

§§ 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

single issuer or guarantor. Paragraph (g) of this section is a special rule for recently acquired issuers or guarantors that overrides each of these exceptions for a specific issuer or guarantor. Paragraph (h) of this section defines the following terms used in this section: 100% owned, full and unconditional, annual report, quarterly report, no independent assets or operations, minor, finance subsidiary and operating subsidiary. Paragraph (i) of this section states the requirements for preparing the condensed consolidating financial information required by paragraphs (c), (d), (e) and (f) of this section.

NOTE TO PARAGRAPH (a)(2). Where paragraphs (b), (c), (d), (e) and (f) of this section specify the filing of financial statements of the parent company, the financial statements of an entity that is not an issuer or guarantor of the registered security cannot be substituted for those of the parent company.

(3) *Foreign private issuers.* Where any provision of this section requires compliance with §§ 210.3-01 and 3-02, a foreign private issuer may comply by providing financial statements for the periods specified by Item 8.A of Form 20-F (§ 249.220f of this chapter).

(b) *Finance subsidiary issuer of securities guaranteed by its parent company.* When a finance subsidiary issues securities and its parent company guarantees those securities, the registration statement, parent company annual report, or parent company quarterly report need not include financial statements of the issuer if:

(1) The issuer is 100% owned by the parent company guarantor;

(2) The guarantee is full and unconditional;

(3) No other subsidiary of the parent company guarantees the securities; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3-01 and 210.3-02 and include a footnote stating that the issuer is a 100%-owned finance subsidiary of the parent company and the parent company has fully and unconditionally guaranteed the securities. The footnote also must include the narrative disclosures specified in paragraphs (i)(9) and (i)(10) of this section.

NOTE TO PARAGRAPH (b). Paragraph (b) is available if a subsidiary issuer satisfies the

requirements of this paragraph but for the fact that, instead of the parent company guaranteeing the security, the subsidiary issuer co-issued the security, jointly and severally, with the parent company. In this situation, the narrative information required by paragraph (b)(4) must be modified accordingly.

(c) *Operating subsidiary issuer of securities guaranteed by its parent company.*

When an operating subsidiary issues securities and its parent company guarantees those securities, the registration statement, parent company annual report, or parent company quarterly report need not include financial statements of the issuer if:

(1) The issuer is 100% owned by the parent company guarantor;

(2) The guarantee is full and unconditional;

(3) No other subsidiary of the parent company guarantees the securities; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3-01 and 210.3-02 and include, in a footnote, condensed consolidating financial information for the same periods with a separate column for:

(i) The parent company;

(ii) The subsidiary issuer;

(iii) Any other subsidiaries of the parent company on a combined basis;

(iv) Consolidating adjustments; and

(v) The total consolidated amounts.

NOTES TO PARAGRAPH (c).

1. Instead of the condensed consolidating financial information required by paragraph (c)(4), the parent company's financial statements may include a footnote stating, if true, that the parent company has no independent assets or operations, the guarantee is full and unconditional, and any subsidiaries of the parent company other than the subsidiary issuer are minor. The footnote also must include the narrative disclosures specified in paragraphs (i)(9) and (i)(10) of this section.

2. If the alternative disclosure permitted by Note 1 to this paragraph is not applicable because the parent company has independent assets or operations, the condensed consolidating financial information described in paragraph (c)(4) may omit the column for "any other subsidiaries of the parent company on a combined basis" if those other subsidiaries are minor.

3. Paragraph (c) is available if a subsidiary issuer satisfies the requirements of this paragraph but for the fact that, instead of

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the parent company guaranteeing the security, the subsidiary issuer co-issued the security, jointly and severally, with the parent company. In this situation, the narrative information required by paragraph (i)(8) of this section must be modified accordingly.

(d) *Subsidiary issuer of securities guaranteed by its parent company and one or more other subsidiaries of that parent company.* When a subsidiary issues securities and both its parent company and one or more other subsidiaries of that parent company guarantee those securities, the registration statement, parent company annual report, or parent company quarterly report need not include financial statements of the issuer or any subsidiary guarantor if:

(1) The issuer and all subsidiary guarantors are 100% owned by the parent company guarantor;

(2) The guarantees are full and unconditional;

(3) The guarantees are joint and several; and

(4) The parent company's financial statements are filed for the periods specified by §§210.3-01 and 210.3-02 and include, in a footnote, condensed consolidating financial information for the same periods with a separate column for:

- (i) The parent company;
- (ii) The subsidiary issuer;
- (iii) The guarantor subsidiaries of the parent company on a combined basis;
- (iv) Any other subsidiaries of the parent company on a combined basis;
- (v) Consolidating adjustments; and
- (vi) The total consolidated amounts.

