

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 210, 229, 230, 239, 240, 249, and 274**

**[Release No. 33-10110; 34-78310; IC-32175; File No. S7-15-16]**

**RIN 3235-AL82**

**Disclosure Update and Simplification**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing amendments to certain of our disclosure requirements that may have become redundant, duplicative, overlapping, outdated, or superseded, in light of other Commission disclosure requirements, U.S. Generally Accepted Accounting Principles (“U.S. GAAP”), International Financial Reporting Standards (“IFRS”), or changes in the information environment. We are also soliciting comment on certain Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP to determine whether to retain, modify, eliminate, or refer them to the Financial Accounting Standards Board (“FASB”) for potential incorporation into U.S. GAAP. The proposed amendments are intended to facilitate the disclosure of information to investors, while simplifying compliance efforts, without significantly altering the total mix of information provided to investors. These proposals are part of an initiative by the Division of Corporation Finance to review disclosure requirements applicable to issuers to consider ways to improve the requirements for the benefit of investors and issuers. We are also issuing these proposals as part of our efforts to implement title LXXII, section 72002(2) of the Fixing America’s Surface Transportation Act.

**DATES:** Comments should be received on or before October 3, 2016.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic comments:*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-15-16 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

*Paper comments:*

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-15-16. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (<http://www.sec.gov/rules/proposed.shtml>). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC's website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at [www.sec.gov](http://www.sec.gov) to receive notifications by e-mail.

**FOR FURTHER INFORMATION CONTACT:** Nili Shah, Deputy Chief Accountant, at (202) 551-3255, Division of Corporation Finance; Duc Dang, Senior Special Counsel, at (202) 551-3386, Office of the Chief Accountant; Matt Giordano, Chief Accountant, at (202) 551-6918, Division of Investment Management; Valentina Minak Deng, Special Counsel, at (202) 551-5778 and Tim White, Special Counsel, at (202) 551-5777, Division of Trading and Markets; Harriet Orol, Branch Chief, at (212) 336-0554, Office of Credit Ratings; Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing amendments to, or soliciting comment on potential FASB referrals of, Rules 1-02, 2-01, 2-02, 3-01, 3-02, 3-03, 3-04, 3-05, 3-12, 3-14, 3-15, 3-17, 3-20, 3A-01, 3A-02, 3A-03, 3A-04, 4-01, 4-07, 4-08, 4-10, 5-02, 5-03, 5-04, 6-03, 6-04, 6-07, 6-09, 6A-04, 6A-05, 7-02, 7-03, 7-04, 7-05, 8-01, 8-02, 8-03, 8-04, 8-05, 8-06, 9-03, 9-04, 9-05, 9-06, 10-01, 11-02, 11-03, 12-16, 12-17, 12-18, 12-28, and 12-29 of Regulation S-X under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"), Items 10, 101, 103, 201, 302, 303, 503, 512, and 601 of Regulation S-K under the Securities Act and the Exchange Act, Item 1010 of Regulation M-A under the Securities Act and the Exchange Act, and Item 1118 of Regulation AB under the Securities Act and the Exchange Act, Rule 158 of the Securities Act, Rules 405 and 436 of

Regulation C under the Securities Act, Forms S-1, S-3, S-11, S-4, F-1, F-3, F-4, F-6, F-7, F-8, F-10, F-80, SF-1, SF-3, 1-A, 1-K, and 1-SA under the Securities Act, Rules 3a51-1, 10A-1, 12b-2, 13a-10, 13b2-2, 14a-101, 15c3-1g, 15d-2, 15d-10, 17a-5, 17a-12, 17g-3, and 17h-1T of the Exchange Act, Forms 20-F, 40-F, 10-K, 11-K, 10-D, and X-17A-5 under the Exchange Act, Forms N-5, N-1A, N-2, N-3, N-4, and N-6 under the Securities Act and the Investment Company Act of 1940 (the “Investment Company Act”), and Form N-8B-2 under the Investment Company Act.

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## **I. Introduction**

### **A. Objective**

We are proposing amendments to certain of our disclosure requirements that may have become redundant, duplicative, overlapping, outdated, or superseded, in light of other Commission disclosure requirements, U.S. GAAP, IFRS, or changes in the information environment. As discussed further below, the proposed amendments are a result of the Division of Corporation Finance’s Disclosure Effectiveness Initiative and part of our efforts to implement title LXXII, section 72002(2) of the Fixing America’s Surface Transportation Act<sup>1</sup> (the “FAST Act”). We are also soliciting comment on certain Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP<sup>2</sup> to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP.<sup>3</sup> The proposals are intended to facilitate the disclosure of information to investors, while simplifying compliance efforts, without significantly altering the total mix of information provided to investors.<sup>4</sup>

This release is part of a comprehensive evaluation of the Commission’s disclosure requirements recommended in the staff’s *Report on Review of Disclosure Requirements in*

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<sup>1</sup> Pub. L. 114-94.

<sup>2</sup> In this release, we refer to such requirements as “incremental” Commission disclosure requirements.

<sup>3</sup> We refer to the proposed amendments and this additional comment solicitation collectively as “proposals.”

<sup>4</sup> The Supreme Court in *TSC v. Northway* held that a fact is material if there is “a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.” See *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).

*Regulation S-K* (“S-K Study”),<sup>5</sup> which was mandated by section 108 of the Jumpstart Our Business Startups Act.<sup>6</sup> Based on the S-K Study’s recommendation and at the request of the Commission Chair, the Commission staff initiated a comprehensive evaluation of the type of information our rules require issuers to disclose, how this information is presented, where and how this information is disclosed, and how we can better leverage technology as part of these efforts (“Disclosure Effectiveness Initiative”). The overall objective of the Disclosure Effectiveness Initiative is to improve our disclosure regime for both investors and issuers. This initiative may result in the addition,<sup>7</sup> revision,<sup>8</sup> or elimination<sup>9</sup> of certain disclosure requirements and seeks input on how potential changes might affect investors, issuers, efficiency, competition, and capital formation.

In connection with the Disclosure Effectiveness Initiative, the Commission staff requested public input.<sup>10</sup> In a separate concept release,<sup>11</sup> we are seeking public comment on

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<sup>5</sup> *Report on Review of Disclosure Requirements in Regulation S-K* (Dec. 2013), available at <http://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf>. Comment letters are available at <http://www.sec.gov/comments/jobs-title-i/reviewreg-sk/reviewreg-sk.shtml>.

<sup>6</sup> Jumpstart Our Business Startups Act, Pub. L. No. 112-106, 126 Stat. 306 (2012).

<sup>7</sup> For example, in this release, we propose to require disclosure of changes in stockholders’ equity and dividends per share for each class of shares, rather than only for common stock in interim periods (please refer to sections III.C.16 and V.B.5), an issuer’s website address (please refer to section IV.B.3), and the ticker symbol of their common equity that is publicly traded (please refer to section IV.B.4). We also propose to change the threshold at which disclosures on dividend restrictions are provided in the audited financial statements, which may result in additional disclosures subject to audit, internal control over financial reporting, and XBRL tagging (please refer to section III.D.2).

<sup>8</sup> For example, in this release, please refer to our proposals in section III.D. on overlapping requirements proposed for integration, section IV on outdated requirements, and section V on superseded requirements.

<sup>9</sup> For example, in this release, please refer to our proposals in section II on redundant or duplicative requirements, section III.C on overlapping requirements proposed for deletion, section IV on outdated requirements, and section V on superseded requirements.

<sup>10</sup> See Request for Public Comment at <http://www.sec.gov/spotlight/disclosure-effectiveness.shtml> and comment letters at <http://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness.shtml>.

modernizing certain business and financial disclosure requirements in Regulation S-K. We have also separately requested comment<sup>12</sup> on the financial disclosure requirements in Regulation S-X for certain entities other than the issuer. In addition, we have requested comment on the proposed rules to modernize the disclosure requirements for mining properties.<sup>13</sup>

We are also issuing this release as part of our effort to implement title LXXII, section 72002(2) of the FAST Act, which, among other things, requires the Commission to eliminate provisions of Regulation S-K that are duplicative, overlapping, outdated, or unnecessary.

## **B. Scope of Proposals**

The proposals, if adopted, would affect a variety of entities we regulate in different ways, as discussed below. For ease of discussion, throughout this release, we refer to the affected entities as issuers. The requirements under discussion may apply to entities other than issuers or to subsets of issuers and, thus, should be referenced for their specific scope. Entities other than issuers include significant acquirees for which financial statements are required under Rule 3-05 of Regulation S-X,<sup>14</sup> significant equity method investments for which financial statements are required under Rule 3-09 of Regulation S-X,<sup>15</sup> broker-dealers, and nationally recognized statistical rating organizations (“NRSROs”).

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<sup>11</sup> *Business and Financial Disclosure Required by Regulation S-K*, Release No. 33-10064 (Apr. 13, 2016) [81 FR 23915] (“S-K Concept Release”). See comment letters at <http://www.sec.gov/comments/s7-06-16/s70616.htm>.

<sup>12</sup> *Request for Comment on the Effectiveness of Financial Disclosures About Entities Other than the Registrant*, Release No. 33-9929 (Sept. 25, 2015) [80 FR 59083] (“Regulation S-X Request for Comment”). See comment letters at <http://www.sec.gov/comments/s7-20-15/s72015.shtml>.

<sup>13</sup> *Modernization of Property Disclosures for Mining Registrants*, Release No. 33-10098 (June 16, 2016) [81 FR 41651].

<sup>14</sup> 17 CFR 210.3-05.

<sup>15</sup> 17 CFR 210.3-09.

## 1. Issuers with Offerings Registered Under the Securities Act and Securities Registered Under the Exchange Act

Because the proposals affect issuers filing forms prescribed under the Securities Act and the Exchange Act differently, our discussion is tailored accordingly. Our references to domestic issuers encompass large accelerated filers,<sup>16</sup> accelerated filers,<sup>17</sup> and non-accelerated filers,<sup>18</sup> as well as emerging growth companies<sup>19</sup> (“EGCs”) and smaller reporting companies<sup>20</sup> (“SRCs”). In this release, we have highlighted the Commission disclosure requirements that affect SRCs

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<sup>16</sup> Under Exchange Act Rule 12b-2 [17 CFR 240.12b-2], a large accelerated filer is an issuer with an aggregate worldwide market value of voting and non-voting common equity held by its non-affiliates of \$700 million or more, as of the last business day of its most recently completed second fiscal quarter. In addition, the issuer needs to have been subject to reporting requirements for at least twelve calendar months, have filed at least one annual report, and not be eligible to use the requirements for smaller reporting companies for its annual and quarterly reports.

<sup>17</sup> Under Exchange Act Rule 12b-2, an accelerated filer is an issuer with an aggregate worldwide market value of voting and non-voting common equity held by its non-affiliates of \$75 million or more, but less than \$700 million, as of the last business day of its most recently completed second fiscal quarter. In addition, the issuer needs to have been subject to reporting requirements for at least twelve calendar months, have filed at least one annual report, and not be eligible to use the requirements for smaller reporting companies for its annual and quarterly reports.

<sup>18</sup> Although the term “non-accelerated filer” is not defined in Commission rules, we use it throughout this release to refer to a reporting company that does not meet the definition of either an “accelerated filer” or a “large accelerated filer” under Exchange Act Rule 12b-2.

<sup>19</sup> An EGC is defined in section 2(a)(19) of the Securities Act [15 U.S.C.77b(a)(19)] and section 3(a)(80) of the Exchange Act [15 U.S.C. 78c(a)(80)] to mean an issuer with less than \$1 billion in total annual gross revenues during its most recently completed fiscal year. If an issuer qualifies as an EGC on the first day of its fiscal year, it maintains that status until the earliest of (1) the last day of the fiscal year of the issuer during which it has total annual gross revenues of \$1 billion or more; (2) the last day of its fiscal year following the fifth anniversary of the first sale of its common equity securities pursuant to an effective registration statement; (3) the date on which the issuer has, during the previous 3-year period, issued more than \$1 billion in non-convertible debt; or (4) the date on which the issuer is deemed to be a “large accelerated filer” (as defined in Exchange Act Rule 12b-2).

<sup>20</sup> SRC is defined to mean an issuer that had a public float of less than \$75 million as of the last business day of its most recently completed second fiscal quarter or had annual revenues of less than \$50 million during the most recently completed fiscal year for which audited financial statements are available. See Rule 405 of Regulation C [17 CFR 230.405], Rule 12b-2 of the Exchange Act, and Item 10(f) of Regulation S-K [17 CFR 229.10(f)].

The Commission has proposed to amend this definition. Under the proposed amendments, the \$75 million public float threshold would be increased to \$250 million and the \$50 million revenue threshold would be increased to \$100 million. See *Amendments to Smaller Reporting Company Definition*, Release No. 33-10107 (Jun. 27, 2016) [81 FR 43130].

differently from non-SRCs. Our references to foreign private issuers<sup>21</sup> encompass large accelerated filers, accelerated filers, and non-accelerated filers, as well as EGCs.<sup>22</sup> More specifically:

- Proposals involving Regulation S-K relate only to domestic issuers<sup>23</sup> and foreign private issuers that elect to file on forms used by domestic issuers.
- Proposals involving Regulation S-X generally relate only to domestic issuers and foreign private issuers that report under U.S. GAAP or a comprehensive body of accounting principles other than U.S. GAAP or IFRS as issued by the International Accounting Standards Board (“IASB”)<sup>24</sup> with a reconciliation to U.S. GAAP.<sup>25</sup>
- Proposals involving Commission forms relate to either domestic issuers or foreign private issuers, depending on the form under discussion. For example, proposed amendments to the “F” series of forms<sup>26</sup> only affect foreign private issuers. Because foreign private issuers may report under U.S. GAAP, Another Comprehensive Body of Accounting

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<sup>21</sup> See Rule 405 of Regulation C and Exchange Act Rule 3b-4(c) [17 CFR 240.3b-4(c)]. A foreign private issuer is any foreign issuer other than a foreign government, except for an issuer that has more than 50 percent of its outstanding voting securities held of record by U.S. residents and any of the following: a majority of its officers or directors are citizens or residents of the United States; more than 50 percent of its assets are located in the United States; or its business is principally administered in the United States.

<sup>22</sup> Foreign private issuers may only use the scaled rules available to SRCs if they file on domestic forms under U.S. GAAP. See Rule 8-01 of Regulation S-X [17 CFR 210.8-01]. The proposals affect these SRCs in the same ways as domestic SRC issuers.

<sup>23</sup> Domestic issuers include foreign issuers that do not meet the definition of foreign private issuer.

<sup>24</sup> Throughout this release, we refer to a comprehensive body of accounting principles other than U.S. GAAP or IFRS as “Another Comprehensive Body of Accounting Principles.”

<sup>25</sup> Foreign private issuers that report under IFRS must comply with the IFRS requirements for the form and content of financial statements, rather than with the specific presentation and disclosure provisions in Articles 3A, 4, 5, 6, 6A, 7, 8, 9, 10, and certain parts of Article 3 of Regulation S-X. Where a proposal on Regulation S-X also affects foreign private issuers that report under IFRS, we discuss both U.S. GAAP and IFRS.

