an accounting acquiree because U.S. GAAP requires elimination of that goodwill. It does not apply to impairments of any other finite-life or indefinite-lived assets or of financial assets.

3245.4 Costs of being a Public Company – The costs of being a public company are future period expenses that will be incurred for compliance with SEC rules and regulations. They do not represent a transaction and therefore do not qualify under SX 11-01(a) for pro forma effect.

3245.5 Non-GAAP Performance Measure - Question 101.05 of the C&DIs on non-GAAP measures indicates that if reconciliation of a non-GAAP financial measure is required and the most directly comparable measure is a “pro forma” measure prepared and presented in accordance with S-X Article 11, companies may use that measure for reconciliation purposes, in lieu of a U.S. GAAP financial measure. If pro forma financial information includes both Transaction Accounting Adjustments and Autonomous Entity Adjustments, reconcile to the pro-forma measure that includes both types of adjustments. If pro forma financial information only includes Transaction Accounting Adjustments, registrants should reconcile to that total. Non-GAAP measures should not be reconciled to a total that includes Management's Adjustments.

3246 Autonomous Entity Adjustments

3246.1 Autonomous Entity Adjustments are required if the registrant previously was a part of another entity, and such presentation is necessary to reflect operations and financial position of the registrant as an autonomous entity. [S-X 11-01(a)(7) and 11-02(a)(6)(ii)] Autonomous Entity Adjustments apply where the registrant is being spun-off from its parent and is filing an initial registration statement.

3246.2 Autonomous Entity Adjustments are distinguished from Management's Adjustments in that they give effect to changes in the spinee's costs resulting from agreements in place, such as new lease arrangements or transition services agreements with its spinor/parent. Changes in costs that are not evidenced by agreements in place ordinarily would not be Autonomous Entity Adjustments but may be synergies and dis-synergies of the spin-off that may, in the registrant's discretion, be presented as Management's Adjustments if the applicable conditions in S-X 11-02(a)(7) are met.

- 3246.3 Autonomous Entity Adjustments must be presented on the face of the pro forma financial information in a separate column from Transaction Accounting Adjustments. [11-02(a)(6)(ii)]
- 3246.4 **Disclosure** – The following disclosure must be made for each Autonomous Entity Adjustment [S-X 11-02(a)(11)(iii)]
- A description of each Autonomous Entity Adjustment (including the material uncertainties),
 - The material assumptions,
 - The calculation of each Autonomous Entity Adjustment, and
 - Additional qualitative information about the Autonomous Entity Adjustment, if any, necessary to give a fair and balanced presentation of the pro forma financial information.

3247 Autonomous Entity Adjustments – Application

- 3247.1 To illustrate application of Autonomous Entity Adjustments:
- The registrant is the business being spun-off and is filing a registration statement.
 - The separate historical financial statements of the business being spun-off must include all costs of doing business. See Staff Accounting Bulletin 1:B.
 - Those historical costs typically include allocations of the parent’s historical expenses.
 - In spin-offs, the parent and the business being spun off often have an agreement in place that sets forth the terms of administrative and other services that the parent will continue to provide to the new registrant.
 - Because the costs to be incurred in the agreement differ from the historical allocations of parent’s expenses to the business, an Autonomous Entity Adjustment is necessary to depict the registrant as an autonomous entity. That adjustment reflects the difference in cost between the agreement and the historical allocation.
 - Importantly, the pro forma effect of the formal agreement would not qualify as a Transaction Accounting Adjustment; it must be shown in a separate column as an Autonomous Entity Adjustment.
- 3247.2 **Disclosure** – The requirement to disclose additional qualitative information recognizes that there is often a relationship between the transactions depicted in Autonomous Entity Adjustments and the synergies and dis-synergies of a

transaction. When a registrant chooses not to disclose Management's Adjustments depicting those synergies and dis-synergies, additional qualitative information may be necessary to give a fair and balanced presentation of the pro forma financial information.

For example, a spinee will typically expect to incur incremental costs in its corporate support functions (e.g., finance, accounting, tax, treasury, information technology, human resources, legal). Some of those functions may be provided by the former parent through a transition services agreement. To fulfill the rest of those functions, the registrant may anticipate hiring new employees. The transaction services agreement would be captured by an Autonomous Entity Adjustment. The anticipated hiring would represent a dis-synergy that could be disclosed as a Management's Adjustment if the applicable conditions in S-X11-02(a)(7) are met. If the registrant chooses not to depict, or does not meet the applicable conditions to depict, a Management Adjustment showing the dis-synergy, the registrant's required disclosure of additional qualitative information about the Autonomous Entity Adjustment would include, among other considerations, the need to hire additional employees and clarification that those hirings are not depicted in the pro forma financial information. Further, discussion and analysis may be required in Management's Discussion and Analysis under its known uncertainty and other requirements. See Topic 9.

3248 Management's Adjustments

- 3248.1 Management's Adjustments depict synergies and dis-synergies of the acquisitions and dispositions for which pro forma effect is being given. They may not be disclosed for other transactions for which pro forma effect is being given, except that the staff also permits disclosure of Management's Adjustments for the autonomous entity condition described in S-X 11-01(a)(7) provided that the conditions for disclosure of Management's Adjustments are met.
- 3248.2 Management's Adjustments are not mandatory but may be presented in the registrant's discretion if: (A) in its management's opinion, such adjustments would enhance an understanding of the pro forma effects of the transaction and (B) the additional conditions as to the Basis for Management's Adjustments and the Form of Presentation described in S-X 11-02(a)(7) are met.
- 3248.3 **Basis for Management's Adjustments – Reasonable Basis** – The registrant must have a reasonable basis for each Management's Adjustment. Whether there is a reasonable basis for a given Management's Adjustment will require careful consideration of the facts and circumstances of the specific company and adjustment.

