

§210.3-11

17 CFR Ch. II (4-1-03 Edition)

(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

(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 the number of days specified in paragraph (g) of this section 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 the number of days specified in

paragraph (g) of this section 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 the number of days subsequent to the end of the fiscal year specified in paragraph (g) of this section, 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.

(g)(1) For purposes of paragraph (a) of this section, the number of days shall be:

(i) For accelerated filers (as defined in §240.12b-2 of this chapter):

(A) 135 days for fiscal years ending on or after December 15, 2002 and before December 15, 2004;

(B) 130 days for fiscal years ending on or after December 15, 2004 and before December 15, 2005; and

(C) 125 days for fiscal years ending on or after December 15, 2005; and

(ii) 135 days for all other registrants.

(2) For purposes of paragraph (b) of this section, the number of days shall be:

(i) For accelerated filers (as defined in §240.12b-2 of this chapter):

(A) 90 days for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(C) 60 days for fiscal years ending on or after December 15, 2004; and

(ii) 90 days for all other registrants.

[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; 67 FR 58504, Sept. 16, 2002]