<sup>26</sup> For example, these forms include Forms F-1[17 CFR 239.31], F-3 [17 CFR 239.33], F-4[17 CFR 239.34], and 20-F [17 CFR 249.220f].

Principles with a reconciliation to U.S. GAAP, or IFRS, discussion of proposals involving F-forms includes consideration of both U.S. GAAP and IFRS, where applicable.

Some of the proposals also affect asset-backed issuers.<sup>27</sup>

## **2. Issuers Offering Securities under Regulation A**

Some of our proposals affect Regulation A issuers, as follows:<sup>28</sup>

- Proposals involving Regulation S-K would affect Regulation A issuers that provide narrative disclosure that follows Part I of Form S-1<sup>29</sup> or Part I of Form S-11<sup>30</sup> in Part II of Form 1-A.<sup>31</sup>
- Proposals involving Rule 4-10,<sup>32</sup> Rule 8-04,<sup>33</sup> Rule 8-05,<sup>34</sup> and Rule 8-06<sup>35</sup> of Regulation S-X would affect all Regulation A issuers. Proposals involving Rule 8-03(a)<sup>36</sup> of Regulation S-X would affect all Regulation A issuers that report under U.S. GAAP.

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<sup>27</sup> “Asset-backed issuer” is defined in Item 1101(b) of Regulation AB [17 CFR 229.1101(b)]. See the proposals regarding: (1) invitations for competitive bids discussed in section III.C.19, (2) available information discussed in section IV.B.3, (3) matters submitted to a vote of security holders discussed in section V.B.15, and (4) incorrect references in General Instruction J(1)(e) to Form 10-K discussed in section V.B.18.

<sup>28</sup> See Rules 251 – 263 of Regulation A [17 CFR 230.251 – 230.263]. A Tier 1 offering under Regulation A limits the sum of the aggregate offering price and the aggregate sales within 12 months before the start of the offering to \$20 million. Rule 251(a)(1) of Regulation A. A Tier 1 offering also limits sales by affiliated selling security holders to \$6 million. A Tier 2 offering under Regulation A limits the sum of the aggregate offering price and the aggregate sales to \$50 million and limits the amount offered by affiliated selling security holders to \$15 million. Rule 251(a)(2) of Regulation A.

<sup>29</sup> 17 CFR 239.11.

<sup>30</sup> 17 CFR 239.18.

<sup>31</sup> 17 CFR 239.90.

<sup>32</sup> 17 CFR 210.4-10.

<sup>33</sup> 17 CFR 210.8-04.

<sup>34</sup> 17 CFR 210.8-05.

<sup>35</sup> 17 CFR 210.8-06.

<sup>36</sup> 17 CFR 210.8-03(a).

Proposals involving the remaining rules in Article 8 of Regulation S-X would affect only Regulation A issuers in a Tier 2 offering that report under U.S. GAAP. No other proposals involving Regulation S-X would affect Regulation A issuers.

- Proposals involving Regulation A forms may affect issuers that report under U.S. GAAP or Canadian issuers that report under IFRS.<sup>37</sup> For this reason, discussion of proposals affecting these forms includes consideration of both U.S. GAAP and IFRS, where applicable.

In this release, we have highlighted the Commission disclosure requirements that affect Regulation A issuers.<sup>38</sup>

We are also soliciting comment on certain Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP. As discussed in section III.E, we are not proposing amendments to this category of disclosure requirements in this release. Rather, the comments received in response to this release may inform both potential future Commission rulemaking and FASB standard-setting activities. One potential outcome of this feedback is a referral of these incremental requirements to the FASB for potential incorporation into U.S. GAAP.<sup>39</sup> A referral alone would have no effect on issuers. Any changes to U.S. GAAP

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<sup>37</sup> Only U.S. and Canadian issuers may rely on Regulation A and use Form 1-A. See Rule 251(b)(1) of Regulation A [17 CFR 230.251(b)(1)]. U.S. issuers must report under U.S. GAAP. Canadian issuers may report under U.S. GAAP or IFRS. See paragraph (a)(2) of Part F/S of Form 1-A [17 CFR 239.90], Item 7(b) of Form 1-K [17 CFR 239.91], and Item 3 of Form 1-SA [17 CFR 239.92].

<sup>38</sup> Statements about the effect of a proposal on Regulation A issuers throughout this release reflect that the form and content requirements in Regulation S-X do not apply to Canadian Regulation A issuers that report under IFRS. Please refer to section V.B.17.

<sup>39</sup> The IASB, which is subject to oversight by the IFRS Foundation, is responsible for IFRS and establishes its own standard-setting agenda. For further information, see <http://www.ifrs.org/About-us/Pages/IFRS-Foundation-and-IASB.aspx>.

that may result from such a referral would be subject to FASB’s standard-setting process, as discussed below, and would potentially affect all entities that report under U.S. GAAP, including crowdfunding issuers and those outside the scope of our regulatory authority.

### **3. Issuers Regulated under the Investment Company Act**

Certain proposals affect requirements applicable to issuers regulated under the Investment Company Act, as follows:

- Proposals involving Regulation S-K would affect business development companies to which the regulation applies.
- Proposals involving Regulation S-X would affect investment companies to which the regulation applies.
- Proposals involving Investment Company Act forms may affect investment companies, depending on the form in question.

### **4. Other Entities**

Certain proposals also affect requirements applicable to registered broker-dealers, investment advisors, and NRSROs.

## **C. FASB-Related Considerations**

### **1. Role of the FASB**

The federal securities laws set forth the Commission’s broad authority and responsibility to prescribe the methods to be followed in the preparation of accounts and the form and content of financial statements to be filed under those laws,<sup>40</sup> as well as its responsibility to ensure that

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<sup>40</sup> See, e.g., sections 7[15 U.S.C. 77g], 19(a) [15 U.S.C. 77s(a)] and Schedule A, Items (25) and (26) of the Securities Act [15 U.S.C. 77aa(25) and (26)]; sections 3(b) [15 U.S.C. 78c(b)], 12(b) [17 CFR 781(b)] and



investors are furnished with other information necessary for investment decisions.<sup>41</sup> To assist it in meeting this responsibility, the Commission historically has looked to private-sector standard-setting bodies designated by the accounting profession to develop accounting principles and standards.<sup>42</sup> At the time of the FASB's formation in 1973, the Commission reexamined its policy and formally recognized pronouncements of the FASB that establish and amend accounting principles and standards as "authoritative" in the absence of any contrary determination by the Commission.<sup>43</sup> The Commission concluded at that time that the expertise and resources that the private sector could offer to the process of setting accounting standards would be beneficial to investors.

The Sarbanes-Oxley Act of 2002<sup>44</sup> ("Sarbanes-Oxley Act") established criteria that must be met in order for the work product of an accounting standard-setting body to be recognized as "generally accepted."<sup>45</sup> In accordance with these criteria, the Commission has designated the FASB as the private-sector accounting standard setter for U.S. financial reporting purposes.<sup>46</sup> As required under the securities laws, including the Sarbanes-Oxley Act, the Commission monitors

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13(b) [17 CFR 78m(b)] of the Exchange Act; and sections 8 [15 U.S.C. 80a-8], 30(e) [15 U.S.C. 80a-29(e)], 31[15 U.S.C. 80a-30], and 38(a) [15 U.S.C. 80a-37(a)] of the Investment Company Act.

<sup>41</sup> See *Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter*, Release No. 33-8221 (Apr. 25, 2003) [68 FR 23333], available at <http://www.sec.gov/rules/policy/33-8221.htm> ("2003 FASB Policy Statement").

<sup>42</sup> Id.

<sup>43</sup> See Accounting Series Release No. 150 (Dec. 20, 1973).

<sup>44</sup> Pub. L. No. 107-204, 116 Stat. 745 (2002)

<sup>45</sup> See section 19 of the Securities Act [15 U.S.C.77s].

<sup>46</sup> Section 108 of the Sarbanes-Oxley Act amended section 19 of the Securities Act to provide that the Commission "may recognize, as 'generally accepted' for purposes of the securities laws, any accounting principles established by a standard setting body that met certain criteria." The Commission has determined that the FASB satisfies the criteria in section 19 and, accordingly, the FASB's financial accounting and reporting standards are recognized as "generally accepted" for purposes of the federal securities laws. See 2003 FASB Policy Statement.

the FASB's ongoing compliance with the expectations and views expressed in the 2003 FASB Policy Statement.

As the designated private-sector accounting standard setter in the United States, the FASB seeks to undertake a transparent, public standard-setting process.<sup>47</sup>

## **2. Interaction of Commission Disclosure Requirements and U.S. GAAP**

Although the FASB functions as the designated private-sector accounting standard setter in the United States, some Commission rules contain accounting and disclosure requirements. In some cases, these Commission requirements mandate disclosures which the FASB later added to U.S. GAAP.<sup>48</sup> Other Commission disclosure requirements include concepts that have been superseded by U.S. GAAP.<sup>49</sup> From time to time, the Commission has reviewed and amended its disclosure requirements to eliminate rules that became redundant, duplicative, or overlapping as the FASB updated U.S. GAAP.<sup>50</sup> In keeping with this historical practice, many of the proposed amendments revise or eliminate Commission disclosure requirements related to information that is addressed by more recently updated U.S. GAAP requirements.

In addition, a number of Commission disclosure requirements are related, but require information that is incremental, to U.S. GAAP. In this release, we solicit comment on certain of

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<sup>47</sup> See <http://www.fasb.org/jsp/FASB/Page/SectionPage&cid=1351027215692>. See also pages 2 and 5 of the FASB Rules of Procedures, available at [http://www.fasb.org/cs/ContentServer?c=Document\\_C&pagename=FASB%2FDocument\\_C%2FDocumentPage&cid=1176162391050](http://www.fasb.org/cs/ContentServer?c=Document_C&pagename=FASB%2FDocument_C%2FDocumentPage&cid=1176162391050).

<sup>48</sup> See, e.g., Rule 4-08(h) of Regulation S-X [17 CFR 210.4-08(h)], parts of which were subsequently incorporated into U.S. GAAP.

<sup>49</sup> See, e.g., Rule 10-01(a)(7) of Regulation S-X [17 CFR 210.10-01(a)(7)], which refers to the disclosures required by ASC 915 on development stage entities, which the FASB has since eliminated.

<sup>50</sup> See, e.g., *General Revision of Regulation S-X*, Release No. 33-6233 (Sept. 2, 1980) [45 FR 63660], *Phase One Recommendations of Task Force on Disclosure Simplification* Release No. 33-7300 (May 31, 1996) [61 FR 30397], and *Technical Amendments to Rules, Forms, Schedules, and Codification of Financial Reporting Policies*, Release No. 33-9026, (Apr. 15, 2009) [74 FR 18612].

those incremental Commission disclosure requirements to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP.<sup>51</sup> The comments received in response to this release may inform both potential future Commission rulemaking and FASB standard-setting activities. Future amendments to these Commission disclosure requirements may depend on the outcome of any FASB's standard-setting activities to address the disclosure requirements. Our staff has discussed these requirements with the FASB staff.

### **3. Current FASB Projects Concerning the Application of U.S. GAAP**

The FASB maintains U.S. GAAP by updating it from time to time through its standard-setting projects. Among a number of projects on the FASB's agenda, there are two current standard-setting projects that we invite commenters to consider when evaluating the proposals and providing feedback.<sup>52</sup> In one project,<sup>53</sup> the FASB has proposed amendments, which, among other things,<sup>54</sup> would clarify that with respect to disclosures in the notes to the financial statements an omission of immaterial information is not an accounting error.<sup>55</sup>

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<sup>51</sup> The incorporation of incremental Commission disclosure requirements into U.S. GAAP may streamline disclosures for investors and simplify requirements for issuers.

<sup>52</sup> The FASB also has other standard-setting projects underway that may affect specific topics within this release. Those projects are identified in the discussion of the specific topics they affect.

<sup>53</sup> FASB Exposure Draft, *Notes to Financial Statements (Topic 235): Assessing Whether Disclosures Are Material* (Sept. 24, 2015), available at: [http://www.fasb.org/jsp/FASB/Document\\_C/DocumentPage?cid=1176166402325&acceptedDisclaimer=true](http://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176166402325&acceptedDisclaimer=true).

<sup>54</sup> Among the other proposed amendments is an amendment related to the legal concept of materiality. Commenters have expressed a range of views on the proposed amendments and their potential impact on the volume of financial disclosures. The comment letters are available at: [http://www.fasb.org/jsp/FASB/CommentLetter\\_C/CommentLetterPage&cid=1218220137090&project\\_id=2015-310](http://www.fasb.org/jsp/FASB/CommentLetter_C/CommentLetterPage&cid=1218220137090&project_id=2015-310).

<sup>55</sup> In 2014, the IASB amended IFRS to clarify that an entity does not have to disclose information required by IFRS if that information would not be material. *See Disclosure Initiative (Amendments to IAS 1)*.

In the other project, the FASB is addressing disclosures in interim reports. The FASB has reached a tentative decision that disclosures about matters required to be provided in annual financial statements should be updated in the interim report if there is a substantial likelihood that the updated information would be viewed by a reasonable investor as significantly altering the total mix of information available to the investor.<sup>56</sup>

Both projects are subject to further stakeholder comment and FASB deliberation. If we ultimately decide to eliminate or revise certain of our disclosure requirements on the basis that U.S. GAAP requires the same or similar disclosure, these projects, if finalized, may impact certain disclosures currently provided under Commission disclosure requirements that we propose to eliminate or amend. In particular, for information currently provided under Commission rules that do not contain a specified disclosure threshold, investors may receive less information if such information is only required by U.S. GAAP and the issuer determines that the information is not material. Throughout this release, we identify those Commission disclosure requirements that contemplate a disclosure threshold in some manner, for example, through the use of terms such as “material” or “significant” or through the use of bright line disclosure thresholds.

#### Request for Comment

1. Would the FASB’s projects discussed above affect our: (1) proposed amendments to eliminate certain Commission disclosure requirements due to a U.S. GAAP requirement

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<sup>56</sup> See Minutes from FASB Board Meeting (May 29, 2014), available at: [http://www.fasb.org/jsp/FASB/FASBContent\\_C/ProjectUpdatePage&cid=1176164227056](http://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdatePage&cid=1176164227056).

or (2) potential referrals to the FASB of certain Commission disclosure requirements? If so, how?

2. Would the information provided to investors in the notes to the financial statements change if the source of the disclosure requirement (i.e., Commission rule or U.S. GAAP) changed? If so, how and why?
3. Do the other proposed amendments within the FASB Exposure Draft related to notes to the financial statements<sup>57</sup> impact the proposals made in this release? If so, how?

## **II. Redundant or Duplicative Requirements**

### **A. Background**

In reviewing our disclosure requirements, we have preliminarily identified a number of requirements that require substantially the same disclosures as U.S. GAAP, IFRS, or other Commission disclosure requirements. We propose to eliminate these redundant or duplicative Commission disclosure requirements to simplify issuer compliance efforts while providing substantially the same information to investors.<sup>58</sup>

The table in section II.B below describes each redundant or duplicative requirement that we propose to eliminate and identifies the corresponding U.S. GAAP, IFRS, or Commission disclosure requirement that requires substantially the same information.

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<sup>57</sup> See *supra* note 53 and 54.