NOTES TO PARAGRAPH (d).

1. Paragraph (d) applies in the same manner whether the issuer is a finance subsidiary or an operating subsidiary.

2. The condensed consolidating financial information described in paragraph (d)(4) may omit the column for "any other subsidiaries of the parent company on a combined basis" if those other subsidiaries are minor.

3. Paragraph (d) is available if a subsidiary issuer satisfies the requirements of this paragraph but for the fact that, instead of the parent company guaranteeing the security, the subsidiary issuer co-issued the security, jointly and severally, with the parent company. In this situation, the narrative information required by paragraph (i)(8) of this section must be modified accordingly.

4. If all of the requirements in paragraph (d) are satisfied except that the guarantee of a subsidiary is not joint and several with, as

applicable, the parent company's guarantee or the guarantees of the parent company and the other subsidiaries, then each subsidiary guarantor whose guarantee is not joint and several need not include separate financial statements, but the condensed consolidating financial information should include a separate column for each guarantor whose guarantee is not joint and several.

5. Instead of the condensed consolidating financial information required by paragraph (d)(4), the parent company's financial statements may include a footnote stating, if true, that the parent company has no independent assets or operations, the subsidiary issuer is a 100% owned finance subsidiary of the parent company, the parent company has guaranteed the securities, all of the parent company's subsidiaries other than the subsidiary issuer have guaranteed the securities, all of the guarantees are full and unconditional, and all of the guarantees are joint and several. The footnote also must include the narrative disclosures specified in paragraphs (i)(9) and (i)(10) of this section.

(e) *Single subsidiary guarantor of securities issued by the parent company of that subsidiary.* When a parent company issues securities and one of its subsidiaries guarantees those securities, the registration statement, parent company annual report, or parent company quarterly report need not include financial statements of the subsidiary guarantor if:

(1) The subsidiary guarantor is 100% owned by the parent company issuer;

(2) The guarantee is full and unconditional;

(3) No other subsidiary of that parent guarantees the securities; and

(4) The parent company's financial statements are filed for the periods specified by §§210.3-01 and 210.3-02 and include, in a footnote, condensed consolidating financial information for the same periods with a separate column for:

- (i) The parent company;
- (ii) The subsidiary guarantor;
- (iii) Any other subsidiaries of the parent company on a combined basis;
- (iv) Consolidating adjustments; and
- (v) The total consolidated amounts.

NOTES TO PARAGRAPH (e).

1. Paragraph (e) applies in the same manner whether the guarantor is a finance subsidiary or an operating subsidiary.

2. Instead of the condensed consolidating financial information required by paragraph (e)(4), the parent company's financial statements may include a footnote stating, if

true, that the parent company has no independent assets or operations, the guarantee is full and unconditional, and any subsidiaries of the parent company other than the subsidiary guarantor are minor. The footnote also must include the narrative disclosures specified in paragraphs (i)(9) and (i)(10) of this section.

3. If the alternative disclosure permitted by Note 2 to this paragraph is not applicable because the parent company has independent assets or operations, the condensed consolidating financial information described in paragraph (e)(4) may omit the column for "any other subsidiaries of the parent company on a combined basis" if those other subsidiaries are minor.

4. If, instead of guaranteeing the subject security, a subsidiary co-issues the security jointly and severally with its parent company, this paragraph (e) does not apply. Instead, the appropriate financial information requirement would depend on whether the subsidiary is a finance subsidiary or an operating subsidiary. If the subsidiary is a finance subsidiary, paragraph (b) applies. If the subsidiary is an operating company, paragraph (c) applies.

(f) *Multiple subsidiary guarantors of securities issued by the parent company of those subsidiaries.* When a parent company issues securities and more than one of its subsidiaries guarantee those securities, the registration statement, parent company annual report, or parent company quarterly report need not include financial statements of the subsidiary guarantors if:

(1) Each of the subsidiary guarantors is 100% owned by the parent company issuer;

(2) The guarantees are full and unconditional;

(3) The guarantees are joint and several; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3-01 and 210.3-02 and include, in a footnote, condensed consolidating financial information for the same periods with a separate column for:

- (i) The parent company;
- (ii) The subsidiary guarantors on a combined basis;
- (iii) Any other subsidiaries of the parent company on a combined basis;
- (iv) Consolidating adjustments; and
- (v) The total consolidated amounts.

