

## §210.8-02

## 17 CFR Ch. II (4-1-10 Edition)

§210.3-10, except that the periods presented are those required by §210.8-02.

NOTE 4 TO §210.8: Financial statements for a smaller reporting company's affiliates whose securities constitute a substantial portion of the collateral for any class of securities registered or being registered must be presented as required by §210.3-16, except that the periods presented are those required by §210.8-02.

NOTE 5 TO §210.8: The Commission, where consistent with the protection of investors, may permit the omission of one or more of the financial statements or the substitution of appropriate statements of comparable character. The Commission by informal written notice may require the filing of other financial statements where necessary or appropriate.

NOTE 6 TO §210.8: Section 210.4-01(a)(3) shall apply to the preparation of financial statements of smaller reporting companies.

### §210.8-02 Annual financial statements.

Smaller reporting companies shall file an audited balance sheet as of the end of each of the most recent two fiscal years, or as of a date within 135 days if the issuer has existed for a period of less than one fiscal year, and audited statements of income, cash flows and changes in stockholders' equity for each of the two fiscal years preceding the date of the most recent audited balance sheet (or such shorter period as the registrant has been in business).

### §210.8-03 Interim financial statements.

Interim financial statements may be unaudited; however, before filing, interim financial statements included in quarterly reports on Form 10-Q (§249.308(a) of this chapter) must be reviewed by an independent public accountant using professional standards and procedures for conducting such reviews, as established by generally accepted auditing standards, as may be modified or supplemented by the Commission. If, in any filing, the issuer states that interim financial statements have been reviewed by an independent public accountant, a report of the accountant on the review must be filed with the interim financial statements. Interim financial statements shall include a balance sheet as of the end of the issuer's most recent fiscal quarter, a balance sheet as of the end of the preceding fiscal year, and in-

come statements and statements of cash flows for the interim period up to the date of such balance sheet and the comparable period of the preceding fiscal year.

(a) *Condensed format.* Interim financial statements may be condensed as follows:

(1) Balance sheets should include separate captions for each balance sheet component presented in the annual financial statements that represents 10% or more of total assets. Cash and retained earnings should be presented regardless of relative significance to total assets. Registrants that present a classified balance sheet in their annual financial statements should present totals for current assets and current liabilities.

(2) Income statements should include net sales or gross revenue, each cost and expense category presented in the annual financial statements that exceeds 20% of sales or gross revenues, provision for income taxes, discontinued operations, extraordinary items and cumulative effects of changes in accounting principles or practices. (Financial institutions should substitute net interest income for sales for purposes of determining items to be disclosed.) Dividends per share should be presented.

(3) Cash flow statements should include cash flows from operating, investing and financing activities as well as cash at the beginning and end of each period and the increase or decrease in such balance.

(4) Additional line items may be presented to facilitate the usefulness of the interim financial statements, including their comparability with annual financial statements.

(b) *Disclosure required and additional instructions as to content—(1) Footnotes.* Footnote and other disclosures should be provided as needed for fair presentation and to ensure that the financial statements are not misleading.

(2) *Material subsequent events and contingencies.* Disclosure must be provided of material subsequent events and material contingencies notwithstanding disclosure in the annual financial statements.

(3) *Significant equity investees.* Sales, gross profit, net income (loss) from

continuing operations, net income, and net income attributable to the investee must be disclosed for equity investees that constitute 20 percent or more of a registrant's consolidated assets, equity or income from continuing operations attributable to the registrant.

(4) *Significant dispositions and business combinations.* If a significant disposition or business combination has occurred during the most recent interim period and the transaction required the filing of a Form 8-K (§249.308 of this chapter), pro forma data must be presented that reflects revenue, income from continuing operations, net income, net income attributable to the registrant and income per share for the current interim period and the corresponding interim period of the preceding fiscal year as though the transaction occurred at the beginning of the periods.

(5) *Material accounting changes.* Disclosure must be provided of the date and reasons for any material accounting change. The registrant's independent accountant must provide a letter in the first Form 10-Q (§249.308a of this chapter) filed after the change indicating whether or not the change is to a preferable method. Disclosure must be provided of any retroactive change to prior period financial statements, including the effect of any such change on income and income per share.

(6) *Development stage companies.* A registrant in the development stage must provide cumulative financial information from inception.

*Instruction 1 to §210.8-03:* Where Article 8 is applicable to a Form 10-Q and the interim period is more than one quarter, income statements must also be provided for the most recent interim quarter and the comparable quarter of the preceding fiscal year.

*Instruction 2 to §210.8-03:* Interim financial statements must include all adjustments that, in the opinion of management, are necessary in order to make the financial statements not misleading. An affirmative statement that the financial statements have been so adjusted must be included with the interim financial statements.

[73 FR 953, Jan. 4, 2008, as amended at 74 FR 18615, Apr. 23, 2009]

#### §210.8-04 Financial statements of businesses acquired or to be acquired.

(a) If a business combination has occurred or is probable, financial statements of the business acquired or to be acquired shall be furnished for the periods specified in paragraph (c) of this section:

(1) This encompasses the purchase of an interest in a business accounted for by the equity method.

(2) 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 issuer have been filed shall be treated as if they are a single business combination for purposes of this section. The required financial statements of related businesses may be presented on a combined basis for any periods they are under common control or management. A group of businesses is deemed to be related if:

(i) They are under common control or management;

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

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

(3) Annual financial statements required by this rule shall be audited. The form and content of the financial statements shall be in accordance with §§210.8-02 and 8-03.

(b) The periods for which financial statements are to be presented are determined by comparison of the most recent annual financial statements of the business acquired or to be acquired and the smaller reporting company's most recent annual financial statements filed at or before the date of acquisition to evaluate each of the following conditions:

(1) Compare the smaller reporting company's investments in and advances to the acquiree to the total consolidated assets of the smaller reporting company as of the end of the most recently completed fiscal year.

(2) Compare the smaller reporting company's proportionate share of the total assets (after intercompany eliminations) of the acquiree to the total