

discussion of possible risks. You may alter the graphic presentation of the form in any way as long as the minimum information is clearly presented.

#### Solicitation of Interest Form

Name of Company \_\_\_\_\_  
 Street Address of Principal Office: \_\_\_\_\_  
 Company Telephone Number: \_\_\_\_\_  
 Date of Organization: \_\_\_\_\_  
 Amount of the Proposed Offering: \_\_\_\_\_  
 Name of Chief Executive Officer: \_\_\_\_\_

This is a solicitation of interest only. No money or other consideration is being solicited and none will be accepted.

No sales of the securities will be made or commitment to purchase accepted until the delivery of a final offering circular that includes complete information about the issuer and the offering.

An indication of interest made by a prospective investor involves no obligation or commitment of any kind.

This offer is being made pursuant to an exemption from registration under the federal and state securities laws. No sale may be made until the offering statement is qualified by the SEC and is registered in this state. This Company

- Has never conducted business operations.
- Is in the development stage.
- Is currently conducting operations.
- Has shown a profit for the last fiscal year.
- Other (specify) \_\_\_\_\_

#### Business

1. Describe in general what business the company does or proposes to do, including what products or goods are or will be produced or services that are or will be rendered.

2. Describe in general how these products or services are to be produced or rendered and how and when the company intends to carry out its activities.

#### Offering Proceeds

3. Describe in general how the company intends to use the proceeds of the proposed offering.

#### Key Personnel of the Company

4. Provide the following information for all officers and directors or persons occupying similar positions:

Name, Title, Office Street Address, Telephone Number, Employment History (Employers, titles and dates of positions held during the past five years), and Education (degrees, schools and dates).

(end of form)

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#### 17 CFR Parts 210, 228, 239 and 249

[Release Nos. 33-7189; 34-35897; International Series No. 820; File No. S7-19-95]

RIN 3235-AG47

#### Streamlining Disclosure Requirements Relating to Significant Business Acquisitions and Requiring Quarterly Reporting of Unregistered Equity Sales

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules and forms.

**SUMMARY:** In connection with its review of problematic practices relating to Regulation S, the Commission is publishing for comment rule revisions that reduce the need for reliance on Regulation S by eliminating certain impediments to registered offerings of securities under the Securities Act of 1933 by streamlining requirements with respect to financial statements of significant acquisitions. Also, rule revisions are proposed that would require registrants to report on a quarterly basis recent sales of equity securities that have not been registered under the Securities Act of 1933.

**DATES:** Comments should be received on or before September 8, 1995.

**ADDRESSES:** Comment letters should refer to File number S7-19-95 and should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room at the same address.

**FOR FURTHER INFORMATION CONTACT:** Annemarie Tierney, (202) 942-2990, Office of International Corporate Finance, or Douglas Tanner, (202) 942-2960, Office of Chief Accountant, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing for comment proposed amendments to the following rules and forms under the Securities Act of 1933 (the "Securities Act")<sup>1</sup> and the Securities Exchange Act of 1934 (the "Exchange Act")<sup>2</sup> concerning financial statements of acquired (or to be acquired) businesses and quarterly reporting of unregistered equity offerings: Rule 3-05 of Regulation S-X,<sup>3</sup> Rule 310 of Regulation S-B,<sup>4</sup> Item 17 of

Form S-4,<sup>5</sup> Item 17 of Form F-4,<sup>6</sup> Item 7 of Form 8-K,<sup>7</sup> Item 2 of Form 10-Q,<sup>8</sup> Item 2 of Form 10-QSB,<sup>9</sup> Item 5 of Form 10-K,<sup>10</sup> and Item 5 of Form 10-KSB.<sup>11</sup>

#### I. Introduction

The Commission adopted Regulation S<sup>12</sup> in April 1990 in order to clarify the extraterritorial application of the registration requirements of the Securities Act.<sup>13</sup> Since adoption, a number of problematic practices have developed involving unregistered sales of equity securities of domestic reporting companies purportedly in reliance upon Regulation S. In a companion release,<sup>14</sup> the Commission is publishing its views concerning problematic practices under Regulation S and is requesting comment as to whether Regulation S also should be amended to impose additional restrictions on its use.