<sup>58</sup> Some proposed amendments, however, may be affected by certain FASB projects, as discussed in section I.C.3.

## B. Proposed Amendments

Commission Disclosure Requirement Proposed for Elimination	Description of Commission Disclosure Requirement Proposed for Elimination	Corresponding U.S. GAAP, IFRS, <sup>59</sup> or Commission Disclosure Requirement
<b>1. Foreign Currency</b>		
Third sentence of Rule 3-20(d) of Regulation S-X <sup>60</sup>	Defines: (1) the currency of an operation’s primary economic environment and (2) a hyperinflationary environment.	Accounting Standards Codification (“ASC”) 830-10-45-2, ASC 830-10-45-12, and ASC 830-10-55-10.
Last sentence of Rule 3-20(d) of Regulation S-X	States that foreign private issuers must comply with Item 17(c)(2) of Form 20-F, <sup>61</sup> which requires disclosure and quantification of departures from the methodology of this rule if their financial statements are prepared on a basis other than U.S. GAAP or IFRS.	Item 17(c)(2) of Form 20-F. Also Item 4 of Form F-1, General Instructions I.B of Form F-3, and Items 11, 12, and 13 of Form F-4, which indirectly refer to Item 17 of Form 20-F.
<b>2. Consolidation<sup>62</sup></b>		
Rule 4-08(a) of Regulation S-X <sup>63</sup>	Requires compliance with Article 3A.	Article 3A <sup>64</sup> itself requires compliance. The requirement is repeated in Rule 4-08(a).
Rule 3A-01 of Regulation S-X <sup>65</sup>	States subject matter of Article 3A.	The same information is set forth in the title of Article 3A.

<sup>59</sup> Where a Commission disclosure requirement proposed for elimination does not apply to foreign private issuers that report under IFRS, the proposed change would not result in a change to the requirements for foreign private issuers and we do not identify a corresponding IFRS requirement. See supra note 25.

<sup>60</sup> 17 CFR 210.3-20(d).

<sup>61</sup> 17 CFR 249.220f.

<sup>62</sup> Please refer to the related discussions in sections III.C.2, III.E.2, and V.B.4.

<sup>63</sup> 17 CFR 210.4.08(a).

<sup>64</sup> 17 CFR 210.3A-01 through 210.3A-04.

<sup>65</sup> 17 CFR 210.3A-01.

<b>Commission Disclosure Requirement Proposed for Elimination</b>	<b>Description of Commission Disclosure Requirement Proposed for Elimination</b>	<b>Corresponding U.S. GAAP, IFRS,<sup>59</sup> or Commission Disclosure Requirement</b>
All except fourth sentence of Rule 3A-02(b)(1) of Regulation S-X <sup>66</sup>	Permits consolidation of an entity's financial statements for its fiscal period if the period does not differ from that of the issuer by more than 93 days <sup>67</sup> and requires recognition by disclosure or otherwise of material intervening events.	ASC 810-10-45-12
First sentence of Rule 3A-02(d) of Regulation S-X <sup>68</sup>	Requires consideration of the propriety of consolidation under certain restrictions. <sup>69</sup>	ASC 810-10-15-10
Last two sentences of first paragraph of Rule 3A-02 of Regulation S-X <sup>70</sup> and 3A-03(a) of Regulation S-X <sup>71</sup>	Requires disclosure of the accounting policies followed in consolidation or combination. <sup>72</sup>	ASC 235-10-50-1 and ASC 810-10-50-1
First sentence of Rule 3A-04 of Regulation S-X <sup>73</sup>	Requires elimination of intercompany transactions.	ASC 323-10-35-5a and ASC 810-10-45

<sup>66</sup> 17 CFR 210.3A-02(b)(1).

<sup>67</sup> ASC 810-10-45-12 uses the phrase "about three months."

<sup>68</sup> 17 CFR 210.3A-02(d).

<sup>69</sup> Rule 3A-02(d) requires due consideration of the propriety of consolidation in the presence of political, economic, or currency restrictions. ASC 810-10-15-10 states that subsidiaries shall not be consolidated in the presence of foreign exchange restrictions, controls, or other governmentally imposed uncertainties so severe that they cast significant doubt on the parent's ability to control the subsidiary.

<sup>70</sup> 17 CFR 210.3A-02.

<sup>71</sup> 17 CFR 210.3A-03(a).

<sup>72</sup> Rule 3A-02 states that the accounting policy disclosure should also include the circumstances associated with any departure from the normal practice of consolidating majority owned subsidiaries and not consolidating entities that are not majority owned. ASC 235-10-50-1 states that the accounting disclosure shall encompass important judgments about the appropriateness of accounting principles and unusual or innovative applications of U.S. GAAP.

<sup>73</sup> 17 CFR 210.3A-04.

<b>Commission Disclosure Requirement Proposed for Elimination</b>	<b>Description of Commission Disclosure Requirement Proposed for Elimination</b>	<b>Corresponding U.S. GAAP, IFRS,<sup>59</sup> or Commission Disclosure Requirement</b>
<b>3. Obligations<sup>74</sup></b>		
Reference to issuances in Rule 4-08(f) of Regulation S-X <sup>75</sup>	Requires disclosure of significant changes <sup>76</sup> in issued amounts of debt subsequent to the latest balance sheet date.	ASC 855-10-50-2 and 855-10-55-2a
<b>4. Income Tax Disclosures<sup>77</sup></b>		
First sentence of Rule 4-08(h)(2) of Regulation S-X <sup>78</sup>	Requires an income tax rate reconciliation	ASC 740-10-50-12
Fourth sentence of Rule 4-08(h)(2) of Regulation S-X	Permits the income tax rate reconciliation to be presented in either percentages or dollars.	ASC 740-10-50-12
<b>5. Warrants, Rights, and Convertible Instruments<sup>79</sup></b>		
Rule 4-08(i) of Regulation S-X <sup>80</sup>	Requires disclosure of the title and amount of securities subject to warrants or rights, the exercise price, and the exercise period. <sup>81</sup>	Non-compensatory warrants or rights: ASC 505-10-50-3 and ASC 815-40-50-5  Compensatory warrants or rights: ASC 505-10-50-3, ASC 718-10-50-1, and ASC 718-10-50-2

<sup>74</sup> Please refer to the related discussion in section III.E.5.

<sup>75</sup> 17 CFR 210.4-08(f).

<sup>76</sup> ASC 855-10-50-2 requires disclosure of events subsequent to the balance sheet date that are of such a nature that non-disclosure would render the financial statements misleading. ASC 855-10-55-55-2a provides that the sale of a bond subsequent to the balance sheet date is an example of such a subsequent event.

<sup>77</sup> Please refer to the related discussions in sections III.E.7 and IV.B.2.

<sup>78</sup> 17 CFR 210.4-08(h)(2).

<sup>79</sup> Please refer to the related discussion in section III.C.15.

<sup>80</sup> 17 CFR 210.4-08(i).

<sup>81</sup> For compensatory warrants or rights, U.S. GAAP requires disclosure of the nature and terms of such arrangements, the number and weighted-average exercise price, and the weighted-average contractual term.



<b>Commission Disclosure Requirement Proposed for Elimination</b>	<b>Description of Commission Disclosure Requirement Proposed for Elimination</b>	<b>Corresponding U.S. GAAP, IFRS,<sup>59</sup> or Commission Disclosure Requirement</b>
<b>6. Related Parties<sup>82</sup></b>		
Reference to identification of related party transactions in Rule 4-08(k)(1) of Regulation S-X <sup>83</sup>	Requires identification of related party transactions.	ASC 850-10-50-1
<b>7. Contingencies</b>		
References to “material contingencies” in Rule 8-03(b)(2) <sup>84</sup> and the second sentence of Rule 10-01(a)(5) of Regulation S-X and the entire last sentence of Rule 10-01(a)(5) of Regulation S-X <sup>85</sup>	Require disclosure of material contingencies in interim financial statements, notwithstanding disclosure in the annual financial statements.	ASC 270-10-50-6
<b>8. Earnings per Share<sup>86</sup></b>		
Reference to “earnings per share” in first sentence of Rule 10-01(b)(2) of Regulation S-X <sup>87</sup>	Requires presentation of earnings per share on interim income statement.	ASC 270-10-50-1b
Item 601(b)(11) of Regulation S-K <sup>88</sup> and Instruction 6 to “Instructions as to Exhibits” of Form 20-F	Require disclosure of the computation of earnings per share in annual filings.	ASC 260-10-50-1a, Rule 10-01(b)(2) of Regulation S-X, and IAS 33, paragraph 70

<sup>82</sup> Please refer to the related discussion in section III.E.8.

<sup>83</sup> 17 CFR 4-08(k)(1).

<sup>84</sup> 17 CFR 210.8-03(b)(2). This rule specifically applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP.

<sup>85</sup> 17 CFR 210.10-01(a)(5). This rule specifically applies to companies other than SRCs (“non-SRCs”).

<sup>86</sup> Please refer to the related discussion in section III.E.10.

<sup>87</sup> 17 CFR 210.10-01(b)(2).

<sup>88</sup> 17 CFR 229.601(b)(11). We also propose conforming revisions to delete references to Item 601(b)(11) of Regulation S-K in the Exhibit Table and in Rule 10-01(b)(2) of Regulation S-X.

<b>Commission Disclosure Requirement Proposed for Elimination</b>	<b>Description of Commission Disclosure Requirement Proposed for Elimination</b>	<b>Corresponding U.S. GAAP, IFRS,<sup>59</sup> or Commission Disclosure Requirement</b>
<b>9. Insurance Companies<sup>89</sup></b>		
Last sentence of Rule 7-03(a)(11) of Regulation S-X <sup>90</sup>	Requires a description of the activities being reported in the separate accounts. <sup>91</sup>	ASC 944-80-50-1a
Rule 7-04.3(c) of Regulation S-X <sup>92</sup>	Requires disclosure of the method followed in determining the cost of investments sold. <sup>93</sup>	ASC 235-10-50-1 and ASC 320-10-50-9b
<b>10. Bank Holding Companies<sup>94</sup></b>		
Rule 9-03.6(a) of Regulation S-X <sup>95</sup>	Requires disclosure of the carrying and market values of (1) securities of the U.S. Treasury and other U.S. Government agencies and corporations, (2) securities of states of the U.S. and political subdivisions, and (3) other securities.	ASC 320-10-50-1B, ASC 320-10-50-2, ASC 320-10-50-5, and ASC 942-320-50-2
Rule 9-03.7(d) of Regulation S-X <sup>96</sup>	Requires disclosure of changes in the allowance for loan losses	ASC 310-10-50-11B(c)
First part of Rule 9-04.13(h) of Regulation S-X <sup>97</sup>	Requires disclosure of the method followed in determining the cost of investment securities sold.	ASC 235-10-50-1 and ASC 320-10-50-9b

<sup>89</sup> Please refer to the related discussions in sections III.C.6 and V.B.8.

<sup>90</sup> 17 CFR 210.7-03(a)(11).

<sup>91</sup> ASC 944-80-50-1a requires disclosure of the nature of the contracts reported in separate accounts.

<sup>92</sup> 17 CFR 210.7-04.3(c).

<sup>93</sup> ASC 320-10-50-9b refers to the “cost of a security sold.”

<sup>94</sup> Please refer to the related discussion in section V.B.9.

<sup>95</sup> 17 CFR 210.9-03.6(a).

<sup>96</sup> 17 CFR 210.9-03.7(d).

<sup>97</sup> 17 CFR 210.9-04.13(h).

<b>Commission Disclosure Requirement Proposed for Elimination</b>	<b>Description of Commission Disclosure Requirement Proposed for Elimination</b>	<b>Corresponding U.S. GAAP, IFRS,<sup>59</sup> or Commission Disclosure Requirement</b>
<b>11. Changes in Accounting Principles<sup>98</sup></b>		
Requirement to disclose reason for change in accounting principle in Rule 8-03(b)(5) <sup>99</sup> and Rule 10-01(b)(6) of Regulation S-X <sup>100</sup>	Requires disclosure of the reasons for making material accounting changes in an interim period.	ASC 250-10-45-12 to 16, ASC 250-10-50-1a, and ASC 270-10-50-1g
<b>12. Interim Adjustments</b>		
Third sentence of Rule 3-03(d) <sup>101</sup> and third sentence of Rule 10-01(b)(8) <sup>102</sup> of Regulation S-X	Provide examples of adjustments in order for interim financial statements to be fairly stated.	ASC 270-10-45-10
<b>13. Interim Financial Statements – Common Control Transactions<sup>103</sup></b>		
Part of first sentence of Rule 10-01(b)(3) of Regulation S-X <sup>104</sup>	Requires that common control transactions be reflected in current and prior comparative period's interim financial statements.	ASC 805-50-45-1 to 5
<b>14. Interim Financial Statements – Dispositions<sup>105</sup></b>		
Rule 10-01(b)(5) of Regulation S-X <sup>106</sup>	Requires disclosure of the effect of discontinued operations on interim revenues, net income, and earnings per share for all periods presented.	ASC 205-20-50-5B, ASC 205-20-50-5C, ASC 260-10-45-3, and ASC 270-10-50-7

<sup>98</sup> Please refer to the related discussions in section III.C.8 and V.B.14.

<sup>99</sup> 17 CFR 210.8-03(b)(5). This rule specifically applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP.

<sup>100</sup> 17 CFR 210.10-01(b)(6). This rule specifically applies to non-SRCs.

<sup>101</sup> 17 CFR 210.3-03(d).

<sup>102</sup> 17 CFR 210.10-01(b)(8).

<sup>103</sup> Please refer to the related discussion in section III.E.12.

<sup>104</sup> 17 CFR 210.10-01(b)(3).

<sup>105</sup> Please refer to the related discussion in section III.C.10.

<sup>106</sup> 17 CFR 210.10-01(b)(5).

Commission Disclosure Requirement Proposed for Elimination	Description of Commission Disclosure Requirement Proposed for Elimination	Corresponding U.S. GAAP, IFRS, <sup>59</sup> or Commission Disclosure Requirement
<b>15. Report Furnished to Security Holders</b>		
Item 601(b)(19) of Regulation S-K <sup>107</sup>	Provides specific instructions to address the incorporation by reference into Form 10-Q <sup>108</sup> of information that is separately made available to security holders.	General Instruction D(3) to Form 10-Q, which refers to Item 601(b)(13) of Regulation S-K <sup>109</sup>

### C. Request for Comment

4. We solicit comment on the foregoing proposed amendments to eliminate redundant or duplicative requirements.
  - a. Do the requirements proposed for elimination require substantially the same disclosures as U.S. GAAP, IFRS, or other Commission disclosure requirements? If eliminated, would investors continue to receive substantially the same information? If not, which redundant or duplicative requirements preliminarily identified above do not require substantially the same disclosures and why?
  - b. Should any proposed amendments not be made? Should any proposed amendments be modified? If so, which ones and why? Please be as specific as possible for each of the proposals on which you provide comments.
5. Are there other Commission disclosure requirements that are redundant or duplicative with U.S. GAAP, IFRS, or other Commission disclosure requirements that we should

<sup>107</sup> 17 CFR 229.601(b)(19). We also propose conforming revisions to delete the reference to Item 601(b)(19) of Regulation S-K in the Exhibit Table.