- 3248.4 **Basis for Management's Adjustments – Limit Effect to Historical Amounts** – Management's Adjustments are limited to the effect of such synergies and dis-synergies on the historical financial statements that form the basis for the pro forma condensed statement of comprehensive income as if the synergies and dis-synergies existed as of the beginning of the fiscal year presented. If such adjustments reduce expenses, the reduction must not exceed the amount of the related expense historically incurred during the pro forma period presented.
- 3248.5 **Basis for Management's Adjustments – Fair Presentation** - The pro forma financial information must reflect all Management's Adjustments that are, in the opinion of management, necessary to a fair statement of the pro forma financial information presented, and a statement to that effect must be disclosed.
- 3248.6 **Basis for Management's Adjustments – Dis-synergies** - If synergies are presented, any dis-synergies must be separately presented; they should not be netted against the synergies.
- 3248.7 **Form of Presentation – Reconciliation located in Explanatory Notes** – Management's Adjustments are not permitted on the face of the pro forma financial information. Instead, they must be shown separately in the explanatory notes of the pro forma financial information in the form of two reconciliations: (1) pro forma net income from continuing operations attributable to the controlling interest and (2) the related pro forma earnings per share data specified in S-X 11-02(a)(9) to each of the respective amounts after giving effect to Management's Adjustments.
- 3248.8 **Form of Presentation – Updating to Most Recent Practicable Date** - Management's Adjustments included or incorporated by reference into a registration statement, proxy statement, Regulation A offering statement, or Form 8–K should be as of the most recent practicable date prior to the effective date, mail date, qualification date, or filing date as applicable, which may require that they be updated if previously provided in a Form 8–K that is appropriately incorporated by reference. [See S-X 11-02(a)(7)(ii)(B) and Section 3244.3]
- 3248.9 **Form of Presentation – EPS Effect** - If Management's Adjustments will change the number of shares or potential common shares, reflect the change within Management's Adjustments in accordance with U.S. GAAP or IFRS–IASB, as applicable, as if the common stock or potential common stock were outstanding as of the beginning of the period presented.
- 3248.10 **Form of Presentation - Disclosure** - The explanatory notes must also include disclosure of the basis for and material limitations of each of Management's Adjustments, including any material assumptions or uncertainties of such adjustment, an explanation of the method of the calculation of the adjustment,

if material, and the estimated time frame for achieving the synergies and dis-synergies of such adjustment. [S-X 11-02(a)(7)(ii)(D)]

3249 Management's Adjustments - Application

- 3249.1 **Non-recurring Costs to Achieve Synergies** – Such costs would be “dis-synergies” and should be included in the pro-forma financial information as a Management’s Adjustment. (See e.g., Release No. 33-10786 (May 20, 2020) at page 111.)
- 3249.2 **Reconciliation** - The form of the reconciliation requirement discussed in Section 3248.7 precludes presenting the reconciliation in the form of a statement of comprehensive income. For each synergy and dis-synergy quantified, it is permissible to identify to which financial statement line item each relates. Similarly, the amounts that give effect to Management’s Adjustments require an appropriate label to clarify they are Management’s Adjusted Pro Forma amounts, thereby distinguishing them from the Pro Forma amounts from which they are derived.
- 3249.3 **Presentation in Other Parts of Filing** - It is permissible for a registrant to present in other parts of the filing both Management’s Adjusted pro forma net income from continuing operations attributable to the controlling interest and Management’s Adjusted pro forma earnings per share provided that the registrant also presents with equal or greater prominence pro forma net income from continuing operations attributable to the controlling interest and pro forma earnings per share.
- 3249.4 **Estimated Range** - Management may have different levels of confidence about different types of synergies and dis-synergies and their transaction effects. If an estimated range is necessary to understand the potential effects of one or more synergies or dis-synergies, a range should be provided. Such disclosure is consistent with the requirement in SX 11-02(a)(7)(i)(C) to reflect all Management’s Adjustments that are, in the opinion of management, necessary to a fair statement of the pro forma financial information presented. If a range is disclosed, then at a minimum both ends of the range should be reconciled to pro forma income from continuing operations attributable to the controlling interests and to related per share data. Whether additional points within the range require reconciliation will depend on the facts and circumstances.
- 3249.5 **Disclosure When Management’s Adjustments are Not Presented** - Termination of employees and closing facilities are actions that may be taken in connection with business acquisitions to eliminate costs perceived by management as redundant. When Management’s Adjustments depicting such synergies and dis-synergies are not presented, consideration should be given to whether the explanatory notes of the pro forma financial information nonetheless should reflect narrative discussion about such actions in order to

make the pro forma financial information not misleading. Similarly, consideration should be given to whether other requirements, such as MD&A, require discussion and analysis of how these actions (and other business integration activities not specifically associated with the acquisition of a business) are expected to impact the operations and liquidity of the newly combined companies going forward.

3250 In Business Acquisitions

3250.1 The most common transaction for which pro forma financial information is required is the acquisition of a business, as defined in S-X 11-01(d) [S-X 3-05(a)(2), S-X 3-14(a)(2)]. Such acquisitions are given pro forma effect through Transaction Accounting Adjustments, which depict the accounting for the transaction required by U.S. GAAP or, as applicable, IFRS-IASB, and in the registrant's discretion, subject to certain conditions, Management's Adjustments.

3250.2 Conforming Accounting Policies of Acquiree - The pro forma financial information should include Transaction Accounting Adjustments to conform the accounting policies of the acquired business to the policies of the registrant if the registrant would be required to conform the accounting policies of the acquiree in the registrant's consolidated financial statements after the business acquisition.

3250.3 Conforming Accounting Policies of Acquiree - If a registrant adopts a new accounting standard as of a different date and/or under a different transition method than a significant acquired business, the registrant must conform the date and method of adoption of the acquired business to its own in its pro forma financial information. The staff will consider requests for relief from this requirement.

3250.4 Transaction Expenses - The Transaction Accounting Adjustment requirement to reflect pro forma adjustments "assuming those adjustments were made as of the beginning of the fiscal year presented" [S-X 11-02(a)(6)(i)(B)] depends on two factors:

- Whether transaction expenses are reflected in either the historical annual or interim periods used to depict the pro forma financial information or whether they are incurred after those periods; and
- Whether the transaction expense is incurred by the registrant or the acquiree.

3250.5 Transaction Expenses – Registrant transaction expenses:

- If a registrant incurred transaction expenses in a historical period used to depict the pro forma financial information, then no pro forma

adjustment to remove them or move them from the interim period to the annual period or from the annual period to the interim period should be made.

- If a registrant incurred transaction expenses after the annual (and when applicable, interim) historical periods used to depict the pro forma financial information, include a Transaction Accounting Adjustment to include them in the pro forma financial information for the annual period.

3250.6 Transaction Expenses – Acquiree transaction expenses:

- If an acquiree incurred transaction expenses in a historical period used to depict the pro forma financial information, then no pro forma adjustment to remove them or move them from the interim period to the annual period or from the annual period to the interim period should be made.
- If an acquiree incurred transaction expenses after the historical periods used to depict the pro forma financial information, do not make a pro forma adjustment to include those expenses. The pro forma financial information gives effect to the registrant's accounting for the transaction and the transaction expenses of the acquiree are not part of the registrant's accounting.

