

§210.2-02

engagement partner primarily practices in connection with the audit.

(12) *Group* means two or more persons who act together for the purposes of acquiring, holding, voting, or disposing of securities of a registrant.

(13) *Immediate family members* means a person's spouse, spousal equivalent, and dependents.

(14) *Investment company complex*.

(i) "Investment company complex" includes:

(A) An investment company and its investment adviser or sponsor;

(B) Any entity controlled by or controlling an investment adviser or sponsor in paragraph (f)(14)(i)(A) of this section, or any entity under common control with an investment adviser or sponsor in paragraph (f)(14)(i)(A) of this section if the entity:

(1) Is an investment adviser or sponsor; or

(2) Is engaged in the business of providing administrative, custodian, underwriting, or transfer agent services to any investment company, investment adviser, or sponsor; and

(C) Any investment company or entity that would be an investment company but for the exclusions provided by section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)) that has an investment adviser or sponsor included in this definition by either paragraph (f)(14)(i)(A) or (f)(14)(i)(B) of this section.

(ii) An investment adviser, for purposes of this definition, does not include a sub-adviser whose role is primarily portfolio management and is subcontracted with or overseen by another investment adviser.

(iii) Sponsor, for purposes of this definition, is an entity that establishes a unit investment trust.

(15) *Office* means a distinct sub-group within an accounting firm, whether distinguished along geographic or practice lines.

(16) *Rabbi trust* means an irrevocable trust whose assets are not accessible to the accounting firm until all benefit obligations have been met, but are sub-

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ject to the claims of creditors in bankruptcy or insolvency.

[37 FR 14594, July 21, 1972, as amended at 48 FR 9521, Mar. 7, 1983; 65 FR 76082, Dec. 5, 2000]

§210.2-02 Accountants' reports.

(a) *Technical requirements*. The accountant's report:

(1) Shall be dated;

(2) Shall be signed manually;

(3) Shall indicate the city and State where issued; and

(4) Shall identify without detailed enumeration the financial statements covered by the report.

(b) *Representations as to the audit*. The accountant's report:

(1) Shall state whether the audit was made in accordance with generally accepted auditing standards; and

(2) Shall designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case, which have been omitted, and the reasons for their omission. Nothing in this rule shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (c) of this section.

(c) *Opinion to be expressed*. The accountant's report shall state clearly:

(1) The opinion of the accountant in respect of the financial statements covered by the report and the accounting principles and practices reflected therein; and

(2) the opinion of the accountant as to the consistency of the application of the accounting principles, or as to any changes in such principles which have a material effect on the financial statements.

(d) *Exceptions*. Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given. (See

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section 101 of the Codification of Financial Reporting Policies.)

[37 FR 14594, July 21, 1972, as amended at 41 FR 35479, Aug. 23, 1976; 45 FR 63668, Sept. 25, 1980; 50 FR 25215, June 18, 1985]

§ 210.2-03 Examination of financial statements by foreign government auditors.

Notwithstanding any requirements as to examination by independent accountants, the financial statements of any foreign governmental agency may be examined by the regular and customary auditing staff of the respective government if public financial statements of such governmental agency are customarily examined by such auditing staff.

§ 210.2-04 Examination of financial statements of persons other than the registrant.

If a registrant is required to file financial statements of any other person, such statements need not be examined if examination of such statements would not be required if such person were itself a registrant.

§ 210.2-05 Examination of financial statements by more than one accountant.

If, with respect to the examination of the financial statements, part of the examination is made by an independent accountant other than the principal accountant and the principal accountant elects to place reliance on the work of the other accountant and makes reference to that effect in his report, the separate report of the other accountant shall be filed. However, notwithstanding the provisions of this section, reports of other accountants which may otherwise be required in filings need not be presented in annual reports to security holders furnished pursuant to the proxy and information statement rules under the Securities Exchange Act of 1934 [§§ 240.14a-3 and 240.14c-3].

[46 FR 40872, Aug. 13, 1981]

GENERAL INSTRUCTIONS AS TO FINANCIAL STATEMENTS

SOURCE: Sections 210.3-01 to 210.3-16 appear at 45 FR 63687, Sept. 25, 1980, unless otherwise noted.

NOTE: These instructions specify the balance sheets and statements of income and cash flows to be included in disclosure documents prepared in accordance with Regulation S-X. Other portions of Regulation S-X govern the examination, form and content of such financial statements, including the basis of consolidation and the schedules to be filed. The financial statements described below shall be audited unless otherwise indicated.

For filings under the Securities Act of 1933, attention is directed to § 230.411(b) regarding incorporation by reference to financial statements and to section 10(a)(3) of the Act regarding information required in the prospectus.

For filings under the Securities Exchange Act of 1934, attention is directed to § 240.12b-23 regarding incorporation by reference and § 240.12b-36 regarding use of financial statements filed under other acts.

[45 FR 63687, Sept. 25, 1980, as amended at 57 FR 45292, Oct. 1, 1992]

§ 210.3-01 Consolidated balance sheets.

(a) There shall be filed, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years. If the registrant has been in existence for less than one fiscal year, there shall be filed an audited balance sheet as of a date within 135 days of the date of filing the registration statement.

(b) If the filing, other than a filing on Form 10-K and Form 10-KSB or Form 10 and Form 10-SB, is made within 45 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not available, the balance sheets may be as of the end of the two preceding fiscal years and the filing shall include an additional balance sheet as of an interim date at least as current as the end of the registrant's third fiscal quarter of the most recently completed fiscal year.

(c) The instruction in paragraph (b) is also applicable to filings, other than