Commenters have suggested that companies may be compelled to sell securities offshore, rather than in registered transactions, because of registration disclosure requirements relating to significant acquisitions. The Commission is proposing to streamline these requirements to reduce regulatory impediments to the use of registered offerings. Also, in response to commenters' suggestions that investors need information about private or offshore placements of equity securities that is not currently disclosed, the Commission is proposing to require quarterly reporting of unregistered equity offerings. Commenters have suggested this public reporting may also have the ancillary benefit of deterring abuses of Regulation S.

#### II. Proposed Simplification of Registration Disclosure of Significant Acquisitions

Domestic companies subject to the reporting requirements of the Exchange Act are required to report significant acquisitions on Form 8-K within 15 days after consummation of the transaction; a grace period of up to 60 days from the filing due date is given for filing the required audited financial statements.<sup>15</sup> On the other hand, a

<sup>5</sup> 17 CFR 239.25.

<sup>6</sup> 17 CFR 239.34.

<sup>7</sup> 17 CFR 249.308.

<sup>8</sup> 17 CFR 249.308a.

<sup>9</sup> 17 CFR 249.308b.

<sup>10</sup> 17 CFR 249.310.

<sup>11</sup> 17 CFR 249.310b.

<sup>12</sup> 17 CFR 230.901-904.

<sup>13</sup> Release No. 33-6863 (Apr. 24, 1990) [55 FR 18306] (the "Adopting Release").

<sup>14</sup> Release No. 33-7190.

<sup>15</sup> See Item 2 and Item 7 of Form 8-K [17 CFR 249.308].

<sup>1</sup> 15 U.S.C. 77a *et seq.*

<sup>2</sup> 15 U.S.C. 78a *et seq.*

<sup>3</sup> 17 CFR 210.3-05.

<sup>4</sup> 17 CFR 228.310.

company that registers securities under the Securities Act must provide information in the registration statement about significant acquisitions, including audited financial statements, from such time as the acquisition is probable.<sup>16</sup> One, two or three years of audited financial statements may be required, depending on the relative significance of the acquired business.<sup>17</sup> If the registrant is unable to obtain such financial statements from the potential acquirer for inclusion in the registration statement, the issuer would have to resort to alternative financings. Thus, reporting companies, including those with shelf registrations of securities, may be compelled to forgo public offerings and to undertake private or offshore offerings. The rules proposed today are intended generally to allow companies to provide information about significant acquisitions in Securities Act registration statements on the same time schedule as for Exchange Act reporting.<sup>18</sup>

In addition, the Commission is proposing to provide an automatic waiver of the earliest year of required audited financial statements otherwise required to be provided for a consummated business acquisition in filings made under either the Securities Act or the Exchange Act if those financial statements are not readily available. A similar waiver provision was previously adopted for small business issuers and has proved quite useful in addressing significant practical problems for issuers engaged in acquisitions.<sup>19</sup>

<sup>16</sup> See Rule 3-05 of Regulation S-X and Item 310(c) of Regulation S-B [17 CFR 210.3-05 and 17 CFR 228.310(c)].

Registered offerings that are not primarily of a capital raising nature are permitted to go forward without those financial statements until 75 days following the acquisition, as permitted by Form 8-K. Specifically, the restriction on offerings registered under the Securities Act does not apply to (a) offerings or sales of securities upon the conversion of outstanding convertible securities or upon the exercise of outstanding warrants or rights; (b) dividend or interest reinvestment plans; (c) employee benefit plans; (d) transactions involving secondary offerings; or (e) sales of securities pursuant to Rule 144. The restriction also applies to certain unregistered offerings as well. See Instruction 2 to Item 7 of Form 8-K.

<sup>17</sup> The significance of an acquired business is evaluated based on (i) the amount of the issuer's investment in the acquired business; (ii) the total assets of the acquired business; and (iii) the pre-tax income of the acquired business, all as compared to the registrant's most recent comparable financial items.

<sup>18</sup> The amendments would also permit certain private placements under Rules 505 and 506 of Regulation D under the Securities Act [17 CFR 230.505 and 506] to go forward under the same conditions as a registered offering.