3250.7 Significant Discounts Relative to Historical Cost - In some transactions, such as in financial institution acquisitions, measuring the acquired assets at their acquisition date fair value may result in significant discounts relative to the acquired business's historical cost of the acquired assets. When such discounts can result in a significant effect on earnings (losses) in periods immediately subsequent to the acquisition that will be progressively eliminated over a relatively short period, the effect of the discounts on reported results of operations for each of the next five years must be disclosed in a note. [S-X 11-02(b)(2)]

3250.8 Acquisition of an Investment Accounted for Using the Equity Method- Because Transaction Accounting Adjustments depict the accounting required by U.S. GAAP (or if applicable, IFRS-IASB), the face of the pro forma financial information giving effect to the acquisition of an investment accounted for using the equity method should depict the registrant's historical column, a pro forma adjustment column, and a pro forma total column. The pro forma adjustment column should depict the acquisition of the investment on the face of the pro forma condensed balance sheet and the equity pickup on the face of the pro forma condensed statement of comprehensive income.

Additional disclosure may be necessary in more complex transactions. For example, when a subsidiary is spun-off and a percentage of its shares

contributed to a new registrant that will account for those shares using the equity method, pro forma adjustment to the investee's historical financial statements may be needed (e.g., to give effect to new transition services agreements stemming from the spinoff) in order to determine the pro forma adjustment to the registrant's statement of comprehensive income to depict its equity pickup in the investee. When such adjustments are needed, they should be depicted in an explanatory note, rather than on the face, of the pro forma financial information, and they may need to take the form of a columnar pro forma of the investee.

- 3250.9 Acquisition of an Equity Method Investment Accounted for Using Fair Value Option** – Where a limited number of pro forma adjustments are required and those adjustments are easily understood, S-X 11-02(a) permits a narrative description of the pro forma effects of the transaction in lieu of the columnar presentation of pro forma financial information. Such a narrative discussion, when the registrant will elect the ASC 825 fair value option in lieu of applying the equity method for an acquired investment described in Section 3250.10, should explain how the application of ASC 825 for the investment will impact the results of operations and balance sheet in future periods.
- 3250.10 Useful lives** – The expected useful lives or amortization periods of significant assets acquired in a business acquisition, including identified intangibles, should be disclosed in a note to the pro forma financial statements. If amortization is not straightline, the effect on operating results for the five years following the acquisition should be disclosed in a pro forma financial information explanatory note, if material.
- 3250.11 Disposal Required by Regulatory Body** – Either the registrant or its target may expect to dispose of certain operations for a merger to gain the approval of one or more regulatory agencies. The introductory paragraph and explanatory notes of the pro forma financial information giving effect to the merger should, at a minimum, disclose with appropriate prominence the circumstances surrounding such expectations, any contingencies, and the reasonably possible impact on the financial statements. The pro forma financial information depicting the merger must depict in a separate column any disposal that is probable if the operations are a business that is significant (see S-X 11-01(a)(4)) or not a business but are material (see S-X 11-01(a)(8)). Pro forma financial information giving effect to consummated disposals should be filed by domestic registrants on Form 8-K if the disposition is significant under Item 2.01 of Form 8-K.
- 3250.12 Contingent Consideration in Updated Pro Forma Financial Information** – When contingent consideration classified as an asset or liability is remeasured to fair value at each reporting date until the contingency is resolved, with changes in fair value recognized in earnings, updated pro forma condensed statements of comprehensive income 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.

3260 Pro Forma Presentations Reflecting Debt Financing

- 3260.1 Pro forma adjustments to reflect debt financing are Transaction Accounting Adjustments that 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 financial 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 introductory paragraph to the pro forma financial information and wherever pro forma financial information is provided.

3270 Tax Effects

- 3270.1 Tax effects, if any, of pro forma adjustments normally should be calculated at the statutory rate in effect during the periods for which the pro forma condensed statements of comprehensive income are presented and should be presented as a separate pro forma adjustment. [S-X 11-02(b)(5)(i)] Companies are not prohibited from using different rates if they are supportable. However, if taxes are not calculated on the basis described in S-X 11-02(b)(5)(i), or if unusual effects of loss carryforwards or other aspects of tax accounting are depicted, an explanation should be provided in an explanatory note of the pro forma financial information.

- 3270.2 When the registrant's historical statements of comprehensive income do not reflect the tax provision on the separate return basis, pro forma condensed statements of comprehensive income adjustments must reflect a tax provision calculated on the separate return basis. [S-X 11-02(b)(5)(ii)]

3280 Abbreviated Financial Statements [S-X 3-05(e)] and Financial Statements of a Business that Includes Oil and Gas Producing Activities [S-X 3-05(f)]

- 3280.1 Transaction Accounting Adjustments or Autonomous Entity Adjustments should not include forward looking information in a pro forma condensed statement of comprehensive income presented (i) to give effect to the acquisition of either net assets that constitute a business for which abbreviated historical financial statements are permitted and presented pursuant to S-X 3-05(e) or (ii) for a business that includes oil and gas producing activities pursuant to S-X 3-05(f). However, Management's Adjustments may include forward-looking information when the requirements of S-X 11-02(a)(7) are met. Limitations of such pro forma condensed statements of comprehensive income should be explained, including prominent disclosure that it is not indicative of operations going forward because it necessarily excludes various operating expenses. See Section 2935 for guidance about form and content of abbreviated financial statements.

3300 Special Applications

3301 Combining Entities with Different Fiscal Years

- 3301.1 An acquired entity's statement of comprehensive income should be brought up to within one fiscal quarter of the registrant's fiscal year, if practicable. This could be accomplished by adding subsequent interim results to the fiscal year's data and deducting the comparable preceding year's interim results, with certain disclosure. [S-X 11-02(c)(3)]
- 3301.2 If a domestic registrant files a Form 8-K or registration statement for a business acquisition transaction and the target company is a foreign private issuer or a foreign business, the age of the pro forma financial 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 financial information that would be more current than its separate historical financial statements [Instruction 1 to S-X 11-02(c)(3)]. S-X Article 11 permits the ending date of the periods included for the target company to differ from those of the registrant by one fiscal quarter, which may provide sufficient relief. The staff also may permit combinations of periods that involve overlaps or gaps in the information of the target company of up to one fiscal quarter, 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.

3302 Historical Results Include Unusual Events [S-X 11-02(c)(4)]

- 3302.1 If unusual events enter 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 condensed statement of comprehensive income for the most recent twelvemonth period if the most recent twelve-month period is more representative of normal operations. The effects of the unusual events ordinarily should not be eliminated from pro forma data. The registrant may also consider filing a forecast in lieu of pro forma condensed statements of comprehensive income [See S-X 11-03].