<sup>108</sup> 17 CFR 249.308a.

<sup>109</sup> 17 CFR 229.601(b)(13). We also propose to amend the Exhibit Table within Item 601 of Regulation S-K to clarify that Item 601(b)(13) applies to Form 10-Q.

consider eliminating? If so, which requirements should be eliminated and how are they redundant or duplicative?

### **III. Overlapping Requirements**

#### **A. Background**

We also have preliminarily identified Commission disclosure requirements that are related to, but not the same as, U.S. GAAP, IFRS, or other Commission disclosure requirements, which we refer to in this release as overlapping requirements. In this section, we:

- Propose to delete Commission disclosure requirements that, as discussed further in section III.C below, we believe: (1) require disclosures that convey reasonably similar information to or are encompassed by the disclosures that result from compliance with the overlapping U.S. GAAP, IFRS, or Commission disclosure requirements or (2) require disclosures incremental to the overlapping U.S. GAAP, IFRS, or Commission disclosure requirements and may no longer be useful to investors.
- Propose to integrate Commission disclosure requirements that overlap with, but require information incremental to, other Commission disclosure requirements, as discussed further in section III.D below, or
- Solicit comment on certain Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP, as discussed further in section III.E below.<sup>110</sup>

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<sup>110</sup> One commenter to the Regulation S-X Request for Comment recommended that we “[c]oordinate with and encourage the FASB to complete a disclosure project that would eliminate the need for SEC-specific footnote disclosure requirements (e.g., S-X 4-08 and 5-02) and financial statement schedules and incorporate them

## **B. Broad Considerations**

Our objective with these proposals is to streamline disclosures for investors and simplify requirements for issuers. In some cases, the proposed streamlining of overlapping disclosure requirements would give rise to the considerations discussed below.<sup>111</sup>

### **1. Disclosure Location Considerations**

In some cases, the streamlining of disclosure requirements would result in the relocation of disclosures within a filing,<sup>112</sup> with the following consequences:

- **Prominence Considerations** – the current location of some disclosures may provide a certain level of prominence and/or context to other disclosures located with them. The relocation of these disclosures may affect investors by changing the prominence and/or context of both the relocated disclosures and the remaining disclosures. Throughout this release, we collectively refer to these consequences as “Disclosure Location – Prominence Considerations.”
- **Financial Statement Considerations** – the proposals related to some topics would result in the relocation of disclosures from outside to inside the financial statements, subjecting this information to annual audit and/or interim review, internal control over financial

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within the US GAAP required disclosures if necessary. This commenter also noted that “US GAAP and SEC disclosure requirements often overlap. Slight differences in requirements cause confusion about whether there are different disclosure objectives and often result in redundancies.” See letter from Ernst & Young LLP (Nov. 20, 2015).

<sup>111</sup> Some proposals may also be affected by certain FASB projects, as discussed in section I.C.3.

<sup>112</sup> For example, as discussed in section III.C.1, our proposed amendments would result in the elimination of disclosures about an issuer’s status as a real estate investment trust (“REIT”) in the audited notes to the financial statements, in reliance on disclosures within the same filing, but outside the audited financial statements. As another example, as discussed in section III.D.2, our proposed amendments would result in the relocation of disclosures about material restrictions on the payment of dividends in a filing from outside to within the audited notes to the financial statements. For equity compensation plans, the proposed amendments would result in the need to reference a different filing, as discussed in section III.C.17.

reporting, and XBRL tagging requirements, as applicable. The safe harbor under the Private Securities Litigation Reform Act of 1995 (“PSLRA”) would not be available for such disclosures.<sup>113</sup> Conversely, relocation of disclosures from inside to outside the financial statements would have the opposite effect – namely, this information would not be subject to annual audit and/or interim review, internal control over financial reporting, and XBRL tagging requirements, as applicable, while the safe harbor under the PSLRA would be available. These topics would also be subject to Disclosure Location – Prominence Considerations. Throughout this release, we collectively refer to these consequences as “Disclosure Location – Financial Statement Considerations.” We refer to the foregoing considerations collectively as “Disclosure Location Considerations.”

#### Request for Comment

6. For each of the disclosures subject to Disclosure Location – Prominence Considerations discussed below:
  - a. Do investors benefit from the prominence of this information in its current location or from the context these disclosures provide to other disclosures located with them?
  - b. Would the proposed changes to the disclosure location either benefit or adversely affect investors or issuers? If so, how? Please be specific.
  - c. Should we mandate a cross-reference in the prior location of the disclosures to assist investors in navigating the issuer’s disclosures and help maintain the prominence and/or context of the disclosures?

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<sup>113</sup> Pub. L. 104-67, 109 Stat. 737 (1995).

- d. Do electronic data analysis tools affect the importance of the disclosure location?
7. For disclosures subject to Disclosure Location – Financial Statement Considerations, in addition to the above questions about prominence, what are the benefits and costs of the inclusion/exclusion of these disclosures in the financial statements for investors and issuers? How important are these benefits and costs to investors and issuers? Please quantify the benefits and costs, to the extent practicable.

## **2. Bright Line Disclosure Threshold Considerations**

Some overlapping requirements, while similar, are not redundant or duplicative because one set of requirements includes a bright line disclosure threshold, while the other set of requirements does not.<sup>114</sup> Where a requirement contains a bright line disclosure threshold, matters involving amounts below that threshold are not required to be disclosed. With the exception of disclosure requirements about major customers, as discussed in section III.E.14, the Commission disclosure requirements we discuss contain bright line disclosure thresholds, while the corresponding requirement does not. For these topics, the elimination of the bright line threshold would potentially change the disclosure provided to investors. Throughout this release, we refer to these considerations as “Bright Line Disclosure Threshold Considerations.”

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<sup>114</sup> For example, Regulation S-K requires, as discussed in section III.E.13, disclosure of the amount of revenue from products and services which account for 10 percent or more of consolidated revenue and, as discussed in section III.E.15, disclosure of legal proceedings involving environmental matters that exceed 10 percent of the issuer’s consolidated current assets. The corresponding U.S. GAAP requirements do not contain such bright line thresholds above which disclosures would be required.



## Request for Comment

8. For each of the disclosures subject to Bright Line Disclosure Threshold Considerations discussed below, should there continue to be a bright line below which the disclosures would not be required? Should the Commission modify the threshold? Why or why not?
  - a. Are there any aspects to these disclosures that warrant bright line disclosure thresholds, as compared to other disclosures?
  - b. Does the bright line disclosure threshold help to ensure disclosure at an appropriate level of detail for investors? Alternatively, does the bright line disclosure threshold result in too much or too little detail for investors? Why or why not?
  - c. Are there alternative disclosure thresholds, in lieu of bright lines, that we should consider? Would the alternative disclosure threshold change the level of information provided to investors and the burdens and costs associated with the preparation of these disclosures for issuers?

### **C. Overlapping Requirements - Proposed Deletions**

This section discusses Commission disclosure requirements that we believe: (1) require disclosures that convey reasonably similar information to or are encompassed by the disclosures that result from compliance with the overlapping U.S. GAAP, IFRS, or Commission disclosure requirements or (2) require disclosures incremental to the overlapping U.S. GAAP, IFRS, or Commission disclosure requirements and may no longer be useful to investors. In these cases, we propose to delete the specified Commission disclosure requirement.

## 1. REIT Disclosures<sup>115</sup>

### a. Undistributed Gains or Losses on the Sale of Properties

Regulation S-X<sup>116</sup> and U.S. GAAP<sup>117</sup> both set forth requirements for the presentation of components of stockholders' equity on the face of the financial statements. Regulation S-X incrementally requires REITs to present undistributed gains or losses on the sale of properties separately from other distributable earnings on their balance sheet.<sup>118</sup> This amount is presented on a book basis,<sup>119</sup> which we do not believe is useful to investors because of the unique tax status of REITs, as discussed below.

Specifically, REITs are not subject to entity-level taxation on the amounts distributed to their investors. Rather, their investors are liable for taxes on these distributions, depending on the character of the dividends (i.e., ordinary income, capital gains, or return of capital) the REIT distributes to them. Because the amount of undistributed gains or losses required by Rule 3-15(a)(2) of Regulation S-X is not presented on a tax basis, this disclosure does not provide investors with insight into the tax implications of the REIT's distributions. Instead, the disclosures required by Rule 3-15(c) of Regulation S-X of the tax status of distributions provide this insight.<sup>120</sup>

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<sup>115</sup> Please refer to the related discussions in sections III.E.1 and V.B.3.

<sup>116</sup> See, e.g., Rule 3-15(a)(2) [17 CFR 210.3-15(a)(2)] and Rule 5-02.30 [17 CFR 210.5-02.30] of Regulation S-X.

<sup>117</sup> See, e.g., ASC 505-10-45.

<sup>118</sup> See Rule 3-15(a)(2) of Regulation S-X.

<sup>119</sup> Amounts presented on a "book" basis refer to amounts determined in accordance with accounting for financial reporting purposes (e.g., U.S. GAAP or IFRS), rather than amounts determined in accordance with federal statutory tax law.

<sup>120</sup> 17 CFR 210.3-15(c).

In addition, the Commission staff has observed that, in practice, because REITs are required to distribute 90 percent of their taxable income in order to maintain their REIT status and often distribute more, REITs generally do not have undistributed amounts to disclose under this requirement.

Based on the foregoing, we propose to delete Rule 3-15(a)(2).

#### Request for Comment

9. Has the requirement to provide incremental disclosure about undistributed gains or losses on the sale of properties on a book basis resulted in the disclosure of useful information? What would the impact to investors and issuers be of a deletion of this requirement?

#### **b. Status as a REIT**

Regulation S-K and Regulation S-X both require certain disclosures about an issuer's status as a REIT. Regulation S-K requires disclosure of the issuer's form of organization,<sup>121</sup> significant risk factors<sup>122</sup> and a description of known uncertainties that are reasonably expected to have a material effect on income.<sup>123</sup> Regulation S-X similarly requires disclosure in the notes to the financial statements of the issuer's status as a REIT.<sup>124</sup>

Regulation S-X also requires REITs to disclose in the notes to the financial statements their assumptions in making or not making federal income tax provisions.<sup>125</sup> As stated above,

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<sup>121</sup> Item 101(a)(1) of Regulation S-K [17 CFR 229.101(a)(1)].

<sup>122</sup> Item 503(c) of Regulation S-K [17 CFR 229.503(c)].

<sup>123</sup> Item 303(a)(3)(ii) of Regulation S-K [17 CFR 229.303(a)(3)(ii)].

<sup>124</sup> Rule 3-15(b) of Regulation S-X [17 CFR 210.3-15(b)].

<sup>125</sup> Rule 3-15(b) of Regulation S-X.

REITs are not subject to entity-level taxation on the amounts distributed to their investors, so long as they maintain their REIT status. As such, for REITs, the primary assumption in making or not making federal income tax provisions is the issuer's continued REIT status and its consideration of the risks affecting its continued REIT status. We believe that the disclosure provided in response to the requirement in Regulation S-X to disclose assumptions in making or not making federal income tax provisions is encompassed by the disclosures provided to comply with Regulation S-K's requirement to disclose significant risk factors and a description of known uncertainties that are reasonably expected to have a material effect on income. In fact, because of the overlap, issuers often repeat or expand on the note disclosures in their risk factor disclosures, by discussing matters such as the applicable tax regulations and the consequence of a loss in REIT status.

Based on the foregoing, we propose to delete Rule 3-15(b) of Regulation S-X. We note that because disclosures under Regulation S-K, unlike those required by Regulation S-X, may be provided outside of the audited financial statements, the proposed amendments give rise to Disclosure Location – Financial Statement Considerations.

Request for Comment

10. Does Rule 3-15(b) require disclosures that are encompassed by disclosures that result from compliance with the overlapping provisions, as discussed above? Why or why not?
11. Would deletion of Rule 3-15(b) as described above affect, in any material respect, the usefulness of information that investors receive? If so, how?

## 2. Consolidation<sup>126</sup>

### a. Difference in Fiscal Periods

Regulation S-X<sup>127</sup> and U.S. GAAP<sup>128</sup> both set forth requirements about the presentation of consolidated financial statements when the issuer and its subsidiaries have different fiscal periods. Regulation S-X incrementally requires disclosure of the subsidiary's fiscal year closing date and an explanation of the necessity for using different closing dates. However, when there is a difference in the fiscal periods of the issuer and its subsidiaries, U.S. GAAP also requires, as stated in section II.B.2, recognition by disclosure or otherwise of the effect of intervening events that materially affect the financial position or results of operations.<sup>129</sup> Because this U.S. GAAP requirement effectively eliminates the effect of differences in the fiscal periods of the issuer and its subsidiaries, we believe that disclosure of the subsidiary's fiscal year closing date and an explanation of the necessity for using different closing dates is no longer useful for investors. We, therefore, propose to delete Rule 3A-02(b)(1) of Regulation S-X.

#### Request for Comment

12. Do disclosures of the subsidiary's fiscal year closing date and the explanation of the necessity for using different closing dates provide useful information to investors? What would the impact to investors and issuers be of a deletion of this requirement?

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<sup>126</sup> Please refer to the related discussions in sections II.B.2, III.E.2, and V.B.4.

<sup>127</sup> See Rule 3A-02(b)(1) of Regulation S-X.

<sup>128</sup> See ASC 810-10-45-12.

<sup>129</sup> See ASC 810-10-45-12.

## **b. Changes in Fiscal Periods**

Regulation S-X requires disclosure in the notes to the financial statements of: (1) material changes in the fiscal periods of an issuer's subsidiaries and (2) the manner in which the material changes are reflected in the financial statements.<sup>130</sup> The corresponding requirements in U.S. GAAP are narrower than Regulation S-X in three respects.

First, U.S. GAAP limits changes in the difference between an issuer and its subsidiary's fiscal periods to situations where the change is preferable.<sup>131</sup> Second, U.S. GAAP only sets forth requirements related to a change or elimination of a previously existing difference in fiscal periods, for example, when an issuer is able to obtain financial information of a subsidiary with fiscal periods that are more consistent with, or the same as, that of the issuer.<sup>132</sup> Regulation S-X is broader than U.S. GAAP in that it refers to all changes in fiscal periods, rather than only changes to pre-existing differences in fiscal periods. Third, U.S. GAAP, unlike Regulation S-X, specifies the manner of treatment of a change in fiscal period by requiring that the change be reflected in the financial statements on a retrospective basis, if practicable.<sup>133</sup> We believe that U.S. GAAP, in limiting potential changes, provides for more consistency in issuer financial statements and results in better financial reporting. Thus, we propose to delete the last sentence of Rule 3A-03(b) of Regulation S-X.

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<sup>130</sup> See Rule 3A-03(b) of Regulation S-X [17 CFR 210.3A-03(b)].

<sup>131</sup> ASC 810-10-45-13 states that a change in a difference in fiscal periods is a change in accounting policy, which requires that the issuer and its auditor assert that the new accounting policy is preferable to the old one. See ASC 250-10-45-12, Rule 8-03(b)(5) of Regulation S-X for SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP, Rule 10-01(b)(6) of Regulation S-X for non-SRCs, and Item 601(b)(16) of Regulation S-K.

<sup>132</sup> See ASC 810-10-45-13.