<sup>19</sup> The Commission has established the Advisory Committee on the Capital Formation and Regulatory Processes (the "Advisory Committee"), chaired by

#### *A. Elimination of Required Financial Statements for Pending Acquisitions and Waiver of Financial Statements for Recently Completed Acquisitions*

The Commission proposes to eliminate the requirement to provide audited financial statements for pending business acquisitions in Securities Act registration statements, other than registrations by "blank check companies."<sup>20</sup> In addition, the proposed rules would automatically waive the required financial statements for significant acquisitions completed within 75 days of a registered offering, if such audited financial statements are not readily available at the time the offer commences.<sup>21</sup> However, other than financial statements and pro forma information presented pursuant to Rules 3-05 and Article 11 of Regulation S-X and Item 310 of Regulation S-B, the proposed rule changes do not change information required with respect to significant acquisitions.

Although financial statements of acquirers may be omitted under the proposed amendments, pro forma financial information required by Article 11 of Regulation S-X and Item 310 of Regulation S-B would continue to be required when financial statements of the acquirer are furnished.<sup>22</sup> In any case, likely effects of a probable or recently consummated business combination are required to be discussed in Management's Discussion and Analysis, to the extent material.<sup>23</sup>

Comments are requested concerning whether the accommodations proposed today should only be available with respect to acquisitions below a particular level of significance

Commissioner Steven M.H. Wallman. The Advisory Committee is considering fundamental issues relating to the regulatory framework governing the capital formation process, including whether the current system of registering securities offerings should be replaced with a company registration system. The recommendations of the Advisory Committee may result in rule proposals or legislative recommendations that, if endorsed by the Commission, ultimately may address the matters discussed in this release. Because most financing transactions that would be undertaken within the framework of several of the company registration models now being considered by the Advisory Committee could be conducted primarily on the basis of disclosure provided in a registered company's filed periodic and current reports, business acquisition reporting generally would be rendered consistent in both the public offering and periodic reporting contexts.

<sup>20</sup> A "blank check company" is defined in § 230.419 of Regulation C [17 CFR 230.419(a)].

<sup>21</sup> The date of an offering will be deemed to be the date of a final prospectus or prospectus supplement relating to the offering as filed with the Commission pursuant to Rule 424(b) [17 CFR 230.424(b)] under the Securities Act.

<sup>22</sup> 17 CFR 210.11-01 to 11-03.

<sup>23</sup> See Item 303 of Regulation S-K and S-B [17 CFR 229.303 and 228.303].

compared to the assets and pre-tax income of the registrant. If a significance test is appropriate, should it be, for example, 75%, 60%, 50%, 40%, 30% or 20%? Comment is requested whether other classes of issuers, in addition to "blank check companies," should be excluded from the provisions of the proposed amendments. Is it appropriate to provide the same grace period for offering documents as for Form 8-K reports? Should the grace period be shorter, e.g. 15 days? Further, comment is requested regarding whether such relief should be available to all registrants (including new registrants) or whether minimum reporting history or public float requirements should be established. Comment is requested as to whether audited financial statements with respect to significant business combinations that have not been consummated but are probable should be required to be furnished in the prospectus if the financial statements are readily available. Comment is requested as to whether unaudited financial statements with respect to probable or recently consummated business combinations should be required if they are readily available.

Although a domestic company may proceed with a registered offering of securities without financial statements of a recent or probable acquirer in the circumstances described above, it will be required to file financial statements of each significant acquired business on Form 8-K within 75 days of consummation of the acquisition. The proposed revisions would apply to offerings of domestic and foreign issuers alike. However, foreign private issuers are not subject to quarterly or Form 8-K reporting rules, and are not required currently to furnish financial statements of acquired businesses in the absence of a registered offering of securities. Comment is requested as to whether the rule should therefore include, as a condition for omission of the financial statements in a registration statement, that the foreign private issuer undertake in the registration statement to provide on Form 6-K the audited financial statements of the acquired business within 75 days of consummation of the business combination.

The amendments proposed today would also eliminate the significance threshold that triggers the requirement to provide in registration statements audited financial statements of acquired businesses that, in the aggregate, but not individually, are significant.<sup>24</sup> Comment

<sup>24</sup> In such case, the issuer must furnish audited financial statements of the most recent fiscal year

is requested as to whether elimination of the requirement is appropriate or whether a significance level applicable to aggregations of individually insignificant businesses should be maintained at the current threshold of 20%, or increased to 40%, 50%, 60% or 75%.

No change is proposed with respect to current rules governing financial statements required for acquired operating real estate properties. The Commission has previously addressed the issue of financial statements for operating real estate properties. Rule 3-14 of Regulation S-X reflects conclusions reached regarding the appropriate form of financial information and the number of periods for which the financial information should be furnished.<sup>25</sup> Comment is requested on whether relief proposed under the proposed amendments should also be available for operating real estate properties acquired or to be acquired by the registrant.