3303 Registrant's Retrospective Adoption of an Accounting Policy [S-X 11-02(c)(2)(ii)]

- 3303.1 The registrant's retrospective application of a new accounting standard is not reflected in a pro forma financial information period until such application has been reflected in the historical financial statements for that period. However, if the effect of the new standard on that prior fiscal year historical information will be material, the registrant should make appropriate disclosure to that effect in the explanatory notes of the pro forma financial information.

For example, a calendar year-end registrant adopts a new accounting standard on January 1 of the current fiscal year that requires retrospective application. The new accounting standard is reflected in the registrant's historical financial statements for the six months ending June 30 of the current fiscal year, but the registrant has not yet reissued financial statements for the prior fiscal year, thus those financial statements do not reflect the accounting change. Nine months after January 1 of the current fiscal year the registrant makes a significant acquisition. The required Form 8-K filing for the significant acquisition includes pro forma financial information for the prior fiscal year and the six months ending June 30 of the current fiscal year. The pro forma financial information for the prior fiscal year would not reflect the new accounting standard because it has not been reflected in the registrant's historical financial statement for that period. As such, only the June 30 interim period for the current fiscal year pro forma financial information would reflect the adoption of the new standard. If the effect of the new standard on that prior fiscal year historical information will be material, the registrant should make appropriate disclosure to that effect in the explanatory notes of the pro forma financial information.

3304 Prohibition on Assuming Offering Proceeds

- 3304.1 Securities Act Rule 170 prohibits giving pro forma effect to the receipt or application of offering proceeds unless certain conditions are met. See Sections 3304.2 and 3304.3. Section 3241 discusses pro forma EPS when the requirements discussed below are met for giving pro forma effect to the receipt of proceeds. If the registrant meets the requirements discussed below to present pro forma financial information for the receipt of proceeds, a registrant may only depict the use of proceeds if such a use is a condition described in S-X 11-01(a). Because use for general corporate purposes would not meet a condition in S-X 11-01(a), it would not be appropriate to reflect use of proceeds indicated for general corporate purposes or for similar activities that involve significant discretion or uncertainty.
- 3304.2 Pro forma financial information 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 effort all or none offering; and
 - d. Certain exceptions for savings and loan conversions.
- 3304.3 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.

3305 Interest income

- 3305.1 Interest income from the use of proceeds from an offering or asset sale generally is not appropriate in pro forma financial information.

3306 Sub-Chapter S Corporations and Partnerships

- 3306.1 If the issuer was formerly a Sub-Chapter S corporation (“SubS”), partnership or similar tax-exempt enterprise, Article 11 pro forma financial information should give effect to taxes in accordance with S-X 11-02(b)(5) and should be presented for the periods identified below:

- a. If Transaction Accounting Adjustments include more than adjustments for taxes, limit pro forma presentation to latest fiscal year and interim period
 - b. If Transaction Accounting Adjustments include only taxes, pro forma presentation for all periods presented is encouraged, but not required.
- 3306.2 In filings for periods after 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 financial information for all periods pursuant to 3306.1(b). Such pro forma presentations should continue to calculate the pro forma tax expense based on statutory rates in effect for the earlier period.
- 3306.3 Undistributed earnings or losses of a Sub-S registrant should be reclassified to paid-in capital in the pro forma financial information. [SAB Topic 4B] Similarly, undistributed earnings or losses of partnerships should be reclassified to paid-in capital in the pro forma financial information. That presentation assumes a constructive distribution to the owners followed by a contribution to the capital of the corporate entity.
- 3306.4 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 3307.2.

3307 Distributions to Promoters/Owners at or Prior to Closing of an IPO [SAB Topic 1B.3]

- 3307.1 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 historical balance sheet but would be significant relative to reported equity, separate S-X Article 11 pro forma financial information reflecting the distribution accrual (but not giving effect to the offering proceeds) should be presented unless such pro forma effect of the distribution is required to be disclosed in accordance with ASC 855. However, if there are other transactions for which S-X Article 11 pro forma financial information is required, the pro forma effects of such distribution must be presented in the S-X Article 11 pro forma financial information.
- 3307.2 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.

3308 Other Changes in Capitalization at or Prior to Closing of an IPO

- 3308.1 The historical balance sheet and statement of comprehensive income (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 S-X Article 11 pro forma financial information may be necessary.
- 3308.2 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 change in equity or, if redemption of a material amount of equity securities will occur in conjunction with the offering, S-X Article 11 pro forma financial information giving effect to the change in capitalization (excluding effects of offering proceeds) should be presented.
- 3308.3 If the conversion of outstanding securities will occur subsequent to the latest balance sheet date and the conversion will result in a material change in earnings per share (excluding effects of offering), S-X Article 11 pro forma EPS for the latest year and interim period should give effect to the conversion (but not the offering). The number of shares used to compute pro forma EPS should include the number of common shares into which the securities will convert as if they were outstanding as of the beginning of the most recently completed fiscal year presented in the Article 11 pro forma financial information, irrespective of when the convertible instrument was issued. See Section 3620 for additional guidance related to financial statements issued after an IPO.

3309 Pro Forma Requirements for Real Estate Operations

- 3309.1 Pro forma presentations should not include the effects of real estate operations for periods prior to actual construction of the real property.

3400 Reserved

3500 Financial Forecasts In Lieu of Certain Pro Forma Financial Information [S-X 11-03]

3510 Alternative to S-X Article 11 Pro Forma Condensed Statements of Comprehensive Income

- 3510.1 Financial forecasts may be presented in lieu of pro forma condensed statements of comprehensive income required by S-X Article 11. They may not be presented in lieu of pro forma financial information required by U.S. GAAP or IFRS–IASB. See Section 3610.
- 3510.2 All forecasts presented in lieu of pro forma condensed statements of comprehensive income must comply with the requirements of S-X 11-03 and the requirements for projections in S-K 10(b). They must also be presented in accordance with the guidelines established by the American Institute of Certified Public Accountants.
- 3510.3 S-K 10(b) requires that management have a reasonable basis for the assumptions underlying their prospective financial statements and that such information is presented in an appropriate format. 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 6.36 of the AICPA’s guide, July 15, 2021 edition.] Support for assumptions might include market surveys; general economic indicators; trends and patterns developed from the entity’s operating history, such as historical sales trends; and internal data and analyses, such as obligations under union contracts for labor rates. An absence of adequate support may preclude a registrant from including prospective financial statements in the filing. The period that appropriately may be covered by a projection depends to a large extent on the particular circumstances of the company involved. For certain companies in certain industries, a projection covering a two- or three-year period may be reasonable. Other companies may not have a reasonable basis for projections beyond the current year. Accordingly, management should select the period most appropriate in the circumstance

3600 Other

3610 Pro Forma Disclosures Required by GAAP

- 3610.1 Certain pro forma disclosures are required by GAAP (e.g., ASC 805) 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

- 3620.1 Pro forma basic EPS reflecting the conversion of preferred stock into common stock at the IPO date (see Section 3308.3) should not be presented in historical financial statements for pre-IPO periods issued after the IPO. If the required historical financial statements in a filing to which S-X Article 11 applies do not yet depict the completed IPO, S-X Article 11 pro forma financial information may be required.