<sup>133</sup> See ASC 810-10-45-13.

## Request for Comment

13. Do issuers rely on the broader language in Rule 3A-03(b) as a basis to change their subsidiaries' fiscal periods where differences did not previously exist? Are issuers and their auditors able to assert preferability of these changes?
14. Does the broader language in Rule 3A-03(b) affect, in any material respect, the usefulness of information that investors receive? If so, how?

### **3. Repurchase and Reverse Repurchase Agreements<sup>134</sup>**

The requirements in Regulation S-X governing repurchase and reverse repurchase agreements were adopted in 1986, following developments at that time in the government securities market.<sup>135</sup> Their primary objective was to require disclosure about the nature and extent of registrants' repurchase and reverse repurchase agreements and the degree of risk involved in these transactions.<sup>136</sup> The FASB has more recently considered requirements in this area in response to constituent concerns in the wake of the global financial crisis. Most recently, in 2014, the FASB issued amendments to the accounting and disclosures for repurchase agreements and similar transactions.<sup>137</sup> These revisions to U.S. GAAP have resulted in overlapping disclosure requirements, as discussed further below.

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<sup>134</sup> Please refer to the related discussion in section III.E.9.

<sup>135</sup> See Disclosure Amendments to Regulation S-X Regarding Repurchase and Reverse Repurchase Agreements, Release No. 33-6621 (Jan. 30, 1986) [51 FR 3765].

<sup>136</sup> *Id.*

<sup>137</sup> See also Accounting Standards Update ("ASU") No. 2014-11, *Transfers and Servicing (Topic 860): Repurchase-to-Maturity Transactions, Repurchase Financings, and Disclosures*.

### **a. Balance Sheet Presentation**

Regulation S-X<sup>138</sup> and U.S. GAAP<sup>139</sup> both require separate presentation of repurchase liabilities associated with repurchase agreements on the face of the balance sheet.<sup>140</sup> However, because Regulation S-X, unlike U.S. GAAP, sets forth a 10 percent threshold for separate presentation,<sup>141</sup> the proposed amendments give rise to Bright Line Disclosure Threshold Considerations. We propose to delete the requirement for separate presentation in Rule 4-08(m)(1)(i) and the related 10 percent threshold. We would retain the requirement to include accrued interest payables in the separately presented liability amounts.<sup>142</sup>

### **b. Disaggregated Disclosures**

While Regulation S-X<sup>143</sup> and U.S. GAAP<sup>144</sup> both require disaggregated disclosures about repurchase agreements, they differ in the form and content of the disaggregated disclosures. First, Regulation S-X and U.S. GAAP both require disaggregated disclosures of repurchase liabilities by class of collateral and maturity interval. Regulation S-X provides a few illustrative examples of classes, where U.S. GAAP requires an entity to determine the appropriate level of disaggregation and classes to be presented on the basis of the nature, characteristics, and risks of

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<sup>138</sup> See Rule 4-08(m)(1)(i) of Regulation S-X [17 CFR 210.4-08(m)(1)(i)].

<sup>139</sup> See ASC 860-30-45-2.

<sup>140</sup> Regulation S-X requires separate presentation of repurchase liabilities incurred pursuant to repurchase agreements. U.S. GAAP is broader in that it includes other transactions with similar characteristics – specifically, “transactions in which cash is obtained in exchange for financial assets with an obligation for an opposite exchange later,” such as dollar rolls and securities lending transactions. See ASC 860-30-15-3.

<sup>141</sup> Specifically, Regulation S-X requires separate presentation if the carrying amount (or market value, if higher than the carrying amount or if there is no carrying amount) of the securities or other assets sold under repurchase agreements, in the aggregate, exceeds 10 percent of total assets.

<sup>142</sup> Please refer to the additional discussion of this requirement to include accrued interest payables in the separately presented liability in section III.E.9 below.

<sup>143</sup> See Rule 4-08(m)(1)(ii) of Regulation S-X [17 CFR 210.4-08(m)(1)(ii)].

<sup>144</sup> See ASC 860-30-50-7.



the collateral pledged. Regulation S-X also specifies maturity intervals (e.g., overnight, up to 30 days), whereas U.S. GAAP permits judgment to determine an appropriate range of maturity intervals. Further, Regulation S-X requires the disaggregated disclosure by class of collateral and maturity interval to be combined in the form of a single table. Although U.S. GAAP is silent about the form of disclosure, the sole example it includes of an approach to comply with its requirements is in the form of a table that includes both classes of collateral as well as maturity intervals similar to those required by Regulation S-X.<sup>145</sup>

Second, Regulation S-X specifies tabular disclosure of the carrying amount of associated assets sold under repurchase agreements disaggregated by class of asset sold and maturity interval (e.g., overnight, up to 30 days) of the repurchase agreement.<sup>146</sup> Instead of a tabular format, U.S. GAAP requires separate presentation on the transferor's balance sheet of the carrying amount of assets that the transferee has the right to sell or repledge.<sup>147</sup> U.S. GAAP also requires disclosure in the notes to the financial statements of the carrying amount and balance sheet classification of both assets pledged as collateral that the transferee does not have the right to sell or repledge and the associated liabilities along with quantitative information about the relationship(s) between them.<sup>148</sup>

Despite some differences in form and content, we believe that disclosures required by Regulation S-X convey reasonably similar information as the disclosures that result from

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<sup>145</sup> See ASC 860-30-55-4.

<sup>146</sup> See Rules 4-08(m)(1)(ii)(A)(i) [17 CFR 210.4-08(m)(1)(ii)(A)(i)] and 4-08(m)(1)(ii)(B) [17 CFR 210.4-08(m)(1)(ii)(B)] of Regulation S-X.

<sup>147</sup> See ASC 860-30-25-5a.

<sup>148</sup> See ASC 860-30-50-1A.b.1 and 2.

compliance with the U.S. GAAP provisions discussed above, along with their accompanying disclosure objectives and aggregation principles.<sup>149</sup>

Third, Regulation S-X requires disaggregated disclosures of the market value of assets sold under repurchase agreements for which unrealized changes in market value are reported in income.<sup>150</sup> Although the FASB deliberated adding a requirement to disclose the market value of these assets to U.S. GAAP, it ultimately decided against doing so due to operability concerns.<sup>151</sup>

Based on the foregoing, we propose to delete Rule 4-08(m)(1)(ii), with the exception of the requirement in Rule 4-08(m)(1)(ii)(A)(ii) to disclose the interest rate on repurchase liabilities, which we would retain. We note that, because Regulation S-X, unlike U.S. GAAP, sets forth a 10 percent threshold for the disaggregated disclosures,<sup>152</sup> the proposed amendments give rise to Bright Line Disclosure Threshold Considerations.

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<sup>149</sup> U.S. GAAP requires that its minimum disclosure requirements about transactions such as repurchase agreements be supplemented as necessary to meet certain disclosures objectives (e.g., providing investors with an understanding of how transfers of financial assets affect an issuer's financial statements) and aggregation principles (e.g., presentation in a manner that clearly and fully explains the transferor's risk exposure related to the transferred financial assets and any restrictions on the assets of the entity). *See* ASC 860-10-50.

<sup>150</sup> *See* Rules 4-08(m)(1)(ii)(A)(i) and 4-08(m)(1)(ii)(B) of Regulation S-X. These rules, however, do not require disclosure of the carrying amount and market value of securities and other assets for which unrealized changes in market value are reported in current income or which have been obtained under reverse repurchase agreements. This scope is narrower than that for the U.S. GAAP requirement to separately present carrying amounts, which applies to all assets sold under repurchase agreements.

<sup>151</sup> *See* Minutes from FASB Board Meeting (Mar. 12, 2014), available at: [http://www.fasb.org/jsp/FASB/Document\\_C/DocumentPage&cid=1176163899372](http://www.fasb.org/jsp/FASB/Document_C/DocumentPage&cid=1176163899372). *See also* Accounting Standards Update ("ASU") No. 2014-11, *Transfers and Servicing (Topic 860): Repurchase-to-Maturity Transactions, Repurchase Financings, and Disclosures*.

<sup>152</sup> Specifically, Regulation S-X requires the tabular disclosures if the carrying amount (or market value, if higher than the carrying amount) of the securities or other assets sold under repurchase agreements, other than securities or other assets for which for which unrealized changes in market value are reported in current income or have been obtained under reverse repurchase agreements, in the aggregate, exceeds 10 percent of total assets.

## Request for Comment

15. Do disclosures required by Rule 4-08(m) convey reasonably similar information as the disclosures that result from compliance with the overlapping provisions discussed above?  
Why or why not?
16. As described above, the form and content of the disclosures required under U.S. GAAP differ in certain respects from Rule 4-08(m). Should we refer any of the disclosure requirements in Rule 4-08(m) to the FASB for potential incorporation into U.S. GAAP?  
If so, which ones and why?
17. Would revision of Rule 4-08(m) as described above affect, in any material respect, the usefulness of information that investors receive? If so, how?

### **c. Collateral Policy**

Regulation S-X<sup>153</sup> requires disclosure of the issuer's policy with regard to taking possession of assets purchased under reverse repurchase agreements. U.S. GAAP requires disclosure of the issuer's policy for requiring collateral or other security.<sup>154</sup> Although U.S. GAAP is not as specific as Regulation S-X about taking possession of collateral, we believe Regulation S-X requires disclosures that are encompassed by the disclosures that result from compliance with U.S. GAAP. Accordingly, we propose to delete this requirement in Rule 4-08(m)(2)(i)(B)(1).

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<sup>153</sup> See Rule 4-08(m)(2)(i)(B)(1) of Regulation S-X [17 CFR 210.4-08(m)(2)(i)(B)(1)].

<sup>154</sup> See ASC 860-30-50-1Aa.

Regulation S-X, unlike U.S. GAAP, requires these disclosures when the aggregate carrying amount of reverse repurchase agreements exceeds 10 percent of total assets. As such, these differences also give rise to Bright Line Disclosure Threshold Considerations.

#### Request for Comment

18. Does Rule 4-08(m)(2)(i)(B)(1) require disclosures that are encompassed by disclosures that result from compliance with the overlapping provisions discussed above? Why or why not?
19. As described above, U.S. GAAP is not as specific as Regulation S-X about taking possession of collateral. Would elimination of Rule 4-08(m)(2)(i)(B)(1) affect, in any material respect, the usefulness of information that investors receive? If so, how?

#### **4. Derivative Accounting Policies**

Regulation S-X<sup>155</sup> and U.S. GAAP<sup>156</sup> both require disclosure in the notes to the financial statements of accounting policies for certain derivative instruments. Regulation S-X applies to: (1) derivative financial instruments, as defined under U.S. GAAP, and (2) derivative commodity instruments such as commodity futures, swaps, and options that are permitted to be settled in cash or with another financial instrument, to the extent such instruments are not within the definition of derivative financial instruments. For both types of instruments, Regulation S-X requires, where material, disclosure of the accounting policies; the criteria required to be met for each accounting method used; the accounting method used if those criteria are not met; the

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<sup>155</sup> See Rule 4-08(n) of Regulation S-X [17 CFR 210.4-08(n)] and Note 2(b) to Rule 8-01 of Regulation S-X [17 CFR 210.8-01]. Rule 4-08(n) applies to non-SRCs and Note 2(b) to Rule 8-01 applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP.

<sup>156</sup> See ASC 815-10-50.

method used to account for terminations of derivatives designated as hedges or derivatives used to affect the terms, fair values, or cash flows of a designated item; the method used to account for derivatives when the designated item matures, is sold, is extinguished, or is terminated; and how the derivative instruments are reported in the financial statements.

U.S. GAAP requires disclosure of accounting principles and methods that materially affect the financial statements, including those involving a selection from existing acceptable alternatives, and important judgments about the appropriateness of the principles.<sup>157</sup> We believe that these U.S. GAAP principles call for reasonably similar information as the corresponding requirements in Regulation S-X, as they require disclosure of the accounting method applied to each aspect of a material derivative transaction from inception to termination.

In addition, for derivative financial instruments, as defined under U.S. GAAP, U.S. GAAP requires disclosure of how and why the issuer uses derivative instruments, how the derivative instruments and related hedged items are accounted for, and how they affect the financial statements.<sup>158</sup> Although Regulation S-X is more detailed than U.S. GAAP, the specificity in Regulation S-X stemmed, in part, from the absence of a comprehensive accounting model for derivatives when the Commission adopted these disclosure requirements.<sup>159</sup> Since

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<sup>157</sup> See ASC 235-10-50-1 and ASC 235-10-50-3.

<sup>158</sup> See ASC 815-10-50.

<sup>159</sup> See *Disclosure of Accounting Policies for Derivative Financial Instruments and Derivative Commodity Instruments, and Disclosure of Quantitative and Qualitative Information about Market Risk Inherent in Derivative Financial Instruments, Other Financial Instruments and Derivative Commodity Instruments*, Release No. 33-7386, Financial Reporting Release No. 48, (Jan. 31, 1997).

In this adopting release, the Commission stated that in the absence of comprehensive accounting literature, registrants have developed accounting practices for options and complex derivatives by analogy to the limited amount of literature that does exist. The Commission also noted that those analogies are complicated because under existing accounting literature, there are at least three distinctively different methods of accounting for derivatives (e.g. fair value accounting, deferral accounting and accrual accounting). The Commission further

that time, the FASB has adopted an accounting model for derivative financial instruments, as defined under U.S. GAAP.<sup>160</sup> Because U.S. GAAP limits the options for accounting for derivatives, we believe that the additional specific disclosure requirements in Rule 4-08(n) are no longer applicable.

Based on the foregoing, we propose to delete Rule 4-08(n) and Note 2(b) to Rule 8-01.

#### Request for Comment

20. Is the U.S. GAAP requirement to disclose accounting principles and methods that materially affect the financial statements reasonably similar to the corresponding requirements in Regulation S-X?
21. Are the specific disclosure requirements in Rule 4-08(n) applicable or necessary in light of the U.S. GAAP requirement? If so, which ones and why?
22. Would deletion of Rule 4-08(n) affect, in any material respect, the usefulness of information that investors receive about derivative financial instruments, as defined under U.S. GAAP? If so, how?
23. Would deletion of Rule 4-08(n) affect, in any material respect, the usefulness of information that investors receive about derivative commodity instruments that are not within the definition of derivative financial instruments? If so, how?
24. Are the requirements in Rule 4-08(n) used by analogy for contracts that derive their value from an underlying price, index, rate, condition, or event, but do not meet the FASB ASC Master Glossary definition of “derivative financial instrument?” Would deletion of Rule

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observed that the underlying concepts and criteria used in determining the applicability of those accounting methods is not consistent.

<sup>160</sup> See SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, codified in ASC 815.

4-08(n) affect, in any material respect, the usefulness of information that investors receive about accounting policy disclosures for these instruments? If so, how?