Where securities are being registered in an offering to acquire a business, audited financial statements of the business to be acquired will still be required as provided under the current rules.<sup>26</sup> The proposed amendments do not cover these situations. The registrant may rely on the proposed rules with respect to other pending or recently completed acquisitions.

Likewise, the proposed new rules would not change the financial statement requirements of the business to be acquired for proxy statements in which financial statements of such business are required to be provided pursuant to Item 14 of Schedule 14A.<sup>27</sup> Comment is requested as to whether the relief afforded under the proposed

amendments should be available for a company being acquired if that acquisition transaction is the subject of the registration statement or proxy statement.

#### *B. Automatic Waiver of Certain Unavailable Acquiree Financial Statements*

When audited financial statements of an acquired business are required in filings made under the Exchange Act or the Securities Act, the number of years for which statements are mandated varies depending on the level of significance of the acquisition relative to the assets and income of the registrant.<sup>28</sup> In 1992, as part of its Small Business Initiatives,<sup>29</sup> the Commission provided certain relief in cases where the acquiree's audited financial statements are not readily available. This automatic waiver is proposed to be extended to all issuers. As proposed to be amended, Rule 3-05 would provide that, where an acquiree's audited financial statements are not readily available, the requirement for furnishing them would be automatically waived if the significance of the acquired business does not exceed 20%, and the earlier of the two years of the required financial statements would be automatically waived where significance does not exceed 40%.<sup>30</sup>

Comment is requested as to the appropriateness of this automatic waiver provision. Should the Commission eliminate altogether the requirement for financial statements of any acquisition below the 20% significance level? Should financial statements that are not readily available be waived automatically unless the acquisition exceeds the 50% level of significance? Comment is requested also as to whether unaudited financial statements should be required to be filed if audited financial statements are omitted pursuant to the automatic waiver granted under the proposed rule.

<sup>28</sup> The number of years for which audited financial statements are required depends on the level of significance: one year at 10%, two years at 20%, and three years at 40%. See Rule 3-05(b)(1) of Regulation S-X.

<sup>29</sup> Release No. 33-6949 (July 30, 1992) [57 FR 36442]; Release No. 33-6996 (April 28, 1993) [58 FR 26509].

<sup>30</sup> If a registrant omits financial statements in reliance on the proposed amendments, the pro forma financial information included in a Form 8-K relating to the acquisition could not be used as the basis for measuring the significance of subsequent acquisitions as otherwise permitted by Rule 3-05(b)(1) of Regulation S-X. See proposed amendments to Rule 3-05(b)(1) of Regulation S-X.

### **III. Quarterly Reporting of Unregistered Equity Sales**

Concerns have been raised by some commenters that while unregistered offshore or private placements of common stock may have a material effect on the issuer and may result in significant dilution of existing shareholders, they frequently are not publicly disclosed.

Recognizing the market need for such information, the Commission last year adopted Rule 135c<sup>31</sup> to remove any regulatory impediment to such disclosure. The rule provides a safe harbor under Section 5 for public announcement of unregistered offerings. Some have suggested that mandated reporting of unregistered equity placements would assure investors are provided with material information about such transactions and have the additional benefit of spotlighting abuses of Regulation S. The SEC Government-Business Forum on Small Business Capital Formation included a recommendation that reporting of Regulation S offerings on Form 8-K be required.<sup>32</sup>

In response to these concerns and suggestions, the Commission is proposing amendments to its annual and quarterly report forms for domestic issuers that would require the disclosure of unregistered sales of equity securities<sup>33</sup> during the previous fiscal quarter, whether pursuant to a private placement, a Regulation S offering or otherwise. This information would be provided in an issuer's Quarterly Report on Form 10-Q or 10-QSB for sales during the issuer's first three fiscal quarters and in the Annual Report on Form 10-K or 10-KSB for offerings during the final fiscal quarter.

The disclosure proposed<sup>34</sup> is that currently set forth in Items 701 of Regulation S-K<sup>35</sup> and Regulation S-B,<sup>36</sup> and includes:

- The title and amount of securities sold, and the date of the transaction.
- Underwriter or placement agent.
- The consideration received.<sup>37</sup>

<sup>31</sup> 17 CFR 230.135c, adopted in Release No. 33-7053 (Apr. 26, 1994) [59 FR 21644].