NOTES TO PARAGRAPH (f).

1. Instead of the condensed consolidating financial information required by paragraph

(f)(4), the parent company's financial statements may include a footnote stating, if true, that the parent company has no independent assets or operations, the guarantees are full and unconditional and joint and several, and any subsidiaries of the parent company other than the subsidiary guarantors are minor. The footnote also must include the narrative disclosures specified in paragraphs (i)(9) and (i)(10) of this section.

2. If the alternative disclosure permitted by Note 1 to this paragraph is not applicable because the parent company has independent assets or operations, the condensed consolidating financial information described in paragraph (f)(4) may omit the column for "any other subsidiaries of the parent company on a combined basis" if those other subsidiaries are minor.

3. If any of the subsidiary guarantees is not joint and several with the guarantees of the other subsidiaries, then each subsidiary guarantor whose guarantee is not joint and several need not include separate financial statements, but the condensed consolidating financial information must include a separate column for each subsidiary guarantor whose guarantee is not joint and several.

(g) *Recently acquired subsidiary issuers or subsidiary guarantors.*

(1) The Securities Act registration statement of the parent company must include the financial statements specified in paragraph (g)(2) of this section for any subsidiary that otherwise meets the conditions in paragraph (c), (d), (e) or (f) of this section for omission of separate financial statements if:

(i) The subsidiary has not been included in the audited consolidated results of the parent company for at least nine months of the most recent fiscal year; and

(ii) The net book value or purchase price, whichever is greater, of the subsidiary is 20% or more of the principal amount of the securities being registered.

(2) Financial statements required.

(i) Audited financial statements for a subsidiary described in paragraph (g)(1) of this section must be filed for the subsidiary's most recent fiscal year preceding the acquisition. In addition, unaudited financial statements must be filed for any interim periods specified in §§ 210.3-01 and 210.3-02.

(ii) The financial statements must conform to the requirements of Regulation S-X (§§ 210.1-01 through 12-29), except that supporting schedules need

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not be filed. If the subsidiary is a foreign business, financial statements of the subsidiary meeting the requirements of Item 17 of Form 20-F (§249.220f) will satisfy this item.

(3) Instructions to paragraph (g).

(i) The significance test of paragraph (g)(1)(ii) of this section should be computed using net book value of the subsidiary as of the most recent fiscal year end preceding the acquisition.

(ii) Information required by this paragraph (g) is not required to be included in an annual report or quarterly report.

(iii) Acquisitions of a group of subsidiary issuers or subsidiary guarantors that are related prior to their acquisition shall be aggregated for purposes of applying the 20% test in paragraph (g)(1)(ii) of this section. Subsidiaries shall be deemed to be related prior to their acquisition if:

(A) They are under common control or management;

(B) The acquisition of one subsidiary is conditioned on the acquisition of each subsidiary; or

(C) The acquisition of each subsidiary is conditioned on a single common event.

(h) *Definitions.* For the purposes of this section:

(1) A subsidiary is "100% owned" if all of its outstanding voting shares are owned, either directly or indirectly, by its parent company. A subsidiary not in corporate form is 100% owned if the sum of all interests are owned, either directly or indirectly, by its parent company other than:

(i) Securities that are guaranteed by its parent and, if applicable, other 100%-owned subsidiaries of its parent; and

(ii) Securities that guarantee securities issued by its parent and, if applicable, other 100%-owned subsidiaries of its parent.

(2) 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 doesn't, any holder of the guaranteed security may immediately bring suit directly against the guarantor for payment of all amounts due and payable.

(3) *Annual report* refers to an annual report on Form 10-K, Form 10-KSB, or Form 20-F (§§249.310, 249.310b, or 249.220f of this chapter).

(4) *Quarterly report* refers to a quarterly report on Form 10-Q or Form 10-QSB (§§249.308a or 249.308b of this chapter).

(5) A parent company has no independent assets or operations if each of its total assets, revenues, income from continuing operations before income taxes, and cash flows from operating activities (excluding amounts related to its investment in its consolidated subsidiaries) is less than 3% of the corresponding consolidated amount.