### **5. Distributable Earnings for Registered Investment Companies**

Regulation S-X<sup>161</sup> and U.S. GAAP<sup>162</sup> both require registered investment companies to present certain components of capital on their balance sheet. Regulation S-X incrementally specifies that, as part of this presentation, three components of distributable earnings must be separately presented on the balance sheet: (1) net investment income, (2) net realized gains (losses) on investment transactions, and (3) net unrealized appreciation (depreciation) in value of investments.<sup>163</sup> Regulation S-X requires these amounts to be presented on a book basis, which we do not believe is useful to investors of registered investment companies. Similar to REITs, as discussed in section III.C.1, registered investment companies are generally structured such that they are not subject to entity-level taxation on the amounts distributed to their investors. As such, the book basis amounts required to be presented under Regulation S-X do not provide investors with insight into the tax implications of registered investment company distributions. Rather, the requirement in U.S. GAAP to disclose the components of distributable earnings on a tax basis in the notes to the financial statements<sup>164</sup> provides this insight.

Based on the foregoing, we propose to amend Rule 6-04.17 to require presentation of the total, rather than the components, of distributable earnings on the balance sheet. We also propose to delete the requirement in Rule 6-09.7 for parenthetical disclosure of undistributed net

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<sup>161</sup> See Rule 6-04.17 of Regulation S-X [17 CFR 210.6-04.17].

<sup>162</sup> See ASC 946-20-50-11.

<sup>163</sup> See Rule 6-04.17 of Regulation S-X.

<sup>164</sup> See ASC 946-20-50-11.

investment income, one of the components of distributable earnings, on a book basis, on the statement of changes in net assets.<sup>165</sup>

### Request for Comment

25. Do investors use the information about the three components (net investment income, net realized gains (losses) on investment transactions, and net unrealized appreciation (depreciation) in value of investments) of distributable earnings separately presented on registered investment company balance sheets? If so, how?
26. Would amendment of Rule 6-04.17 to require presentation of the total, rather than the components, of distributable earnings on the balance sheet affect, in any material respect, the usefulness of information that investors receive? If so, how?
27. Would deletion of the requirement in Rule 6-09.7 for parenthetical disclosure of undistributed net investment income on the statement of changes in net assets affect, in any material respect, the usefulness of information that investors receive? If so, how?

## **6. Insurance Companies<sup>166</sup>**

### **a. Liability Assumptions**

Regulation S-X<sup>167</sup> and U.S. GAAP<sup>168</sup> both require disclosure in the notes to the financial statements of assumptions for insurance liabilities stated at present value. Regulation S-X, unlike U.S. GAAP, specifically identifies three assumptions (interest rates, mortality, and withdrawals) for disclosure about the liability for future policy benefits. U.S. GAAP, however,

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<sup>165</sup> See Rule 6-09.7 of Regulation S-X [17 CFR 210.6-09.7].

<sup>166</sup> Please refer to the related discussions in sections II.B.9 and V.B.8.

<sup>167</sup> See Rule 7-03(a)(13)(b) of Regulation S-X [17 CFR 210.7-03(a)(13)(b)].

<sup>168</sup> See ASC 944-40-50.



does not limit its disclosures to these three assumptions but, rather, provides additional examples of assumptions.<sup>169</sup> Accordingly, we propose to delete Rule 7-03(a)(13)(b).

#### Request for Comment

28. Would deletion of the requirement in Rule 7-03(a)(13)(b) for disclosures of the above three assumptions affect, in any material respect, the usefulness of information that investors receive? If so, how?

#### **b. Reinsurance Transactions**

Regulation S-X<sup>170</sup> and U.S. GAAP<sup>171</sup> both require disclosures in the notes to the financial statements about the nature of reinsurance contracts. Regulation S-X specifically requires disclosure of the nature and effect of material nonrecurring reinsurance transactions.<sup>172</sup> We believe this provision requires disclosures that are encompassed by the disclosures that result from compliance U.S. GAAP and Regulation S-K. Specifically, although U.S. GAAP does not explicitly refer to nonrecurring reinsurance transactions, it requires disclosure of all reinsurance transactions, meaning that nonrecurring and recurring transactions would be included in the disclosures. In addition, Item 303(a)(3)(i) of Regulation S-K requires disclosure of any unusual or infrequent events or changes, which may include the nature and effect of material nonrecurring reinsurance transactions.

Based on the foregoing, we propose to delete Rule 7-03(a)(13)(c). We note that because disclosures required by Item 303(a)(3)(i), unlike those required by Regulation S-X, may be

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<sup>169</sup> See ASC 944-40-30-7 for examples of assumptions made in estimating the liability.

<sup>170</sup> See Rule 7-03(a)(13)(c) of Regulation S-X [17 CFR 210.7-03(a)(13)(c)].

<sup>171</sup> See ASC 944-20-50-3 and ASC 944-20-50-4.

<sup>172</sup> See Rule 7-03(a)(13)(c)(2) [17 CFR 210.7-03(a)(13)(c)(2)].

provided outside of the audited financial statements, the proposed amendments give rise to Disclosure Location – Financial Statement Considerations.

#### Request for Comment

29. Does Rule 7-03(a)(13)(c) require disclosures that are encompassed by disclosures that result from compliance with the overlapping provisions discussed above? Why or why not?
30. Would deletion of the requirement in Rule 7-03(a)(13)(c) affect, in any material respect, the usefulness of information that investors receive? If so, how?
31. As stated above, U.S. GAAP does not require separate disclosure of nonrecurring transactions. Should we refer disclosure requirements specifically about the nature and effect of material nonrecurring reinsurance to the FASB for potential incorporation into U.S. GAAP?

### **7. Interim Financial Statements – Material Events Subsequent to the End of the Most Recent Fiscal Year**

Regulation S-X requires disclosure, in interim financial statements, of material events subsequent to the end of the most recent fiscal year.<sup>173</sup> As discussed below, we believe that these provisions require disclosures that are encompassed by the disclosures that result from compliance with U.S. GAAP and Item 303(b) of Regulation S-K (or Item 9 of Form 1-A and Item 1 of Form 1-SA for Regulation A issuers), in combination.

Specifically, U.S. GAAP requires disclosure of a number of items occurring in the interim periods after the end of the most recent fiscal periods, including changes in accounting

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<sup>173</sup> See Rule 8-03(b)(2) [17 CFR 210.8-03(b)(2)] and Rule 10-01(a)(5) [17 CFR 210.10-01(a)(5)] of Regulation S-X. Rule 8-03(b)(2) applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP and Rule 10-01(a)(5) applies to non-SRCs.

principles, changes in estimates, disposals, business combinations, and disclosures about segments, fair value, and pensions.<sup>174</sup> Item 303(b) of Regulation S-K (or Item 9 of Form 1-A and Item 1 of Form 1-SA for Regulation A issuers) require disclosure of: (1) material changes in the issuer's financial condition and results of operations, (2) unusual or infrequent events that materially affect income and any other significant components of revenues or expenses that, in the issuer's judgment, should be described in order to understand its interim results of operations, and (3) known trends that are reasonably expected to have a material effect on the financial statements.<sup>175</sup>

Rule 10-01(a)(5) incrementally requires disclosure of the status of long-term contracts and changes in capitalization, including significant new borrowings or modification of existing financing arrangements. Although Regulation S-K does not specify these two items, they would be required under Item 303(b) of Regulation S-K (or Item 9 of Form 1-A and Item 1 of Form 1-SA for Regulation A issuers), if material, as discussed above.

Based on the foregoing, we propose to delete the requirements to disclose material events subsequent to the end of the most recent fiscal year in Rule 8-03(b)(2) and Rule 10-01(a)(5). We note that because disclosures required by Item 303(b) (or Item 9 of Form 1-A and Item 1 of Form 1-SA for Regulation A issuers), unlike those required by Regulation S-X, may be provided outside of the interim financial statements, the proposed amendments give rise to Disclosure Location – Financial Statement Considerations.

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<sup>174</sup> See ASC 270-10-50-1 and 7.

<sup>175</sup> Item 303(b) of Regulation S-K explicitly requires interim disclosure of changes in financial condition and results of operations and, through its reference to Item 303(a), requires disclosure of unusual and infrequent events and trends.

### Request for Comment

32. Do the provisions in Rule 8-03(b)(2) and Rule 10-01(a)(5) to disclose material events subsequent to the end of the most recent fiscal year require disclosures that are encompassed by disclosures that result from compliance with the overlapping provisions discussed above? Why or why not?
33. Rule 10-01(a)(5) specifies disclosure of the status of long-term contracts and changes in capitalization subsequent to the most recent fiscal year. Would deletion of this requirement affect, in any material respect, the usefulness of information that investors receive? If so, how?

### **8. Interim Financial Statements – Changes in Accounting Principles<sup>176</sup>**

Regulation S-X requires disclosure in the notes to the interim financial statements of the date of any material accounting change.<sup>177</sup> We believe this information is unnecessary because U.S. GAAP requires disclosure of the accounting change in the period of the change.<sup>178</sup> We, therefore, propose to delete these requirements in Rule 8-03(b)(5) and Rule 10-01(b)(6).

### Request for Comment

34. Is disclosure of the date of any material accounting change unnecessary in light of the U.S. GAAP requirements discussed above? Why or why not?

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<sup>176</sup> Please refer to the related discussions in section II.B.11 and V.B.14.

<sup>177</sup> See Rule 8-03(b)(5) and Rule 10-01(b)(6) [17 CFR 210.10-01(b)(6)] of Regulation S-X. Rule 8-03(b)(5) specifically applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP, while 10-01(b)(6) applies to non-SRCs.

<sup>178</sup> See ASC 250-10-50-1 and ASC 270-10-50-1g.

## 9. Interim Financial Statements – Pro Forma Business Combination Information<sup>179</sup>

Regulation S-X<sup>180</sup> and U.S. GAAP<sup>181</sup> both require supplemental pro forma information about business combinations in the notes to interim financial statements. These disclosure requirements differ in two ways: (1) scope and (2) the line items required to be disclosed. Notwithstanding these differences, we believe that U.S. GAAP and Item 9.01 of Form 8-K result in reasonably similar disclosures as the corresponding requirements in Regulation S-X.

First, with respect to scope, Regulation S-X requires disclosure of pro forma information for significant business combinations for SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP and material business combinations for non-SRCs. U.S. GAAP, on the other hand, does not qualify the size of the business combinations to which pro forma information requirements apply. Accordingly, the requirements in U.S. GAAP would apply to the same or a greater number of business combinations and, thus, subsume the scope of the corresponding requirements in Regulation S-X.

Second, with respect to the line items required to be disclosed, Regulation S-X requires disclosure of pro forma revenue, net income, net income attributable to the issuer, and net income per share. Regulation S-X also requires SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP to disclose pro forma income from continuing operations.

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<sup>179</sup> Please refer to the related discussion in section V.B.6.

<sup>180</sup> See Rule 8-03(b)(4) [17 CFR 210.8-03(b)(4)] and Rule 10-01(b)(4) [17 CFR 210.10-01(b)(4)] of Regulation S-X. Rule 8-03(b)(4) specifically applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP, while 10-01(b)(4) applies to non-SRCs.

<sup>181</sup> See ASC 270-10-50-7, which refers to ASC 805-10-50-2h.3 for purposes of interim disclosures.

U.S. GAAP only requires disclosure of pro forma revenue and earnings. This difference resulted from changes to U.S. GAAP for which Regulation S-X was not conformed, as discussed below.

The Commission originally adopted Rule 8-03(b)(4) and Rule 10-01(b)(4) to require in interim financial statements the same pro forma business combination disclosures provided in annual financial statements under Accounting Principles Board (“APB”) Opinion No. 16, *Business Combinations*.<sup>182</sup> In 2001, the FASB issued Statement of Financial Accounting Standards (“SFAS”) No. 141, *Business Combinations* (“SFAS No. 141”), which required these pro forma disclosures in interim financial statements and superseded APB Opinion No. 16; however, Regulation S-X was not updated at that time to eliminate the duplication with U.S. GAAP. In 2007, the FASB issued SFAS No. 141R (revised 2007), *Business Combinations* (“SFAS No. 141R”), which required fewer pro forma line items – namely, only revenue and earnings – than previously required under SFAS No. 141, in part to converge with IFRS.<sup>183</sup>

As a result of these changes, issuers are required to disclose more pro forma information about business combinations in interim periods than in annual periods,<sup>184</sup> even though Regulation S-X generally imposes fewer obligations with regard to interim financial statements.<sup>185</sup> Moreover, Rule 8-03(b)(4) requires SRCs and Regulation A issuers in a Tier 2

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<sup>182</sup> In the proposing release, the Commission noted that the proposed rule would require disclosure of pro forma data in connection with business combinations accounted for on a purchase basis similar to that required in annual statements by APB No. 16. See *Interim Financial Data Proposals to Increase Disclosure*, Release No. 33-5549 (Dec. 19, 1974) [40 FR 1079].

<sup>183</sup> SFAS No. 141R, paragraph B426.

<sup>184</sup> See ASC 805-10-50-2h.3.

<sup>185</sup> For example, Article 8 and Article 10 of Regulation S-X permit the presentation of condensed financial statements, do not require audits of interim financial statements, allow issuers to assume that a user has read the preceding year’s audited financial statements, permit omission of details of accounts that have not changed significantly since the audited balance sheet date, and permit omission of the disclosures required by Rule 4-08 of Regulation S-X.

offering that report under U.S. GAAP to present more line items than the corresponding requirement in Rule 10-01(b)(4) for non-SRCs, even though Commission disclosure requirements, as a general matter, provide certain accommodations for SRCs<sup>186</sup> and Regulation A issuers.

In addition, we believe Item 9.01 of Form 8-K mitigates at least in part the absence of a U.S. GAAP requirement to present pro forma earnings per share, as it requires SRCs and non-SRCs to file, within approximately 75 days after the transaction, pro forma financial information for significant acquisitions, including earnings per share, through the issuer's most recently filed balance sheet. We note, however, this pro forma financial information would not cover the same periods as the pro forma information required under Rule 8-03(b)(4) and Rule 10-01(b)(4).<sup>187</sup>

Based on the foregoing, we propose to delete the requirements for pro forma financial information in interim filings for business combinations in Rule 8-03(b)(4) and Rule 10-01(b)(4).

#### Request for Comment

35. Would elimination of the specific requirements discussed above to disclose the line items pro forma income from continuing operations, net income attributable to the issuer, and net income per share affect, in any material respect, the usefulness of information that investors receive? If so, how? Do the pro forma disclosures in Form 8-K sufficiently

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<sup>186</sup> For example, SRCs are required to present only two, rather than three, years of financial statements and are not required to present selected financial data in accordance with Item 301 of Regulation S-K [17 CFR 229.301].

<sup>187</sup> For example, for a significant acquisition that occurs on September 1, 2015, the Form 8-K would contain pro forma financial information for the year ended December 31, 2014 and the six months ended June 30, 2015 and 2014. Under Rule 8-03(b)(4) and Rule 10-01(b)(4), however, the Form 10-Q for the nine months ended September 30, 2015 would be required to include pro forma disclosures for the nine months ended September 30, 2015 and 2014.

substitute for the loss of these specific line items, despite the differences in timing discussed above?

### **10. Interim Financial Statements – Dispositions<sup>188</sup>**

For significant dispositions, Regulation S-X requires SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP to disclose in the notes to the financial statements pro forma revenue, income from continuing operations, net income, net income attributable to the issuer, and net income per share for all interim periods presented, as though the disposition occurred at the beginning of the periods.<sup>189</sup> There are two types of dispositions: (1) those that meet the definition of discontinued operations and (2) all others (hereafter referred to as “other dispositions”).

