

Manual of Publicly Available Telephone Interpretations

F. INDUSTRY GUIDES

1. Industry Guide 4

Item 11 of Guide 4 (information relating to management) should include the information called for by Item 404, as well as Item 401 through 403 of Regulation S-K. Although Guide 4 refers only to Items 401 through 403, Item 404 (which was not in existence at time Guide 4 was put into effect) deals with disclosure matters that were covered by Item 402 at the time Guide 4 was adopted.

2. Industry Guide 5; Form S-11; Form S-4

The Division staff was asked whether a real estate limited partnership filing an acquisition shelf on Form S-4 for the purpose of acquiring properties could rely on Undertaking 20.D. in Industry Guide 5. It was decided that: (1) no objection would be made to the use of Form S-4, although the acquisition of properties rather than securities is not explicitly provided for in the form; (2) whether Form S-4 or Form S-11 is used, the 20.D. undertaking is inappropriate and the procedure set forth for reflecting acquisitions should not be used. The undertaking is only applicable to "blind pool" offerings for cash.

3. ** Industry Guide 5; Form 8-K **

Item 20.D. of Industry Guide 5 requires, *inter alia*, an undertaking to file every three months post-effective amendments containing financial statements of acquired properties. Even if the automatic 60-day extension of time to file the financial statements for an acquired property is applicable to a Form 8-K, this extension does not apply to the Guide 5 post-effective amendment. Accordingly, the post-effective amendment must be filed when required by Item 20 of Guide 5, and must contain the required financial statements. This is the same position as that taken before the Form 8-K extensions were made automatic.

During the pendency of a 60-day extension applicable to a Form 8-K, Securities Act offerings may not be made except as provided in the Instructions to Item 7(a) of Form 8-K. The Division staff has been asked whether this provision applies to real estate limited partnership offerings, thus prohibiting sales from being made until financial statements for properties acquired during the offering period have been filed (even when the quarterly post-effective amendment is not yet due). The amendment to Form 8-K was not intended to change the procedure established in Item 20.D. of Guide 5. Accordingly, when properties are acquired during the offering period, the registrant may continue sales activities notwithstanding the pendency of an 8-K extension, so long as the quarterly post-effective amendments containing the financial statements are filed when required.

4. Industry Guide 7

The specific disclosure requirements of Industry Guide 7 under the Securities Act and Exchange Act apply to all issuers, including small business issuers, engaged in mining operations. Guide 7 is applicable to all mining companies, not just small business issuers.