<sup>32</sup> Final Report of the SEC Government-Small Business Capital Formation (February 1995).

<sup>33</sup> The term "equity security" would include convertible and exchangeable securities, warrants, options and other types of equity-related securities, as provided under Rule 3a11-1 [17 CFR 240.3a-11-1] under the Exchange Act.

<sup>34</sup> This information is currently required in registration statements on Forms S-1, S-11 and F-1.

<sup>35</sup> 17 CFR 229.701.

<sup>36</sup> 17 CFR 228.701.

<sup>37</sup> As to consideration, Item 701 requires: "As to securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts or

for a majority of the individually insignificant businesses. See Rule 3-05(b)(i) of Regulation S-X.

<sup>25</sup> Audited income statements of significant acquired or to be acquired operating real estate properties are required to be furnished pursuant to Rule 3-14 of Regulation S-X and Item 310(e) of Regulation S-B [17 CFR 210.3-14 and 228.310(e)]. The income statements are required to be presented only for the most recent fiscal year, regardless of significance, if the property is not acquired from a related party and the registrant is not aware of any material factors relating to the specific property that would cause the reported financial information not to be necessarily indicative of future operating results. The income statements may exclude items not comparable to the proposed future operation of the property, such as mortgage interest, leasehold rental, depreciation, corporate expenses and federal and state income taxes.

<sup>26</sup> Forms S-4 and F-4 do provide certain accommodations with respect to acquirees that are not reporting companies under the Exchange Act. See Item 17 in each Form [17 CFR 239.25 and 33].

<sup>27</sup> Financial statements of an acquired business are required pursuant to Item 14 if action is to be taken with respect to mergers, consolidations, acquisitions and similar matters [17 CFR 240.14a-101.14].

- Persons or classes of persons to whom the securities were sold.
- The exemption from registration claimed.

Comment is requested on investors' need for such information. Comment is also requested as to whether the information will be sufficiently timely, or instead, should be provided in a filing at an earlier date, such as a mandatory Current Report on Form 8-K, or a notice of sale similar to that used for Regulation D. Should notice be required prior to or at the time of the sale? Some have suggested that earlier reporting should be required unless the Regulation S restricted period is lengthened so that a report must be filed before the end of the restricted period. Comment also is requested as to the adequacy of the information required; is there additional information that would be helpful to investors; are there items that are not necessary?

The proposed requirement is limited to unregistered sales of common equity securities (and common equity equivalents) because of the significant market impact the issuance of such securities often has and the current lack of public information about such sales. Comment is requested as to whether a reporting requirement should be extended to other types of securities or registered offerings, e.g., takedowns off a shelf registration statement, and if so why?

#### IV. Cost-Benefit Analysis

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed changes to disclosure requirements contained in this release, commenters are requested to provide views and data relating to any costs and benefits associated with the proposals. It is expected that the proposals relating to financial statements of acquired businesses will decrease registrants' costs and compliance burdens. It is expected that the proposals to disclose sales of unregistered equity securities on a quarterly basis will modestly increase registrants' costs and compliance burdens. This requirement should not significantly increase the burden on company resources, since most registrants are required to gather such information in connection with the preparation of audited and unaudited financial statements. To the extent this requirement results in any additional expense, it may be justified in view of

commissions. As to any securities sold otherwise than for cash, state the nature of the transactions and the nature and aggregate amount of consideration received by the registrant."

the material information that would be available to investors.

#### V. Request for Comments

Any interested person wishing to submit written comments on any aspect of the amendments to forms and rules that are subject to this release are requested to do so. Comments should be submitted in triplicate to Jonathan G. Katz, secretary, U.S. Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549 and should refer to file number S7-19-95.

#### VI. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis pursuant to the requirements of the Regulatory Flexibility Act,<sup>38</sup> regarding the proposed amendments to Rule 3-05 of Regulation S-X, Item 310 of Regulation S-B, Form S-4 and Form F-4 and Forms 10-Q, 10-QSB, 10-K and 10-KSB. The analysis notes that these proposed amendments relating to financial statement requirements for acquired businesses would provide issuers greater flexibility and efficiency in accessing the public securities markets. The proposed amendments with respect to disclosure of recent sales of unregistered securities are intended to provide investors with more information regarding changes in outstanding securities of public companies.