U.S. GAAP requires that the effects of discontinued operations be isolated and separately presented on the income statement on a retrospective basis,<sup>190</sup> thereby obviating the need for pro forma information for discontinued operations in the notes to the financial statements.

For other dispositions, we believe that the disclosures required by U.S. GAAP and Item 9.01 of Form 8-K results in reasonably similar disclosures as the pro forma disclosures mandated by Rule 8-03(b)(4). Specifically, U.S. GAAP requires disclosure of pre-tax profit and pre-tax profit attributable to the parent for individually significant dispositions for all interim periods presented.<sup>191</sup> However, U.S. GAAP does not contain an equivalent to the requirement in Rule 8-

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<sup>188</sup> Please refer to the related discussion in section II.B.14.

<sup>189</sup> See Rule 8-03(b)(4) of Regulation S-X.

<sup>190</sup> See ASC 205-20-45.

<sup>191</sup> See ASC 270-10-50-7, which refers to ASC 360-10-50-3A for purposes of interim disclosures. ASC 360-10-50-3A is effective for public business entities on a prospective basis to: (1) all disposals (or classifications as held for sale) of components of an entity that occur within annual periods beginning on or after December 15,



03(b)(4) to disclose pro forma revenues as if the other disposal occurred at the beginning of the periods presented.

We believe Item 9.01 of Form 8-K provides some mitigation, as it requires SRCs to file within four business days after a significant disposition, pro forma financial information, including revenue, income from continuing operations, and income per share, through the most recently filed balance sheet date. We note, however, this pro forma financial information would not cover the same periods as the separate results required under Rule 8-03(b)(4).<sup>192</sup>

In addition, Rule 8-03(b)(4) requires SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP to disclose more information about dispositions in interim periods than in annual periods,<sup>193</sup> even though Regulation S-X, as noted above, generally imposes fewer obligations with regard to interim financial statements. Moreover, Rule 8-03(b)(4) requires SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP to disclose more extensive information about other dispositions than is required of non-SRCs,<sup>194</sup> even though Commission disclosure requirements, as a general matter, provide certain scaled disclosure accommodations for SRCs.<sup>195</sup>

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2014, and interim periods within those years and (2) all businesses that, on acquisition, are classified as held for sale that occur within annual periods beginning on or after December 15, 2014, and interim periods within those years. Early adoption is permitted, but only for disposals (or classifications as held for sale) that have not been reported in financial statements previously issued or available for issuance.

<sup>192</sup> For example, for a significant disposal that occurs on August 3, 2015, the Form 8-K filed by August 7, 2015, would contain pro forma financial information for the year ended December 31, 2014 and the three months ended March 31, 2015 and 2014, as if the disposal had occurred on January 1, 2014. In contrast, Rule 8-03(b)(4) would require pro forma disclosures in the September 30, 2015 interim financial statements, filed on Form 10-Q by November 16, 2015, for the nine months ended September 30, 2015 and 2014, as if the disposal had occurred at the beginning of each period presented.

<sup>193</sup> See ASC 360-10-50-3A.

<sup>194</sup> See Rule 10-01(b)(5) of Regulation S-X [17 CFR 210.10-01(b)(5)].

<sup>195</sup> See *supra* note 186.

Based on the foregoing, we propose to delete these requirements in Rule 8-03(b)(4).

### Request for Comment

36. Would elimination of the specific requirement discussed above to disclose pro forma revenue affect, in any material respect, the usefulness of information that investors receive? If so, how? Do the pro forma disclosures in Form 8-K sufficiently substitute for this specific line item, despite the differences in timing discussed above?

### **11. Segments**

Item 101(b) of Regulation S-K<sup>196</sup> requires disclosure of segment financial information, restatement of prior periods when reportable segments change, and discussion of interim segment performance that may not be indicative of current or future operations. U.S. GAAP<sup>197</sup> and Item 303(b) of Regulation S-K<sup>198</sup> require similar disclosures. In fact, Item 101(b) explicitly permits issuers to cross-reference between the notes to the financial statements and the description of business to avoid duplicative disclosures about segments. We, therefore, propose to delete Item 101(b). We note that because these disclosures (or the cross-reference to the notes to the financial statements) are located in the business section of the filing, while the

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<sup>196</sup> 17 CFR 229.101(b).

<sup>197</sup> See ASC 280-10-50-22, ASC 280-10-50-34, and ASC 280-10-50-35.

<sup>198</sup> 17 CFR 229.303(b). Specifically, Instruction 4 of Item 303(b) of Regulation S-K, which addresses interim periods, requires that the registrant's discussion of material changes in results of operations shall identify any significant elements of the registrant's income or loss from continuing operations which do not arise from or are not necessarily representative of the registrant's ongoing business. The introduction paragraph to Item 303(b) also states that the interim discussion and analysis shall include a discussion of material changes in those items specifically listed in paragraph (a) of the Item. Since paragraph (a) indicates that where in a registrant's judgment a discussion of segment information or of other subdivisions of the registrant's business would be appropriate to an understanding of such business, the discussion shall focus on each relevant, reportable segment or other subdivision of the business and on the registrant as a whole, the requirement in Item 101(b)(2) of Regulation S-K is duplicative of Item 303 requirements.

corresponding disclosures are in the notes to the financial statements, their elimination gives rise to Disclosure Location – Prominence Considerations.

Regulation A issuers are similarly required to cross-reference to their segment disclosures under U.S. GAAP or IFRS.<sup>199</sup> We also propose to delete Item 7(b) of Form 1-A. We note that because the cross-reference to the notes to the financial statements is located in the business section of the filing, while the corresponding disclosures are in the notes to the financial statements, its elimination also gives rise to Disclosure Location – Prominence Considerations.

## **12. Geographic Areas<sup>200</sup>**

### **a. Financial Information**

Regulation S-K<sup>201</sup> requires disclosure of financial information by geographic area. U.S. GAAP requires similar disclosures.<sup>202</sup> In fact, Item 101(d)(2) explicitly permits issuers to cross-reference between the notes to the financial statements and the description of business to avoid duplicative disclosures about geographic areas. We, therefore, propose to delete Item 101(d)(1) and Item 101(d)(2).<sup>203</sup> We note that because these disclosures (or the cross-reference to the notes to the financial statements) are located in the business section of the filing, while the corresponding disclosures are in the notes to the financial statements, their elimination gives rise to Disclosure Location – Prominence Considerations.

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<sup>199</sup> See Item 7(b) of Form 1-A.

<sup>200</sup> Please refer to the related discussion in section III.D.3.

<sup>201</sup> 17 CFR 229.101(d)(1) and 17 CFR 229.101(d)(2).

<sup>202</sup> See ASC 280-10-50-41.

<sup>203</sup> Two commenters on the Disclosure Effectiveness Initiative recommended that Item 101(d)(1) and Item 101(d)(2) be deleted given the overlap with ASC 280. See letters from the Disclosure Effectiveness Working Group of the Federal Regulation of Securities Committee and the Law & Accounting Committee of the American Bar Association (“ABA”) (Mar. 6, 2015) and Center for Capital Markets Competitiveness, U.S. Chamber of Commerce (“CCMC”) (July 29, 2014).

## **b. Risks and Dependence**

Item 101(d)(3) of Regulation S-K requires disclosures of any risks associated with an issuer's foreign operations and any segment's dependence on foreign operations. We believe that Item 101(d)(3) requires disclosures that are largely encompassed by the disclosures that result from compliance with other parts of Regulation S-K. Specifically, Item 503(c) of Regulation S-K requires disclosure of significant risk factors. Although Item 101(d)(3) is more expansive than Item 503(c) in its requirement to disclose "any" risk, rather than "significant" risk factors, we believe that disclosure of "significant" risk factors provides appropriate disclosure to investors and disclosure of "any" risk is not necessary.

In addition, Item 303(a) of Regulation S-K requires disclosure of trends and uncertainties by segment, if appropriate to an understanding of the issuer as a whole, which would include disclosure of a segment's dependence on foreign operations.<sup>204</sup> We, therefore, propose to delete Item 101(d)(3).<sup>205</sup> We note that because these disclosures are located in the business section of the filing, while the corresponding disclosures are in the risk factors and management's discussion and analysis ("MD&A") sections, their elimination gives rise to Disclosure Location – Prominence Considerations.

### Request for Comment

37. Would deletion of the requirements in Item 101(d)(3) affect, in any material respect, the usefulness of information that investors receive? If so, how?

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<sup>204</sup> The proposed amendment to add a reference to "geographic areas" to Item 303(a), as discussed in section III.D.3, would also help ensure disclosure of a segment's dependence on foreign operations.

<sup>205</sup> One commenter on the Disclosure Effectiveness Initiative observed that material disclosures about geographic areas would already be provided under Item 303 of Regulation S-K. See letter from CCMC (July 29, 2014).

### 13. Seasonality

Regulation S-K<sup>206</sup> and U.S. GAAP<sup>207</sup> both require disclosures about seasonality. As discussed below, we believe that these provisions in Instruction 5 to Item 303(b) (“Instruction 5”) and Item 101(c)(1)(v) require disclosures that convey reasonably similar information as the disclosures that result from compliance with U.S. GAAP and other parts of Regulation S-K, in combination.

#### a. Interim Disclosures

Instruction 5 and U.S. GAAP both require disclosures about seasonality in interim periods. Accordingly, we propose to delete Instruction 5. We note that because U.S. GAAP requires seasonality disclosures in the financial statements, whereas Instruction 5 requires disclosure in MD&A, its elimination gives rise to Disclosure Location – Prominence Considerations. With the proposed amendments, issuers may also be less willing to voluntarily supplement the required disclosures in the notes to the financial statements with forward-looking information because note disclosures are not subject to safe harbor protections under the PSLRA.

#### Request for Comment

38. Would the unavailability of the PSLRA safe harbor in this instance affect issuers or investors? If so, how? What disclosures, if any, are currently provided to voluntarily supplement the required disclosures above? Would issuers cease to provide these voluntary disclosures if we delete Instruction 5? If so, would such a change affect the information available to investors?

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<sup>206</sup> See Instruction 5 to Item 303(b) of Regulation S-K. This disclosure is required where the effect is material. See also Item 101(c)(1)(v) [17 CFR 229.101(c)(1)(v)] of Regulation S-K.

<sup>207</sup> See ASC 270-10-45-11.

## **b. Annual Disclosures**

Item 101(c)(1)(v) requires annual seasonality disclosure. Seasonality, by definition, relates to variations within annual periods, so the effects of seasonality are not evident in annual financial statements. We, therefore, believe that interim seasonality disclosures required under U.S. GAAP, as discussed above, are more useful to investors than annual seasonality disclosures.

Item 101(c)(1)(v), unlike U.S. GAAP, incrementally requires seasonality disclosure at the segment level, to the extent material to an understanding of the business as a whole. However, Item 303(b) of Regulation S-K requires disclosure of results of operations, liquidity, and capital resources in interim periods at the segment level, when appropriate to an understanding of the business.<sup>208</sup> Accordingly, we believe Item 303(b), in conjunction with U.S. GAAP, would result in reasonably similar disclosures as Item 101(c)(1)(v) about the effects of seasonality on an issuer's financial statements at the segment level, if material and appropriate to an understanding of the business.

Based on the foregoing, we propose to delete Item 101(c)(1)(v). We note that because these disclosures are located in the business section and MD&A, while the corresponding disclosures are in MD&A and the notes to the financial statements, their elimination gives rise to Disclosure Location – Prominence Considerations. With the proposed amendments, issuers may also be less willing to voluntarily supplement the required disclosures in the notes to the financial statements with forward-looking information because note disclosures are not subject to safe harbor protections under the PSLRA.

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<sup>208</sup> Specifically, Item 303(b) requires discussion of material changes in the items listed in Item 303(a). Item 303(a) requires discussion at the reportable segment level where appropriate to an understanding of the business.

## Request for Comment

39. Would deletion of the requirements in Item 101(c)(1)(v) affect, in any material respect, the usefulness of information that investors receive? If so, how?
40. Would the unavailability of the PSLRA safe harbor in this instance affect issuers or investors? If so, how? What disclosures, if any, are currently provided to voluntarily supplement the required disclosures above? Would issuers cease to provide these voluntary disclosures if we delete Item 101(c)(1)(v)? If so, would such a change affect the information available to investors?

### **14. Research and Development Activities**

#### **a. Domestic Issuers**

Regulation S-K requires disclosures, if material, of the amount spent on research and development activities for all years presented.<sup>209</sup> Although Regulation S-K uses terms that differ from U.S. GAAP,<sup>210</sup> we believe U.S. GAAP results in reasonably similar disclosures as this requirement.

First, Regulation S-K refers to the “amount spent,” while U.S. GAAP refers to “costs charged to expense” or “costs incurred.” We note, however, that the Regulation S-K adopting release used the term “expense” when discussing this requirement.<sup>211</sup>

Regulation S-K also uses the term “company-sponsored,” but U.S. GAAP does not. However, the Regulation S-K adopting release specified that the amount of company-sponsored

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<sup>209</sup> See Item 101(c)(1)(xi) of Regulation S-K for non-SRCs and Item 101(h)(4)(x) of Regulation S-K for SRCs. Item 101(c)(1)(xi) only requires this disclosure by non-SRCs if material.

<sup>210</sup> See ASC 730-10-50-1 and ASC 730-20-50-1.

<sup>211</sup> See *Adoption of Disclosure Regulation and Amendments of Disclosure Forms and Rules*, Release No. 33-5893 (Dec. 23, 1977) [42 FR 65554].

research and development expenses to be disclosed should be determined in accordance with U.S. GAAP, suggesting no difference in scope was intended.<sup>212</sup>

In addition, Regulation S-K refers to “customer-sponsored” research and development activities, while U.S. GAAP refers to “research and development performed on behalf of others.” Because U.S. GAAP is broader in its reference to all other parties, rather than only customers, the disclosures required by U.S. GAAP would encompass those required by Regulation S-K.

Further, Item 101(c)(1)(xi) only refers to customer-sponsored “research activities” rather than research *and* development activities. However, we do not believe this difference is substantive because Item 101(h)(4)(x) refers to “research and development activities” and it was intended to “parallel” Item 101(c)(1)(xi).<sup>213</sup>

Based on the foregoing, we propose to delete Item 101(c)(1)(xi) of Regulation S-K and Item 101(h)(4)(x) of Regulation S-K. We note that because the Item 101(c)(1)(xi) disclosures are located in the business section of the filing, while the corresponding disclosures are in the notes to the financial statements, their elimination gives rise to Disclosure Location – Prominence Considerations. With the proposed amendments, issuers may also be less willing to voluntarily supplement the required disclosures in the notes to the financial statements with forward-looking information because note disclosures are not subject to safe harbor protections under the PSLRA.

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<sup>212</sup> Id.

<sup>213</sup> See *Small Business Initiatives*, Release No. 33-6949, (Jul. 30, 1992) [57 FR 36442].



## Request for Comment

41. Would deletion of the requirements in Item 101(c)(1)(xi) and Item 101(h)(4)(x) affect, in any material respect, the usefulness of information that investors receive? If so, how?
42. Would the unavailability of the PSLRA safe harbor in this instance affect issuers or investors? If so, how? What disclosures, if any, are currently provided to voluntarily supplement the required disclosures above? Would issuers cease to provide these voluntary disclosures if we delete Item 101(c)(1)(xi) and Item 101(h)(4)(x)? If so, would such a change affect the information available to investors?