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: 12/31/2022)*

No.	Entities for which an audit report on the financial statements is included in the document filed with SEC1:	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

No.	Entities for which an audit report on the financial statements is included in the document filed with SEC1:	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?
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 ("SPAC")	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 (except for the target of a SPAC in Form S-4/F-4, then follow 3a above)	No	No
7	Non-issuer entity whose financial statements are filed to satisfy S-X 3-09	See footnote 3	See footnote 5
8	Subsidiary issuer or guarantor of guaranteed debt or debt-like securities whose separate financial statements are filed because it does not qualify for relief under S-X 3-10 (see Section 2500)	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 the applicable professional standards under which the audit was conducted. Under S-X 1-02 an audit of the financial statements of an issuer means an examination by an independent accountant in accordance with the standards of the PCAOB. In the situation identified in the chart above, the view of the SEC staff is that the applicable professional standards in S-X 2-02, as applied to the other auditor's report, relates to an issuer and, 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 [Reserved]
(Last updated: 12/31/2022)

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

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 <https://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. See also [Office of the Chief Accountant: Application of the Commission's Rules on Auditor Independence Frequently Asked Questions](#). (Last updated: 10/30/2020)

- 4130.3 SEC Independence rules also apply to Regulation A, except for Tier 1 offerings where the AICPA independence standards may be applied and Regulation D filings, and when separately audited financial statements of an equity investee is included in a filing under Rule 3-09 of Regulation S-X. [Form 1-A Part F/S and Section O. Other Independence in **OCA: Application of the Commission's Rules on Auditor Independence Frequently Asked Questions**.] (Last updated: 10/30/2020)

4140 Principal Auditor [S-X 2-05, PCAOB AS 1205]

- 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 applicable professional standards (that is, U.S. GAAS as issued by the AICPA) for non-issuers (with certain exceptions noted in Section 4210.4). (Last updated: 10/30/2020)
- 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.

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. In substantial deficiency situations, the related filing, e.g. Form 10-K, is deemed not timely filed and would impact compliance with certain rule and form eligibility requirements – such as, Regulation S, Rule 144, Form S-3 and Form S-8. *(Last updated: 10/30/2020)*

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 2201, paragraph 92]

4230 Other Report Modifications

4230.1 Going Concern Modifications [AS 2415]

- a. Going concern modifications are required by PCAOB standards and 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 AS 2415, but none of these types of opinion comply with the requirements of S-X Article 2.

4230.2 Changes in Accounting Principles [ASC 250, AS 2820, 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 2820, 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 2820, 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 company justifies the use of an alternative acceptable accounting principle on the basis that it is preferable. [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 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), AS 3105]

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 AS 3105.59 to .60.

4300 Report on Internal Control Over Financial Reporting [SOX 404, AS 2201 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)
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- 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 not permitted in management's report, except for the following limited exceptions (see 4310.3 for link to FAQs referenced):

- 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 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 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 2201, S-X 2-02(f)]

4320.1 AS 2201 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 2201, 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 2201 for sample Illustrative Reports on Internal Control Over Financial Reporting.
- 4320.4 AS 2201 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 2201, 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 2201, 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 2201, 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 2201, paragraph 70]

4320.10 AS 2201 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 2201, 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 2201, 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 2201, 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 2201, 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 an opinion on this information. [AS 2201, 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 2201, 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 2201, 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 1205 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 2201, 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 6115 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 [AS 4105, AT Section 401]

- 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, including registration and proxy statements, 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 the filing.
- 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 [AS 4105]

- 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: 10/30/2020)

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.

Another transaction where the staff has accepted the filing of a “draft report” in the form that it will be expressed at effectiveness is if there is a component that qualifies as a discontinued operation before an initial registration statement is filed but after the date of the latest balance sheet included in the initial filing. A “to-be-issued” report in this circumstance may be included when:

- 1) The disposal of the discontinued operation has occurred;
- 2) The audit of the financial statements, including the retrospective revision, is complete; and
- 3) The registrant has consulted with CF to confirm that the use of the “to-be-issued” audit report is appropriate.

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/registrar 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 [AI 23, 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 AI 23 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. [AI 23.65]
- 4830 Successor Auditor Reports [AI 23]
- 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. [AI 23.61]
- 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. [AI 23.66]
- 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. [AI 23.70]
- 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 AS 3105.58. [AI 23.71]
- 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 AS 4101 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. For additional information, see [Notices required under Section 10A-1 of Exchange Act](#). (Last updated: 10/30/2020)

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 AS 3315. Unless the auditor reports on selected financial data using the guidelines in AS 3315, 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 AS 3315 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 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: 10/30/2020)

5110 Eligibility as a Smaller Reporting Company [S-K 10(f)(1)]

5110.1 An entity that is not an investment company, asset-backed issuer or majority-owned subsidiary of a parent that is not a smaller reporting company qualifies as a smaller reporting company based on the following criteria:

- a. **Public float of less than \$250 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 equity held by non-affiliates) of less than \$250 million; or
- b. **Annual revenues of less than \$100 million and either no public float or a public float of less than \$700 million.** An entity is a smaller reporting company if it has annual revenues of less than \$100 million and either (1) **no** public float (because it has no public equity outstanding or no public trading market for its equity exists) or (2) a public float of less than \$700 million.

For additional information, see the [Small Entity Compliance Guide for Issuers](#).

5110.2 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 shares of voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of the common equity, in the principal market for the common equity.

- 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. Public float shall be computed by multiplying the (A) aggregate worldwide number of shares voting and non-voting common equity held by non-affiliates prior to the filing of the registration statement plus, 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.

5110.3 Annual revenue is determined as follows:

a. Reporting company

Revenue in its annual audited financial statements as originally filed with the Commission (not restated for subsequent discontinued operations) for its most recent fiscal year completed before the last business day of the second fiscal quarter (i.e., public float test date).

b. Initial Registration Statement - Securities Act and Exchange Act

Annual revenue in its most recent audited financial statements available on the initial public float calculation date (as described above in 5110.2b), which would be 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.

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 may 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.

