

§210.3-12

17 CFR Ch. II (4-1-01 Edition)

(e) No exchange upon which the shares are listed, or governmental authority having jurisdiction, requires the furnishing to it or the publication of audited financial statements.

§210.3-12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

(a) If the financial statements in a filing are as of a date 135 days or more prior to the date the filing is expected to become effective or proposed mailing date in the case of a proxy statement, the financial statements shall be updated, except as specified in the following paragraphs, with a balance sheet as of an interim date within 135 days and with statements of income and cash flows for the interim period between the end of the most recent fiscal year and the date of the interim balance sheet provided and for the corresponding period of the preceding fiscal year. Such interim financial statements may be unaudited and need not be presented in greater detail than is required by §210.10-01. Notwithstanding the above requirements, the most recent interim financial statements shall be at least as current as the most recent financial statements filed with the Commission on Form 10-Q and Form 10-QSB.

(b) Where the anticipated effective date of a filing, or in the case of a proxy statement the proposed mailing date, falls within 90 days subsequent to the end of the fiscal year, the filing need not include financial statements more current than as of the end of the third fiscal quarter of the most recently completed fiscal year unless the audited financial statements for such fiscal year are available or unless the anticipated effective date or proposed mailing date falls after 45 days subsequent to the end of the fiscal year and the registrant does not meet the conditions prescribed under paragraph (c) of §210.3-01. If the anticipated effective date or proposed mailing date falls after 45 days subsequent to the end of the fiscal year and the registrant does not meet the conditions prescribed under paragraph (c) of §210.3-01, the filing must include audited financial

statements for the most recently completed fiscal year.

(c) Where a filing is made near the end of a fiscal year and audited financial statements for that fiscal year are not included in the filing, the filing shall be updated with such audited financial statements if they become available prior to the anticipated effective date, or proposed mailing date in the case of a proxy statement.

(d) The age of the registrant's most recent audited financial statements included in a registration statement filed under the Securities Act of 1933 or filed on Form 10 and Form 10-SB (17 CFR 249.210) under the Securities Exchange Act of 1934 shall not be more than one year and 45 days old at the date the registration statement becomes effective if the registration statement relates to the security of an issuer that was not subject, immediately prior to the time of filing the registration statement, to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934.

(e) For filings by registered management investment companies, the requirements of §210.3-18 shall apply in lieu of the requirements of this section.

(f) Any foreign private issuer may file financial statements whose age is specified in Item 8.A of Form 20-F (§249.220f of this chapter). Financial statements of a foreign business which are furnished pursuant to §§210.3-05 or 210.3-09 because it is an acquired business or a 50 percent or less owned person may be of the age specified in Item 8.A of Form 20-F.

[45 FR 62687, Sept. 25, 1980, as amended at 46 FR 12491, Feb. 17, 1981; 46 FR 36125, July 14, 1981; 47 FR 54767, Dec. 6, 1982; 54 FR 10316, Mar. 13, 1989; 56 FR 30053, July 1, 1991; 57 FR 45292, Oct. 1, 1992; 59 FR 65636, Dec. 20, 1994; 64 FR 53909, Oct. 5, 1999]

§210.3-13 Filing of other financial statements in certain cases.

The Commission may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Commission may also by informal

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written notice require the filing of other financial statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

§ 210.3-14 Special instructions for real estate operations to be acquired.

(a) If, during the period for which income statements are required, the registrant has acquired one or more properties which in the aggregate are significant, or since the date of the latest balance sheet required has acquired or proposes to acquire one or more properties which in the aggregate are significant, the following shall be furnished with respect to such properties:

(1) Audited income statements (not including earnings per unit) for the three most recent fiscal years, which shall exclude items not comparable to the proposed future operations of the property such as mortgage interest, leasehold rental, depreciation, corporate expenses and Federal and state income taxes: *Provided, however*, That such audited statements need be presented for only the most recent fiscal year if

(i) The property is not acquired from a related party;

(ii) Material factors considered by the registrant in assessing the property are described with specificity in the filing with regard to the property, including sources of revenue (including, but not limited to, competition in the rental market, comparative rents, occupancy rates) and expense (including, but not limited to, utility rates, ad valorem tax rates, maintenance expenses, capital improvements anticipated); and

(iii) The registrant indicates in the appropriate filing that, after reasonable inquiry, the registrant is not aware of any material factors relating to that specific property other than those discussed in response to paragraph (a)(1)(ii) of this section that would cause the reported financial information not to be necessarily indicative of future operating results.

NOTE: The discussion of material factors considered should be combined with that required by Item 15 of Form S-11.

(2) If the property is to be operated by the registrant, there shall be furnished a statement showing the estimated taxable operating results of the registrant based on the most recent twelve month period including such adjustments as can be factually supported. If the property is to be acquired subject to a net lease the estimated taxable operating results shall be based on the rent to be paid for the first year of the lease. In either case, the estimated amount of cash to be made available by operations shall be shown. There shall be stated in an introductory paragraph the principal assumptions which have been made in preparing the statements of estimated taxable operating results and cash to be made available by operations.

(3) If appropriate under the circumstances, there shall be given in tabular form for a limited number of years the estimated cash distribution per unit showing the portion thereof reportable as taxable income and the portion representing a return of capital together with an explanation of annual variations, if any. If taxable net income per unit will become greater than the cash available for distribution per unit, that fact and approximate year of occurrence shall be stated, if significant.

(b) Information required by this section is not required to be included in a filing on Form 10-K and Form 10-KSB.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 13, 15(d), 23(a), 48 Stat. 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 4, 6, 78 Stat. 570-574; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 57; secs. 202-204, 91 Stat. 1494, 1498-1500; 15 U.S.C. 77g, 77j, 77s(a), 78m, 78o(d), 78w(a))

[45 FR 63687, Sept. 25, 1980, as amended at 47 FR 25122, June 10, 1982]

§ 210.3-15 Special provisions as to real estate investment trusts.

(a)(1) The income statement prepared pursuant to § 210.5-03 shall include the following additional captions between those required by § 210.5-03.15 and 16: (i)