(6) A subsidiary is minor if each of its total assets, stockholders' equity, revenues, income from continuing operations before income taxes, and cash flows from operating activities is less than 3% of the parent company's corresponding consolidated amount.

NOTE TO PARAGRAPH (h)(6). When considering a group of subsidiaries, the definition applies to each subsidiary in that group individually and to all subsidiaries in that group in the aggregate.

(7) A subsidiary is a finance subsidiary if it has no assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the security being registered and any other securities guaranteed by its parent company.

(8) A subsidiary is an operating subsidiary if it is not a finance subsidiary.

(i) Instructions for preparation of the condensed consolidating financial information required by paragraphs (c), (d), (e) and (f) of this section.

(1) Follow the general guidance in §210.10-01 for the form and content for condensed financial statements and present the financial information in sufficient detail to allow investors to determine the assets, results of operations and cash flows of each of the consolidating groups;

(2) The financial information should be audited for the same periods that the parent company financial statements are required to be audited;

(3) The parent company column should present investments in all subsidiaries under the equity method;

(4) The parent company's basis shall be "pushed down" to the applicable

subsidiary columns to the extent that push down would be required or permitted in separate financial statements of the subsidiary;

(5) All subsidiary issuer or subsidiary guarantor columns should present the following investments in subsidiaries under the equity method:

- (i) Non-guarantor subsidiaries;
- (ii) Subsidiary issuers or subsidiary guarantors that are not 100% owned or whose guarantee is not full and unconditional;
- (iii) Subsidiary guarantors whose guarantee is not joint and several with the guarantees of the other subsidiaries; and
- (iv) Subsidiary guarantors with differences in domestic or foreign laws that affect the enforceability of the guarantees;

(6) Provide a separate column for each subsidiary issuer or subsidiary guarantor that is not 100% owned, whose guarantee is not full and unconditional, or whose guarantee is not joint and several with the guarantees of other subsidiaries. Inclusion of a separate column does not relieve that issuer or guarantor from the requirement to file separate financial statements under paragraph (a) of this section. However, paragraphs (b) through (f) of this section will provide this relief if the particular paragraph is satisfied except that the guarantee is not joint and several;

(7) Provide separate columns for each guarantor by legal jurisdiction if differences in domestic or foreign laws affect the enforceability of the guarantees;

(8) Include the following disclosure, if true:

- (i) Each subsidiary issuer or subsidiary guarantor is 100% owned by the parent company;
- (ii) All guarantees are full and unconditional; and
- (iii) Where there is more than one guarantor, all guarantees are joint and several;

(9) Disclose any significant restrictions on the ability of the parent company or any guarantor to obtain funds from its subsidiaries by dividend or loan;

(10) Provide the disclosures prescribed by § 210.4-08(e)(3) with respect

to the subsidiary issuers and subsidiary guarantors;

(11) The disclosure:

(i) May not omit any financial and narrative information about each guarantor if the information would be material for investors to evaluate the sufficiency of the guarantee;

(ii) Shall include sufficient information so as to make the financial information presented not misleading; and

(iii) Need not repeat information that would substantially duplicate disclosure elsewhere in the parent company's consolidated financial statements; and

(12) Where the parent company's consolidated financial statements are prepared on a comprehensive basis other than U.S. Generally Accepted Accounting Principles, reconcile the information in each column to U.S. Generally Accepted Accounting Principles to the extent necessary to allow investors to evaluate the sufficiency of the guarantees. The reconciliation may be limited to the information specified by Item 17 of Form 20-F (§ 249.220f of this chapter). The reconciling information need not duplicate information included elsewhere in the reconciliation of the consolidated financial statements.

[65 FR 51707, Aug. 24, 2000]

§ 210.3-11 Financial statements of an inactive registrant.

If a registrant is an inactive entity as defined below, the financial statements required by this regulation for purposes of reports pursuant to the Securities Exchange Act of 1934 may be unaudited. An inactive entity is one meeting all of the following conditions:

- (a) Gross receipts from all sources for the fiscal year are not in excess of \$100,000;
- (b) The registrant has not purchased or sold any of its own stock, granted options therefor, or levied assessments upon outstanding stock;
- (c) Expenditures for all purposes for the fiscal year are not in excess of \$100,000;
- (d) No material change in the business has occurred during the fiscal year, including any bankruptcy, reorganization, readjustment or succession or any material acquisition or disposition of plants, mines, mining equipment, mine rights or leases; and