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. [Instruction 2 to definition of “smaller reporting company.”]
- 5110.6 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.

5120 Determination

- 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. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company at that time has the option to redetermine its status based on the actual offering price and 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 it falls below a specified lower threshold for the criterion (i.e. 80% of the initial qualification thresholds). The issuer remains unqualified unless when making a subsequent annual determination either:
 - Its public float falls below \$200 million as of the last business day of its most recently completed second fiscal quarter; or
 - Its public float and its annual revenues meet the requirements for subsequent qualification included in the following chart:

Prior Annual Revenues (for the fiscal year completed before the fiscal year in which the company determined that it failed to qualify for SRC status)	Prior Public Float (as of the last business day of the second quarter of the fiscal year in which the company determined that it failed to qualify for SRC status)		
Amount	None or less than \$700 million	\$700 million or more	
Less than \$100 million	Neither threshold was exceeded; company would not fail to qualify as a SRC.	Public float required: (as of the last business day of the most recently completed second fiscal quarter) ¹⁶	Less than \$560 million; and
		Revenues required: (for the most recently completed fiscal year before the last business day of the second fiscal quarter) ¹⁷	Less than \$100 million.
\$100 million or more	Public float required: (as of the last business day of the most recently completed second fiscal quarter)	None or less than \$700 million; and	Public float required: (as of the last business day of the most recently completed second fiscal quarter)
	Revenues required: (for the most recently completed fiscal year before the last business day of the second fiscal quarter)	Less than \$80 million.	Revenues required: (for the most recently completed fiscal year before the last business day of the second fiscal quarter)
Less than \$80 million.		Less than \$560 million; and	

Example: A company has a December 31 fiscal year end. Its public float as of June 28, 2019 was \$710 million and its annual revenues for the fiscal year ended December 31, 2018 were \$90 million. It therefore does not qualify as a SRC. At the next determination date (June 30, 2020), it will remain unqualified for SRC status unless it determines that its public float as of June 30, 2020 was

¹⁶ For example, for a company with a December 31 fiscal year-end making a determination on June 30, 2022, “public float required” would be as of June 30, 2022.

¹⁷ For example, for a company with a December 31 fiscal year-end making a determination on June 30, 2022, “revenues required” would be for the fiscal year ended December 31, 2021.

less than \$560 million and its annual revenues for the fiscal year ended December 31, 2019 remained less than \$100 million.

- 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 Regulation S-K, Question 102.01, clarifies that a company can be both an accelerated filer and a smaller reporting company at the same time.

- 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. An issuer *must* reflect its SRC status no later than in its Form 10-Q for the first fiscal quarter of the next year.

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

Section	Description	Last Updated
5210	Financial Statements Required Pursuant to S-X 3-05 or 3-09	2020 and prior
5220	Business Acquisitions	12/31/2011
5230	Reverse Acquisitions	2011 and prior

5210 Financial Statements Required Pursuant to the 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 \$100 million in order to comply with other S-X reporting requirements. *(Last updated: 10/30/2020)*

5220 Business Acquisitions

(Last updated: 12/31/2011)

- 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](#)).

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)*

5300 Form and Content Disclosure Required by Regulation S-X Are Not Applicable

Section	Description	Last Updated
5310	General	12/31/2022
5320	Pro Forma Information	6/30/2025
5330	Significant Equity Investees	9/30/2008
5340	A la Carte Approach to Disclosure	9/30/2008
5350	Restricted Net Assets	10/30/2020

5310 General

(Last updated: 12/31/2022)

- 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. The requirements of S-X 3-10 are applicable to financial statements for a subsidiary of a smaller reporting company that issues securities guaranteed by the smaller reporting company or guarantees securities issued by the smaller reporting company. Additionally, disclosures about guarantors and issuers of guaranteed securities registered or being registered must be presented as required by S-X 13-01. (See Section 2500).
 - e. The requirements of S-X 13-02 are applicable if a smaller reporting company’s securities registered or being registered are collateralized by securities of the smaller reporting company’s affiliate. (See Section 2600). S-X 3-16 may be applicable in certain circumstances involving collateral release provisions. (See Section 2650).
- 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 Financial Information [S-X 8-05]

(Last updated: 6/30/2025)

When a form requires application of S-X 8-05 *Pro forma financial information*, such information must be disclosed when any of the conditions in S-X 11-01(a) exist. The preparation, presentation, and disclosure of pro forma financial information must also comply with S-X Article 11, except that the pro forma financial information may be condensed pursuant to S-X 8-03(a).

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: 10/30/2020)

Companies that qualify as smaller reporting companies are not subject to S-X 5-04 or 4-08(e), even when the disclosure thresholds are triggered. However, when the restricted net assets of a smaller reporting company’s consolidated subsidiaries are a significant proportion of consolidated net assets 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)*

Section	Description	Last Updated
6000	[Reserved]	N/A
6100	Definitions and Basic Rules	2011 and prior
6200	General Financial Statement Requirements for Foreign Private Issuers	2022 and prior
6300	IFRS	2012 and prior
6400	Requirement for Reconciliation to U.S. GAAP	2022 and prior
6500	Content of Reconciliation to U.S. GAAP	2011 and prior
6600	Selection of a Reporting Currency	2011 and prior
6700	Price-Level Adjusted Financial Statements and Effects of Hyperinflationary Environments	9/30/2008
6800	Foreign Auditor Matters	2011 and prior
6900	[Reserved]	N/A

6000 [Reserved]

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. [Regulation C, Rule 405 and Exchange Act Rule 3b-4] 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. A foreign private issuer that voluntarily files on domestic forms is not required to prepare its financial statements in accordance with U.S. GAAP (see section 6120.6).

- 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. [Regulation C, Rule 405 and Exchange Act Rule 3b-4] For example, if a calendar fiscal year registrant determines on June 30, 2022 that it is no longer a foreign private issuer, it would become subject to domestic reporting requirements on January 1, 2023. It would not be required to file Forms 8-K or 10-Q during the period from June 30, 2022 through December 31, 2022. However, it would be required to file reports on Form 8-K for events occurring on or after January 1, 2023, file quarterly reports on Form 10-Q for quarters ended after January 1, 2023, and file its annual report for the year ended December 31, 2022 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 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). (S-X 3-20(a)(2)). *(Last updated: 12/31/2022)*
- 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. Financial statement requirements for Canadian

registrants are the same as required for other registrants. If the Canadian registrant is a foreign private issuer, it may prepare its financial statements in accordance with IFRS as issued by the IASB, or U.S. GAAP. A Canadian company that is not a foreign private issuer must use U.S. GAAP in filings with the SEC. *(Last updated: 12/31/2022)*

- 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. See Section 6120.4.
- 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	Statement of Comprehensive Income	Shareholders' Equity	Cash Flow Statement
2 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.
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.

