

distribution of water, or the furnishing of telephone or telegraph service; or (2) in holding securities of companies engaged in such businesses, it may at its option include statements of income and cash flows (which may be unaudited) for the twelve-month period ending on the date of the most recent balance sheet being filed, in lieu of the statements of income and cash flows for the interim periods specified.

(c) If a period or periods reported on include operations of a business prior to the date of acquisition, or for other reasons differ from reports previously issued for any period, the statements shall be reconciled as to sales or revenues and net income in the statement or in a note thereto with the amounts previously reported: *Provided, however*, That such reconciliations need not be made (1) if they have been made in filings with the Commission in prior years or (2) the financial statements which are being retroactively adjusted have not previously been filed with the Commission or otherwise made public.

(d) Any unaudited interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Such adjustments shall include, for example, appropriate estimated provisions for bonus and profit sharing arrangements normally determined or settled at year-end. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

(e) Disclosures regarding segments required by generally accepted accounting principles shall be provided for each year for which an audited statement of income is provided. To the extent that the segment information presented pursuant to this instruction complies with the provisions of Item 101 of Regulation S-K, the disclosures may be combined by cross ref-

erencing to or from the financial statements.

[45 FR 63687, Sept. 25, 1980. Redesignated at 47 FR 29836, July 9, 1982, and amended at 50 FR 25215, June 18, 1985; 50 FR 49532, Dec. 3, 1985; 57 FR 45292, Oct. 1, 1992; 64 FR 1734, Jan 12, 1999]

#### § 210.3-04 Changes in other stockholders' equity.

An analysis of the changes in each caption of other stockholders' equity presented in the balance sheets shall be given in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which an income statement is required to be filed with all significant reconciling items described by appropriate captions. State separately the adjustments to the balance at the beginning of the earliest period presented for items which were retroactively applied to periods prior to that period. With respect to any dividends, state the amount per share and in the aggregate for each class of shares.

(Secs. 7 and 19a of the Securities Act, 15 U.S.C. 77g, 77s(a), 77aa(25)(26); secs. 12, 13, 14, 15(d), and 23(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78l, 78m, 78n, 78o(d), 78w(a), secs. 5(b), 10(a), 14, 20(a) of the Public Utility Holding Company Act, 15 U.S.C. 79e(a), 79n, 79t(a); secs. 8, 20, 30, 31(c), 38(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-8, 80a-20, 80a-29, 80a-30(c), 80a-37(a))

[47 FR 29836, July 9, 1982]

#### § 210.3-05 Financial statements of businesses acquired or to be acquired.

(a) *Financial statements required.* (1) Financial statements prepared and audited in accordance with this regulation should be furnished for the periods specified in paragraph (b) below if any of the following conditions exist:

(i) Consummation of a business combination accounted for as a purchase has occurred or is probable (for purposes of this rule, the term *purchase* encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a business combination to be accounted for as a pooling of interests is probable.

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(2) For purposes of determining whether the provisions of this rule apply, the determination of whether a *business* has been acquired should be made in accordance with the guidance set forth in §210.11-01(d).

(3) Acquisitions of a group of related businesses that are probable or that have occurred subsequent to the latest fiscal year-end for which audited financial statements of the registrant have been filed shall be treated under this section as if they are a single business combination. The required financial statements of related businesses may be presented on a combined basis for any periods they are under common control or management. For purposes of this section, businesses shall be deemed to be related if:

(i) They are under common control or management;

(ii) The acquisition of one business is conditional on the acquisition of each other business; or

(iii) Each acquisition is conditioned on a single common event.

(4) This rule shall not apply to a business which is totally held by the registrant prior to consummation of the transaction.

(b) *Periods to be presented.* (1) If securities are being registered to be offered to the security holders of the business to be acquired, the financial statements specified in §§210.3-01 and 210.3-02 shall be furnished for the business to be acquired, except as provided otherwise for filings on Form N-14, S-4 or F-4 (§§239.23, 239.25 or 239.34 of this chapter). The financial statements covering fiscal years shall be audited except as provided in Item 14 of Schedule 14A (§240.14a-101 of this chapter) with respect to certain proxy statements or in registration statements filed on Forms N-14, S-4 or F-4 (§§239.23, 239.25 or 239.34 of this chapter).

(2) In all cases not specified in paragraph (b)(1) of this section, financial statements of the business acquired or to be acquired shall be filed for the periods specified in this paragraph (b)(2) or such shorter period as the business has been in existence. The periods for which such financial statements are to be filed shall be determined using the conditions specified in the definition of

significant subsidiary in §210.1-02(w) as follows:

(i) If none of the conditions exceeds 20 percent, financial statements are not required. However, if the aggregate impact of the individually insignificant businesses acquired since the date of the most recent audited balance sheet filed for the registrant exceeds 50%, financial statements covering at least the substantial majority of the businesses acquired shall be furnished. Such financial statements shall be for at least the most recent fiscal year and any interim periods specified in §§210.3-01 and 210.3-02.

