

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.

§§ 210.3-07—210.3-08

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Where there is a requirement for filing financial statements for a time period exceeding one year but not exceeding three consecutive years (with not more than 12 months included in any period reported upon), the filing of financial statements covering a period of nine to 12 months shall satisfy a filing requirement of financial statements for one year of that time period only if the conditions described in either paragraph (a), (b), or (c) of this section exist and financial statements are filed that cover the full fiscal year or years for all other years in the time period.

[54 FR 10315, Mar. 13, 1989]

§§ 210.3-07—210.3-08 [Reserved]

§ 210.3-09 Separate financial statements of subsidiaries not consolidated and 50 percent or less owned persons.

(a) If any of the conditions set forth in §210.1-02(v), substituting 20 percent for 10 percent in the tests used therein to determine a significant subsidiary, are met for a majority-owned subsidiary not consolidated by the registrant or by a subsidiary of the registrant, separate financial statements of such subsidiary shall be filed. Similarly, if either the first or third condition set forth in §210.1-02(w), substituting 20 percent for 10 percent, is met by a 50 percent or less owned person accounted for by the equity method either by the registrant or a subsidiary of the registrant, separate financial statements of such 50 percent or less owned person shall be filed.

(b) Insofar as practicable, the separate financial statements required by this section shall be as of the same dates and for the same periods as the audited consolidated financial statements required by §§210.3-01 and 3-02. However, these separate financial statements are required to be audited only for those fiscal years in which either the first or third condition set forth in §210.1-02(w), substituting 20 percent for 10 percent, is met. For purposes of a filing on Form 10-K (§249.310 of this chapter), if the fiscal year of any 50 percent or less owned person ends within 90 days before the date of the filing, or if the fiscal year ends after the date of the filing, the required

financial statements may be filed as an amendment to the report within 90 days, or within six months if the 50 percent or less owned person is a foreign business, after the end of such subsidiary's or person's fiscal year.

(c) Notwithstanding the requirements for separate financial statements in paragraph (a) of this section, where financial statements of two or more majority-owned subsidiaries not consolidated are required, combined or consolidated statements of such subsidiaries may be filed subject to principles of inclusion and exclusion which clearly exhibit the financial position, cash flows and results of operations of the combined or consolidated group. Similarly, where financial statements of two or more 50 percent or less owned persons are required, combined or consolidated statements of such persons may be filed subject to the same principles of inclusion or exclusion referred to above.

(d) If the 50 percent or less owned person 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))

[46 FR 56179, Nov. 16, 1981, as amended at 47 FR 29837, July 9, 1982; 57 FR 45292, Oct. 1, 1992; 59 FR 65636, Dec. 20, 1994]

§ 210.3-10 Financial statements of guarantors and issuers of guaranteed securities registered or being registered.

(a)(1) *General rule.* Every issuer of a registered security that is guaranteed and every guarantor of a registered security must file the financial statements required for a registrant by Regulation S-X.

(2) *Operation of this rule.* Paragraphs (b), (c), (d), (e) and (f) of this section are exceptions to the general rule of paragraph (a)(1) of this section. Only one of these paragraphs can apply to a