Financial Statement	Period Required
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 comply with the 15-month requirement if the registrant is able to represent adequately that compliance with the 12-month requirement is not required in any other jurisdiction and it is impracticable or involves undue hardship. The representation must be filed as an exhibit to the registration statement. [Item 8 of Form 20-F] *(Last updated: 10/30/2020)*
- 6220.4 The age requirements in Item 8 of Form 20-F also apply to financial statements of: *(Last updated: 12/31/2022)*
- 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; and
 - d. Foreign businesses that are acquired real estate operations under S-X 3-14.
- 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 comprehensive 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 and 3-14, target company financial statements on a Form F-4, as well as disclosures required by S-X 13-01 and 13-02. 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. *(Last updated: 12/31/2022)*
- 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: 10/30/2020)

- 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.

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:

Registrant	Report
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	<ul style="list-style-type: none">• 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	<ul style="list-style-type: none">• Unaudited financial statements• Information required by Items 5, 8.A.7, 13, 14, and 17 or 18 of Form 20-F.¹⁸	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.

¹⁸ The next annual report on Form 20-F must include audited financial statements for this transition period.

6260 [Reserved]
(Last updated: 10/30/2020)

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.
- 6320.1 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)

- 6320.2 [Reserved]
(Last updated: 9/30/2011)
- 6320.3 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.
- 6320.4 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 IFRS, filing requirements, and auditing 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 profit or loss and other comprehensive 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, and 3-14. *(Last updated: 12/31/2022)*

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 3-14 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. *(Last updated: 12/31/2022)*
- 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

Acquiree	Foreign	Foreign	Foreign	US
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?

Acquiree	Foreign	Foreign	Foreign	US
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

Acquiree	Foreign	Foreign	Foreign	US
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, 3-14, and 8-04 for smaller reporting companies, as well as non-issuer target company financial statements included in Forms S-4, F-4 and proxy statements. [Release No. 33-8959]
(Last updated: 12/31/2022)
- 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 and 3-14, 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. *(Last updated: 12/31/2022)*
- 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 statements of comprehensive income 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. Financial statements under Rule 3-05 are also not required when filing Form 20-F as an annual report. However, foreign private issuers must comply with S-X 3-05 in registration statements under the 1933 Act (e.g., Form F-1, F-3) and in registration statements on Form 20-F.
- 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. 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. See Section 6360.1 and 6360.2.
- 6410.12 [Reserved].
(*Last updated: 12/31/2022*)

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: 12/31/2022)

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 (including those for subsidiary issuers/guarantors that are not eligible for relief under S-X 3-10) 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]

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:

Deficiency	Resolution
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 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 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 statement of comprehensive income, 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 (ASC 260)

- b. Segment information (ASC 280)
- c. Fair value information (ASC 825)
- d. Concentrations of credit risk (ASC 825-10-50-20)
- e. Information about investment securities (ASCs 320, 321, and 326)
- f. Information about off-balance sheet financial instruments (ASC 815)
- g. Disclosures about stock-based compensation to employees and non-employees (ASC 718, as appropriate)
- h. Components of pensions and benefits other than pensions (ASC 715)
- i. Components of tax expense and deferred tax liability/asset (ASC 740)
- j. Statement of comprehensive income classification differences
- k. Information about equity method investments (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, 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 for a foreign private issuer, 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 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 statement of comprehensive income is translated at the weighted average annual exchange rate. The translation effects of exchange rate changes are included as a separate component of equity. *(Last updated: 10/30/2020)*

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 of a foreign private issuer 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 [Reserved].
(Last updated: 10/30/2020)

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 any subsequent 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 ASC 830 (IAS 21 for IFRS filers). Statements of comprehensive income 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: 10/30/2020)

S-X 3-20(a)(2) 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 used 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 ASC 830 for further guidance.

Note: Inflation rates are multiplied in computing cumulative inflation. For example, $1.26 \times 1.26 \times 1.26 = 2.00$. 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 ASC 255-10-45.
Stable currency, such as the U.S. dollar	Apply the remeasurement principles of ASC 830. The stable currency's average annual rate should be used for purposes of the statement of comprehensive income. [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

(Last updated: 10/30/2020)

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 applicable professional standards. [Instruction 2 to Item 8.A.2 of Form 20-F]

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, applicable professional standards for non-issuers.

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 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. [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 comprehensive 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: *(Last updated: 3/31/2013)*
- 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)
- 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). (Non-GAAP C&DI Question 102.12) *(Last updated: 10/30/2020)*
- 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).

8130 General Applicability and Requirements of Regulation G and S-K 10(e)
(Last updated: 12/31/2011)

Reg	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. ¹⁹	<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • 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.

¹⁹ 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.

Reg	Applicability	Requirements	Prohibitions
S-K 10(e)	Applies to a registrant's filings with the SEC Ex: 10-K, 10-Q, 20-F, S-1, F-1	<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • 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 or 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

Issuer	Regulation G	S-K 10(e)
Foreign Private Issuers	<p>FPIs are exempt from Regulation G if three conditions are met:</p> <ul style="list-style-type: none"> 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. <p>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:</p> <ul style="list-style-type: none"> 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. 	<p>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 <i>filing</i> if the measure is:</p> <ul style="list-style-type: none"> 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. <p>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).</p>

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)

8200 [Reserved]

(Last updated: 10/30/2020)

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 statement of comprehensive income. 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 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 statement of comprehensive income 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 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 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 (being both indexed to the company's own stock and classified in stockholder's equity) in ASC 815-10-15-74;
- d. Any obligation (including contingent obligations), arising out of a variable interest entity as defined in 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 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 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 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 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)]

Contractual Obligations	Payments: Total	Due: Less than 1 year	By: 1-3 yrs	Period: 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.

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 [Reserved].
(Last updated: 10/30/2020)

- 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 (e.g. seasonal aspects of the business).

- 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. (Last updated: 10/30/2020)

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 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 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 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 ASC 820, and suggest disclosures that companies may consider in preparing their MD&A. The full letters are available at: [March 2008, Sample Letter Sent to Public Companies on MD&A Disclosure Regarding the Application of SFAS 157 \(Fair Value Measurements\)](#) and [September 2008, Sample Letter Sent to Public Companies on MD&A Disclosure Regarding the Application of SFAS 157 \(Fair Value Measurements\)](#).