(ii) If any of the conditions exceeds 20 percent, but none exceed 40 percent, financial statements shall be furnished for at least the most recent fiscal year and any interim periods specified in §§210.3-01 and 210.3-02.

(iii) If any of the conditions exceeds 40 percent, but none exceed 50 percent, financial statements shall be furnished for at least the two most recent fiscal years and any interim periods specified in §§210.3-01 and 210.3-02.

(iv) If any of the conditions exceeds 50 percent, the full financial statements specified in §§210.3-01 and 210.3-02 shall be furnished. However, financial statements for the earliest of the three fiscal years required may be omitted if net revenues reported by the acquired business in its most recent fiscal year are less than \$25 million.

(3) The determination shall be made by comparing the most recent annual financial statements of each such business, or group of related businesses on a combined basis, to the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition. However, if the registrant made a significant acquisition subsequent to the latest fiscal year-end and filed a report on Form 8-K (§249.308 of this chapter) which included audited financial statements of such acquired business for the periods required by this section and the pro forma financial information required by §210.11, such determination may be made by using pro forma amounts for the latest fiscal year in the report on Form 8-K (§249.308 of this chapter) rather than by using the historical amounts of the

registrant. The tests may not be made by “annualizing” data.

(4) Financial statements required for the periods specified in paragraph (b)(2) of this section may be omitted to the extent specified as follows:

(i) Registration statements not subject to the provisions of § 230.419 of this chapter (Regulation C) and proxy statements need not include separate financial statements of the acquired or to be acquired business if it does not exceed any of the conditions of significance in the definition of significant subsidiary in § 210.1-02 at the 50 percent level, and either:

(A) The consummation of the acquisition has not yet occurred; or

(B) The date of the final prospectus or prospectus supplement relating to an offering as filed with the Commission pursuant to § 230.424(b) of this chapter, or mailing date in the case of a proxy statement, is no more than 74 days after consummation of the business combination, and the financial statements have not previously been filed by the registrant.

(ii) An issuer, other than a foreign private issuer required to file reports on Form 6-K, that omits from its initial registration statement financial statements of a recently consummated business combination pursuant to paragraph (b)(4)(i) of this section shall furnish those financial statements and any pro forma information specified by Article 11 of this chapter under cover of Form 8-K (§ 249.308 of this chapter) no later than 75 days after consummation of the acquisition.

(iii) Separate financial statements of the acquired business need not be presented once the operating results of the acquired business have been reflected in the audited consolidated financial statements of the registrant for a complete fiscal year unless such financial statements have not been previously filed or unless the acquired business is of such significance to the registrant that omission of such financial statements would materially impair an investor’s ability to understand the historical financial results of the registrant. For example, if, at the date of acquisition, the acquired business met at least one of the conditions in the definition of significant subsidiary in

§ 210.1-02 at the 80 percent level, the income statements of the acquired business should normally continue to be furnished for such periods prior to the purchase as may be necessary when added to the time for which audited income statements after the purchase are filed to cover the equivalent of the period specified in § 210.3-02.

(iv) A separate audited balance sheet of the acquired business is not required when the registrant’s most recent audited balance sheet required by § 210.3-01 is for a date after the date the acquisition was consummated.

(c) *Financial statements of foreign business.* If the business acquired or to be acquired is a foreign business, financial statements of the business meeting the requirements of Item 17 of Form 20-F (§ 249.220f of this chapter) will satisfy this section.

(Secs. 7 and 19a of the Securities Act, 15 U.S.C. 77g, 77s(a), 77aa(25)(26); secs. 12, 13, 14, 15(d), and 23(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78l, 78m, 78n, 78o(d), 78w(a), secs. 5(b), 10(a), 14, 20(a) of the Public Utility Holding Company Act, 15 U.S.C. 79e(a), 79n, 79t(a); secs. 8, 20, 30, 31(c), 38(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-8, 80a-20, 80a-29, 80a-30(c), 80a-37(a))

[47 FR 29836, July 9, 1982, as amended at 50 FR 49532, Dec. 3, 1985; 51 FR 42056, Nov. 20, 1986; 59 FR 65636, Dec. 20, 1994; 61 FR 54514, Oct. 18, 1996]

**§ 210.3-06 Financial statements covering a period of nine to twelve months.**

Except with respect to registered investment companies, the filing of financial statements covering a period of 9 to 12 months shall be deemed to satisfy a requirement for filing financial statements for a period of 1 year where:

(a) The issuer has changed its fiscal year;

(b) The issuer has made a significant business acquisition for which financial statements are required under § 210.3-05 of this chapter and the financial statements covering the interim period pertain to the business being acquired; or

(c) The Commission so permits pursuant to § 210.3-13 of this chapter.