As discussed more fully in the analysis, the proposed changes would affect persons that are small entities, as defined by the Commission's rules. It is expected that the changes primarily would decrease reporting, recordkeeping and compliance burdens, although the requirement to report unregistered sales would modestly increase such burdens. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the revised disclosure provisions.

As stated in the analysis, several possible significant alternatives to the disclosure proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. As more fully discussed in the analysis, the alternatives were either addressed in the proposals, inconsistent with the purposes of the federal securities laws, or otherwise without justification.

Written comments are encouraged with respect to any aspect of the

analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed revisions are adopted. A copy of the analysis may be obtained by contacting Annemarie Tierney, Office of International Corporate Finance, Division of Corporation Finance at (202) 942-2990, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

#### VII. Statutory Bases

The amendments to the Commission's rules and forms are being proposed pursuant to sections 2, 3, 4 and 19 of the Securities Act of 1933 and 3(b), 4A, 12, 13, 14, 15, 16 and 23 of the Securities Exchange Act of 1934.

#### Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-X

1. The authority citation for Part 210 continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e(b), 79j(a), 79n, 79t(a), 80a-8, 80a-20, 80a-29, 80a-30, 80a-37a, unless otherwise noted.

2. Section 210.3-05 is amending by revising paragraph (b) to read as follows:

#### § 210.3-05 Financial statements of businesses acquired or to be acquired.

(a) \*\*\*

(b) Periods to be presented. (1)(i) If securities are being registered to be offered to the security holders of the business to be acquired, the financial statements specified in §§ 210.3-01 and 210.3-02 shall be furnished for the business to be acquired, except as provided otherwise for filings on Form N-14, S-4 or F-4. In all other cases, financial statements of the business acquired or to be acquired shall be filed for the periods specified in this paragraph or such shorter period as the business has been in existence. The financial statements covering fiscal years shall be audited except as provided in Item 14 of Schedule 14A, (§ 240.14a-101 of this chapter) with respect to certain proxy statements or in

<sup>38</sup> 5 U.S.C. 603 (1988).

registration statements filed on Forms N-14, S-4 or F-4 (§ 239.23, 25 or 34 of this chapter). The periods for which such financial statements are to be filed shall be determined using the conditions specified in the definition of significant subsidiary in § 210.1-02(w) as follows:

(A) If none of the conditions exceeds 10 percent, financial statements are not required.

(B) If any of the conditions exceeds 10 percent, but none exceed 20 percent, financial statements shall be furnished for at least the most recent fiscal year and any interim periods specified in §§ 210.3-01 and 210.3-02.

(C) If any of the conditions exceeds 20 percent, but none exceed 40 percent, financial statements shall be furnished for at least the two most recent fiscal years and any interim periods specified in §§ 210.3-01 and 210.3-02.

(D) If any of the conditions exceeds 40 percent, the full financial statements specified in §§ 210.3-01 and 210.3-02 shall be furnished.

(ii) The determination shall be made by comparing the most recent annual financial statements of each such business to the registrant's most recent annual consolidated financial statements filed at or prior to the date of the acquisition. However, if the registrant made a significant acquisition subsequent to the latest fiscal year-end and filed a report on Form 8-K which included audited financial statements of such acquired business for the periods required by this section and the pro forma financial information required by § 210.11, such determination may be made by using the pro forma amounts for the latest fiscal year in the report on Form 8-K rather than by using the historical amounts for the latest fiscal year of the registrant. The tests may not be made by "annualizing" data. However, if a Form 8-K was filed to report a significant acquisition but audited financial statements were not furnished pursuant to the provisions of paragraph (b)(2)(i) of this section, the determination of significance may not be made using the pro forma amounts for the latest fiscal year.

(2) Notwithstanding the requirements in paragraph (b)(1) of this section:

(i) If none of the conditions specified in the definition of significant subsidiary in paragraph (b)(1) of this section exceeds 20 percent and the required audited financial statements of the acquired business are not readily available, an automatic waiver of the required audited financial statements is granted. If none of the conditions specified in the definition of significant subsidiary in paragraph (b)(1) of this

section exceeds 40 percent and the required audited financial statements are not readily available, an automatic waiver is granted with respect to the required audited financial statements for the fiscal year preceding the latest fiscal year.