9800 Other Items

(Last updated: 9/30/2008)

9810 S-X Acquisition Rules and 3-09

MD&A is not required for financial statements filed to comply with the S-X Acquisition Rules 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 13-01

(Last updated: 12/31/2022)

- 9820.1 S-X 3-10 (a) permits the omission of separate financial statements of subsidiary issuers and guarantors of guaranteed debt or debt-like securities when certain conditions are met, including that the parent company provides supplemental financial and non-financial disclosures about the subsidiary issuers and/or guarantors and the guarantees (see Section 2500). There is no requirement for the results of operations as presented in these supplemental financial disclosures to be discussed. However, S-X 13-01 requires certain information about the issuers, guarantors, and guarantees to be disclosed. If, for example, there are factors that may affect payments to holders of the guaranteed security, such as contractual or statutory restrictions on dividends, or if the information presented in the supplemental financial disclosures indicates that trends for the issuers and guarantors 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 because it does not qualify for relief under S-X 3-10, then MD&A is required.
- 9820.3 [Reserved].

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 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/cfoffbalance1207.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/fairvalue1tr0308.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/fairvalue1tr0908.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/cforeclosure1010.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/cfjobsactfaq-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 \$1.235 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.
(Last updated: 12/31/2022)

10110.2 *Revenue Test:* The phrase “total annual gross revenues” means total revenues as presented on the statement of comprehensive income 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 may 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. *(Last updated: 10/30/2020)*

- 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 \$1.235 billion or more. For example, a calendar year-end company whose total annual gross revenues exceed \$1.235 billion on October 31, 2013 would cease to be an EGC on December 31, 2013. *(Last updated: 12/31/2022)*
- 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 \$1.235 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: 12/31/2022)*

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.

Examples/Tests	Example 1: Forward Acquisition	Example 2: Reverse Merger
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.
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

[See the Division of Corporation Finance's C&DIs for Securities Act Forms, Question 101.04](#). Note that Question 101.05 addresses similar matters for non-EGC issuers. *(Last updated 8/25/2017)*

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 [Reserved]
(Last updated: 10/30/2020)

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. [See the Division of Corporation Finance's C&DIs for the FAST Act, Question 2](#) for guidance regarding the omission of financial statements of other entities. *(Last updated 8/25/2017)*
- 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 accounting standard if permitted by the standard, without being deemed to have "opted in" for purposes of subsequent new or revised financial accounting standards.
- f. EGCs that take advantage of an extended transition period provision are encouraged to review their plans to adopt accounting standards upon losing EGC status and to discuss with the staff any issues they foresee in being able to timely comply. Generally, if an EGC loses its status after it would have had to adopt a standard absent the extended transition, the issuer should adopt the standard in its next filing after losing status. However, depending on the facts and circumstances, the staff may not object to other alternatives. *(Last updated: 12/1/2017)*

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 **not** 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.

Topic 11

Reporting Issues Related to Adoption of New Accounting Standards

11100 [Reserved]

(Last updated: 12/31/2022)

11200 New Leasing Standard (FASB ASC Topic 842)

(Last updated: 10/30/2020)

In February 2016, the FASB issued ASU No. 2016-02, “Leases” (Topic 842). Public entities must apply Topic 842 to annual reporting periods beginning after December 15, 2018, including interim reporting periods within that reporting period.²⁰ 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 Topic 842 to annual reporting periods beginning after December 15, 2019, and interim reporting periods within annual reporting periods beginning after December 15, 2020. ASU No. 2020-05 further delayed adoption of ASC 842 for all other entities for financial statements issued for fiscal years beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022. 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 Topic 842 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.

²⁰ A public business entity that otherwise would not meet the definition of a public business entity except for a requirement to include or inclusion of its financial statements or financial information in another entity’s filing with the Commission may apply Topic 842 for annual reporting periods beginning after December 15, 2020, and interim reporting periods within annual reporting periods beginning after December 15, 2021. See ASU No. 2020-02. The dates in this ASU corresponded with the “all other entities” adoption dates and as a result of ASU No. 2020-05 these dates have changed as discussed above.

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.

11400 Targeted Improvements to the Accounting for Long-Duration Contracts for Insurance Entities (FASB ASC Topic 944)

(Last updated: 12/31/2022)

On August 15, 2018, the FASB issued ASU No. 2018-12, “Financial Services — Insurance (Topic 944): Targeted Improvements to the Accounting for Long-Duration Contracts.” The ASU applies to insurance entities that issue long-duration contracts as defined in Topic 944, Financial Services – Insurance.

Public business entities that meet the definition of a Securities and Exchange Commission (SEC) filer, excluding entities eligible to be smaller reporting companies, must apply the ASU to fiscal years beginning after December 15, 2022 and interim periods within those fiscal years. The one-time determination of whether an entity is eligible to be a smaller reporting company is based on an entity’s most recent determination as of November 15, 2019.

All other entities, including smaller reporting companies and 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), are required to apply the ASU to fiscal years beginning after December 15, 2024, and interim periods within fiscal years beginning after December 15, 2025.

Early application of the amendments is permitted. If early application is elected, the transition date shall be either the beginning of the prior period presented or the beginning of the earliest period presented. If early application is not elected, the transition date shall be the beginning of the earliest period presented.

11410 Registrant Financial Information

11410.1 Date of Initial Application

Question

A calendar year-end registrant adopts ASU No. 2018-12 on January 1, 2023, with a transition date of January 1, 2021. In May 2023, 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, 2022, 2021 and 2020, as well as the quarters ending March 31, 2023 and 2022.

Item 11(b)(ii) of Form S-3 requires “restated financial statements” 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 that requires a material retroactive application. Does the reissuance of the registrant’s financial statements in accordance with Item 11(b)(ii) change the transition date to January 1, 2020 because it is the beginning of the earliest period presented?

Answer

No. The reissuance of the financial statements in Form S-3 accelerates the requirement to provide the financial statements for the years ended December 31, 2022 and 2021 with retroactive application, but does not change the transition date of the accounting standard.

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):
<ul style="list-style-type: none"> • 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 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. 	<ul style="list-style-type: none"> • 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). • 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 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 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 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 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 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 delisted 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 a statement of comprehensive income 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: 10/30/2020)

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 statements of comprehensive income and related earnings per share data, 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 [Reserved].

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 comprehensive income and earnings per share 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. [Reserved];
- 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 <i>Not</i> Subject to ERISA
<p>a. May file the financial information prepared in accordance with ERISA requirements in lieu of the financial statements required by S-X Article 6A.</p> <p>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]</p> <p>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.</p>	<p>Must provide the schedules required by S-X 6A-05.</p>

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 Exchange²¹; 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.

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;

²¹ The Vancouver Stock Exchange is now called the TSX Venture Exchange.

- 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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