(ii)(A) Separate financial statements of the acquired or to be acquired business need not be presented in a proxy statement or registration statement pursuant to this rule, if either:

(1) The consummation of the acquisition has not yet occurred; or

(2) The acquisition was consummated within 75 days of the date of the offering under the Securities Act of 1933 [15 U.S.C. §§ 77a *et seq.*], or mailing date in the case of a proxy statement, and the required audited financial statements of the acquired business are not readily available at the date of the final prospectus or mailing of the proxy.

(B) *Except that* the provisions of this paragraph are not applicable to registration statements for securities issued to acquire the business or registrations statements subject to the provisions of § 419 of Regulation C [17 CFR 230.419].

(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.

\* \* \* \* \*

3. Section 210.11-01 is amended by revising paragraph (e) to read as follows:

**§ 210.11-01 Pro forma financial information.**

\* \* \* \* \*

(e) This rule does not apply to transactions between a parent company and its totally held subsidiary or to a transaction for which financial statements of an acquired or to be acquired business are not presented pursuant to § 210.3-05(b)(i) and § 210.3-05(b)(ii).

**PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS**

4. The authority citation for Part 228 continues to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 78ll, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

5. By amending § 228.310 by adding paragraph (c)(3)(iv), removing paragraph (c)(4), redesignating paragraph (c)(5) as paragraph (c)(4), and revising paragraph (d)(2) to read as follows:

**§ 228.310 (Item 310) financial statements.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(iv) Notwithstanding the requirements in paragraphs (c)(3)(i) and (c)(3)(ii) of this Item, separate financial statements of the acquired or to be acquired business need not be presented in a proxy statement or registration statement pursuant to this rule, if either:

(A) The consummation of the acquisition has not yet occurred; or

(B) The acquisition was consummated within 75 days of the date of the offering under the Securities Act of 1933 [15 U.S.C. §§ 77a *et seq.*], or mailing date in the case of a proxy statement, and the required audited financial statements of the acquired business are not readily available at the date of the final prospectus or mailing of the proxy.

*Except that* the provisions of this paragraph are not applicable to registration statements for securities issued to acquire the business or registrations statements subject to the provisions of § 419 of Regulation C [17 CFR 230.419].

(4) \* \* \*

(d) \* \* \*

(2) The provisions of paragraph (c)(2) of this Item apply to paragraph (d) of this Item. However, paragraph (d) of this Item does not apply to a transaction for which financial statements of an acquired or to be acquired business are not presented pursuant to paragraph (c)(3)(iv) of this Item.

\* \* \* \* \*

**PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

6. The authority citation for Part 239 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

\* \* \* \* \*

7. By revising paragraph (b)(7) of Item 17 of Form S-4 (referenced in § 239.25) to read as follows:

**Note:** Form S-4 does not and these amendments will not appear in the Code of Federal Regulations.

**Form S-4**

\* \* \* \* \*

Item 17. Information with Respect to Companies Other Than S-3 or S-2 Companies.

\* \* \* \* \*

(b) \* \* \*

(7) Financial statements as would have been required to be included in an annual report furnished to security holders pursuant to Rules 14a-3(b)(1) and (b)(2) (§ 240.14a-3 of this chapter) or Rules 14c-3(a)(1) and (a)(2) (§ 240.14c-3 of this chapter), had the company being acquired been required to prepare such a report; *Provided, however*, that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. In any case, such financial statements need only be audited to the extent practicable. If this Form is used for resales to the public by any person who with regard to the securities being reoffered is deemed to be an underwriter within the meaning of Rule 145(c) (§ 230.145(c) of this chapter), the financial statements of such companies must be audited for the periods required to be presented pursuant to paragraphs (b)(1) and (b)(2)(i) of Rule 3-05 of Regulation S-X (17 CFR 210.3-05).

\* \* \* \* \*

8. By revising paragraph (b)(5) of Item 17 of Form F-4 to read as follows:

**Note:** Form F-4 does not and these amendments will not appear in the Code of Federal Regulations.

**Form F-4**

\* \* \* \* \*

Item 17. Information with Respect to Foreign Companies Other Than F-3 or F-2 Companies.

\* \* \* \* \*

(b) \* \* \*

(5) Financial statements as would have been required to be included in an annual report on Form 20-F (17 CFR 249.220f) had the company being acquired been required to prepare such a report; *Provided, however*, that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if

they have not previously been audited. In any case, such financial statements need only be audited to the extent practicable. If this Form is used for resales to the public by any person who with regard to the securities being reoffered is deemed to be an underwriter within the meaning of Rule 145(c) (§ 230.145(c) of this chapter), the financial statements of such companies must be audited for the periods required to be presented pursuant to paragraphs (b)(1) and (b)(2)(i) of Rule 3-05 of Regulation S-X (17 CFR 210.3-05).

\* \* \* \* \*

**PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934**

9. The authority citation for Part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a *et seq.*, unless otherwise noted;

\* \* \* \* \*

10. By amending Form 8-K (referenced in § 249.308) by revising Instruction 2 of Item 7 to read as follows:

**Note:** Form 8-K does not and these amendments will not appear in the Code of Federal Regulations

**Form 8-K**

\* \* \* \* \*

Item 7. Financial Statements and Exhibits.

\* \* \* \* \*

*Instructions.* \* \* \*

2. During the pendency of an extension pursuant to this paragraph, registrants will be deemed current for purposes of their reporting obligations under Section 13(a) or 15(d) of the Securities Exchange Act of 1934. With respect to filings under the Securities Act of 1933, however, registration statements will not be declared effective and post-effective amendments to registration statements will not be declared effective. In addition, offerings should not be made pursuant to effective registration statements, or pursuant to Rules 505 and 506 of Regulation D (§§ 230.501 through 506 of this chapter), where any purchasers are not accredited investors under Rule 501(a) of that Regulation, until the required audited financial statements are filed; *Provided, however*, that the above restriction shall not apply during the pendency period of an extension pursuant to this Item if the required audited financial statements of the acquired business are not readily available. Further, the following offerings or sales of securities shall not be affected by this restriction:

- (a) Offerings or sales of securities upon the conversion of outstanding convertible securities or upon the exercise of outstanding warrants or rights;
- (b) Dividend or interest reinvestment plans;
- (c) Employee benefit plans;
- (d) Transactions involving secondary offerings; or
- (e) Sales of securities pursuant to Rule 144 (§ 230.144 of this chapter).

\* \* \* \* \*

11. By amending Form 10-Q (referenced in § 249.308a) by adding paragraph (c) to Item 2 of Part II prior to the Instruction to read as follows:

**Note:** Form 10-Q does not and these amendments will not appear in the Code of Federal Regulations

**Form 10-Q**

\* \* \* \* \*

*Part II*

Item 2. Changes in Securities.

\* \* \* \* \*

(c) Furnish the information required by Item 701 of Regulation S-K (§ 229.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act.

\* \* \* \* \*

12. By amending Form 10-QSB (referenced in § 249.308b) by adding paragraph (c) to Item 2 of Part II prior to the Instruction to read as follows:

**Note:** Form 10-QSB does not and these amendments will not appear in the Code of Federal Regulations

**Form 10-QSB**

\* \* \* \* \*

*Part II*

Item 2. Changes in Securities.

\* \* \* \* \*

(c) Furnish the information required by Item 701 of Regulation S-B (§ 228.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act.

\* \* \* \* \*

13. By amending Form 10-K (referenced in § 249.310) by revising Item 5 of Part II as follows:

**Note:** Form 10-K does not and these amendments will not appear in the Code of Federal Regulations

**Form 10-K**

\* \* \* \* \*

*Part II*

Item 5. Market for Registrant's Common Equity and Related Stockholder Matters.

Furnish the information required by Item 201 of Regulation S-K (§ 229.201 of this chapter) and Item 701 of Regulation S-K (§ 229.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act; *provided* that information that has previously been included in a Quarterly Report on Form 10-Q or 10-QSB (§ 249.308a or 249.308b of this chapter) need not be provided.

\* \* \* \* \*

14. By amending Form 10-KSB (referenced in § 249.310b) by revising Item 5 of Part II to read as follows:

**Note:** Form 10-K does not and these amendments will not appear in the Code of Federal Regulations

**Form 10-KSB**

\* \* \* \* \*

*Part II*

\* \* \* \* \*

Item 5. Market for Common Equity and Related Stockholder Matters.

Furnish the information required by Item 201 of Regulation S-B and Item 701 of Regulation S-B as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act; *provided* that information that has previously been included in a Quarterly Report on Form 10-Q or 10-QSB need not be provided.

\* \* \* \* \*

By the Commission.  
Dated: June 27, 1995.

**Margaret H. McFarland,**  
*Deputy Secretary.*

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