### **b. Foreign Private Issuers**

Item 5.C of Form 20-F requires foreign private issuers to describe their research and development policies, where significant, and disclose the amount spent on company-sponsored research and development activities. We propose to delete the requirement to disclose the amount spent, as foreign private issuers are already required to disclose the amount of research and development expenses in the notes to the financial statements.<sup>214</sup> We note that, in certain circumstances, IFRS requires amounts spent on development be capitalized as an intangible asset, instead of expensed.<sup>215</sup> However, although Commission disclosure requirements use terms different from IFRS, for the same reasons discussed above about differences between Commission disclosure requirements and U.S. GAAP terminology, we believe IFRS results in reasonably similar disclosures as this requirement. We also note that because the Item 5.C

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<sup>214</sup> Paragraph 126 of IAS 38, *Intangible Assets*, requires foreign private issuers that report under IFRS to disclose the aggregate amount of research and development expenses in the notes to their financial statements. Foreign private issuers that report under U.S. GAAP or Another Comprehensive Body of Accounting Principles with a reconciliation to U.S. GAAP are also required to disclose the amount of research and development expenses in the notes to their financial statements, as discussed above.

<sup>215</sup> See paragraph 57 of IAS 38, *Intangible Assets*.

disclosures are located in the operating and financial review and prospects section of Form 20-F, while the corresponding disclosures are in the notes to the financial statements, their elimination gives rise to Disclosure Location – Prominence Considerations. With the proposed amendments, issuers may also be less willing to voluntarily supplement the required disclosures in the notes to the financial statements with forward-looking information because note disclosures are not subject to safe harbor protections under the PSLRA.

#### Request for Comment

43. Does the requirement in Item 5.C of Form 20-F to disclose the amount spent on company-sponsored research and development activities result in reasonably similar disclosure as IFRS, which requires disclosure of research and development expense?
44. Would deletion of the above requirements in Item 5.C of Form 20-F affect, in any material respect, the usefulness of information that investors receive? If so, how?
45. Would the unavailability of the PSLRA safe harbor in this instance affect issuers or investors? If so, how? What disclosures, if any, are currently provided to voluntarily supplement the required disclosures above? Would issuers cease to provide these voluntary disclosures if we delete the above requirement in Item 5.C of Form 20-F? If so, would such a change affect, in any material respect, the usefulness of the information that investors receive?

#### **c. Regulation A Issuers**

Form 1-A requires Regulation A issuers to disclose, if material, the amount spent on research and development activities for all years presented.<sup>216</sup> This requirement is based on the

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<sup>216</sup> Item 7(a)(1)(iii) of Form 1-A.

requirement in Regulation S-K. Accordingly, Regulation A issuers that report under either U.S. GAAP or IFRS will provide substantially the same information in the notes to their financial statements, as described above. We, therefore, propose to delete Item 7(a)(1)(iii) of Form 1-A. We note that because the Item 7(a)(1)(iii) disclosures are located in the business section of Form 1-A, while the corresponding disclosures are in the notes to the financial statements, their elimination gives rise to Disclosure Location – Prominence Considerations. With the proposed amendments, issuers may also be less willing to voluntarily supplement the required disclosures in the notes to the financial statements with forward-looking information because note disclosures are not subject to safe harbor protections under the PSLRA.

#### Request for Comment

46. Would deletion of Item 7(a)(1)(iii) of Form 1-A affect, in any material respect, the usefulness of information that investors receive? If so, how?
47. Would the unavailability of the PSLRA safe harbor in this instance affect issuers or investors? If so, how? What disclosures, if any, are currently provided to voluntarily supplement the required disclosures above? Would issuers cease to provide these voluntary disclosures if we delete Item 7(a)(1)(iii) of Form 1-A? If so, would such a change affect, in any material respect, the usefulness of the information that investors receive?

### **15. Warrants, Rights, and Convertible Instruments<sup>217</sup>**

Regulation S-K requires disclosure on Form S-1 or Form 10 of the amount of common equity subject to outstanding options, warrants, or convertible securities, when the class of

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<sup>217</sup> Please refer to the related discussion in section II.B.5.

common equity has no established United States public trading market.<sup>218</sup> U.S. GAAP more broadly requires disclosure of the terms of significant contracts to issue additional shares, the number of shares authorized for certain equity awards,<sup>219</sup> and, in the calculation of diluted earnings per share, the weighted-average incremental shares that would be issued from the assumed exercise or conversion of options, warrants, and convertible securities.<sup>220</sup> As such, we propose to delete Item 201(a)(2)(i) of Regulation S-K. We note that because Item 201(a)(2)(i) disclosures are located with related information about the potential dilution of equity for which there is no established United States public trading market, such as the amount of common equity that is being publicly offered which could have a material effect on the market price of the issuer's common equity, while the corresponding disclosures are in the notes to the financial statements, the proposed amendments give rise to Disclosure Location – Prominence Considerations.

#### Request for Comment

48. Would deletion of Item 201(a)(2)(i) affect, in any material respect, the usefulness of information that investors receive? If so, how?

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<sup>218</sup> 17 CFR 229.201(a)(2)(i).

<sup>219</sup> ASC 470-20-50, ASC 505-10-50-3, ASC 505-50-50-1, ASC 718-10-50-1, ASC 718-10-50-2, and ASC 815-40-50-5.

<sup>220</sup> ASC 260-10-50. U.S. GAAP also requires disclosure of amounts not included in the calculation of diluted earnings per share because exercise or conversion of the securities would have had an antidilutive effect in the period. In aggregate, these amounts may be similar to, but not the same as, those required by Item 201(a)(2)(i) of Regulation S-K, as U.S. GAAP determines the incremental shares as a weighted average based on the period outstanding during the year and assumes that cash received from the assumed exercise or conversion is used to repurchase outstanding shares.

## 16. Dividends

Item 201(c)(1) of Regulation S-K<sup>221</sup> requires disclosure of the frequency and amount of cash dividends declared for the two most recent fiscal years and any subsequent interim period. Rule 3-04 of Regulation S-X requires annual disclosure of the amount of dividends per share and in the aggregate for each class of shares and changes in stockholders' equity for each period for which an income statement is required to be filed, but does not apply to interim periods. We propose to add requirements to Rule 8-03 and Rule 10-01 to mandate that Rule 3-04 be applied to interim periods. These proposed amendments would provide disclosure of the amount of dividends in interim periods, similar to Item 201(c)(1). In addition, the frequency of dividends would be evident from this disclosure.<sup>222</sup>

Based on the foregoing, we propose to delete the requirement in Item 201(c)(1) to disclose the frequency and amount of cash dividends declared. We also propose to delete the reference to dividends in Instruction 2 to Item 201 to conform to the deletion of Item 201(c)(1).<sup>223</sup>

Extending Rule 3-04 disclosures to interim periods may create some additional burden for issuers. However, we expect this burden would be minimal, as the required information is

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<sup>221</sup> 17 CFR 229.201(c)(1).

<sup>222</sup> These proposed amendments also address certain inconsistencies between Rule 3-04 of Regulation S-X [17 CFR 210.3-04] and U.S. GAAP and may create some additional burdens for issuers, as discussed in section V.B.5.

<sup>223</sup> Three commenters on the Disclosure Effectiveness Initiative stated that the requirement to disclose the frequency and amount of dividends pursuant to Item 201(c)(1) are unnecessary and proposed its elimination. See letters from ABA (Mar. 6, 2015), CCMC (July 29, 2014), and Standards & Financial Market Integrity Division, CFA Institute ("CFA Institute") (Nov. 12, 2014). One commenter on the Disclosure Effectiveness Initiative recommended more transparency in the disclosure of dividends, observing "[t]oo often these amounts are deliberately buried in financial statements that many small investors cannot read." See letter from Rosann Balfour (Sept. 27, 2015).

already available from the preparation of the interim financial statements.<sup>224</sup> In addition, we note that because disclosures required by Regulation S-K are located with related information about dividends and other stockholder matters, while the corresponding disclosures are in the notes to the financial statements, the proposed amendments give rise to Disclosure Location – Prominence Considerations. With the proposed amendments, issuers may also be less willing to voluntarily supplement the required disclosures in the notes to the financial statements with forward-looking information because note disclosures are not subject to safe harbor protections under the PSLRA.

#### Request for Comment

49. Would deletion of Item 201(c)(1) affect, in any material respect, the usefulness of information that investors receive? If so, how?
50. Would the unavailability of the PSLRA safe harbor in this instance affect issuers or investors? If so, how? What disclosures, if any, are currently provided to voluntarily supplement the required disclosures above? Would issuers cease to provide these voluntary disclosures if we delete Item 201(c)(1)? If so, would such a change affect the information available to investors?

### **17. Equity Compensation Plans**

Regulation S-K prescribes the form and content for the disclosure of existing equity compensation plans with equity securities authorized for issuance.<sup>225</sup> This information is

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<sup>224</sup> Please refer to further discussion of the potential additional burden and request for comment in section V.B.5.

<sup>225</sup> See Item 201(d) of Regulation S-K [17 CFR 229.201(d)].

currently required in Part III of Form 10-K,<sup>226</sup> Item 11 of Form S-1, Item 9 of Form 10, and Item 10 of Schedule 14A.<sup>227</sup> In 2004, the FASB issued SFAS No. 123 (revised 2004), *Share-Based Payment* (“SFAS No. 123R”), which resulted in disclosures that overlap with Item 201(d).<sup>228</sup>

Regulation S-K incrementally requires: (1) for options, warrants, or rights assumed in a business combination, disclosure of the number of securities to be issued upon exercise and the weighted-average exercise price<sup>229</sup> and (2) disclosure of any formula for calculating the number of securities available for issuance under the plan.<sup>230</sup> Item 201(d) further provides instructions about the aggregation of equity compensation plan disclosures. Although these requirements and instruments are not explicitly contained in U.S. GAAP, we believe that the U.S. GAAP requirement to provide disclosures to enable investors to understand the nature and terms of equity compensation arrangements and the potential effects of those arrangements on shareholders<sup>231</sup> would result in reasonably similar disclosures.

Regulation S-K also incrementally requires disaggregation of information between equity compensation plans approved by security holders and those not approved by security holders.

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<sup>226</sup> There was previously uncertainty regarding whether this disclosure should appear both in Part II, Item 5 and Part III, Item 12 of Form 10-K. The staff of the Division of Corporation Finance has provided guidance to clarify that the general reference to Item 201 of Regulation S-K in Part II, Item 5 does not include Item 201(d). Issuers therefore provide the Item 201(d) disclosure in response to Part III, Item 12, which specifically references Item 201(d). See Division of Corporation Finance CD&I 106.01 available at <http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm>. As with any staff guidance referenced in this release, the views of the staff are not rules or interpretations of the Commission. The Commission has neither approved nor disapproved the views of the staff.

<sup>227</sup> 17 CFR 240.14a-101. Item 1 of Schedule 14C [17 CFR 240.14c-101] also requires inclusion of the information that would have been provided in a Schedule 14A if proxies were being solicited even though consents are not being solicited by the information statement.

<sup>228</sup> See ASC 718-10-50-1 to 4. Additionally, ASC 505-50-50-1 requires similar disclosure when share based payments are made to non-employees.

<sup>229</sup> See Instruction 5 to Item 201(d).

<sup>230</sup> See Instruction 8 to Item 201(d).

<sup>231</sup> ASC 718-10-50-1a.

The Commission adopted these requirements in 2001<sup>232</sup> before the major national securities exchanges required listed issuers to have, with limited exceptions, shareholder approved plans.<sup>233</sup> Because the major exchanges<sup>234</sup> now have such requirements, we believe disaggregation of the disclosures about the plans in this manner is no longer useful to investors.<sup>235</sup>

Based on the foregoing, we propose to delete Item 201(d) and the references to it in Part III of Form 10-K and Item 10(c) of Schedule 14A.<sup>236</sup> These proposed amendments would not affect the disclosures related to new plans or modifications of existing plans subject to shareholder action.<sup>237</sup> We note that because disclosures required by Item 201(d) are located with related information about the issuer's common equity and related stockholder matters, while the corresponding disclosures are in the notes to the financial statements, the proposed amendments give rise to Disclosure Location – Prominence Considerations. In particular, as a result of the

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<sup>232</sup> See *Disclosure of Equity Compensation Plan Information*, Release No. 33-8048 (Dec. 21, 2001) [67 FR 232], available at <https://www.sec.gov/rules/final/33-8048.htm>.

<sup>233</sup> For example, the New York Stock Exchange (“NYSE”) listing standard does not require shareholder approval of employment inducement awards, certain grants, plans and amendments in the context of mergers and acquisitions, and certain other specific types of plans. See *Self-Regulatory Organizations; New York Stock Exchange, Inc. and National Association of Securities Dealers, Inc.; Order Approving NYSE and Nasdaq Proposed Rule Changes and Nasdaq Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 Thereto Relating to Equity Compensation Plans*, Release No. 34-48108 (June 30, 2003). See also New York Stock Exchange, Listed Company Manual § 303A.08; Nasdaq Listing Rule 5635(c) and IM-5635-1; *American Stock Exchange Rulemaking Re: Shareholder Approval of Stock Option Plans and Other Equity Compensation Arrangements*, Release No. 34-48610 (Oct. 9, 2003); and NYSE MKT Company Guide § 711.

<sup>234</sup> We refer to the NYSE, NYSE MKT, and Nasdaq as the major exchanges. The majority of domestic issuers, representing substantially all domestic issuer market capitalization, is listed on one of the major exchanges.

<sup>235</sup> One commenter on the Disclosure Effectiveness Initiative recommended that Item 201(d)(3), which requires the material features of non-shareholder approved equity compensation plans, be deleted, noting that such plans are either not material or covered by other disclosure requirements. See letter from ABA (Mar. 6, 2015).

<sup>236</sup> Because Form S-1 and Form 10 contain a general reference to Item 201, rather than a specific reference to Item 201(d), no amendment to these forms is necessary.

<sup>237</sup> See Items 10(a), 10(b), and the Instructions to 10(c) of Schedule 14A.



proposed amendments, Item 201(d) disclosures would no longer be provided in Schedule 14A<sup>238</sup> alongside information on equity compensation plans subject to security holder action; rather, investors would obtain that information from the notes to the financial statements in the separate Form 10-K filing. With the proposed amendments, issuers may also be less willing to voluntarily supplement the required disclosures in the notes to the financial statements with forward-looking information because note disclosures are not subject to safe harbor protections under the PSLRA.

#### Request for Comment

51. Would deletion of Item 201(d) affect, in any material respect, the usefulness of information that investors receive? If so, how?
52. Would the unavailability of the PSLRA safe harbor in this instance affect issuers or investors? If so, how? What disclosures, if any, are currently provided to voluntarily supplement the required disclosures above? Would issuers cease to provide these voluntary disclosures if we delete Item 201(d)? If so, would such a change affect the information available to investors?
53. Non-listed issuers and, in limited circumstances, listed issuers,<sup>239</sup> are not required to have shareholder approved plans. Should we retain the requirements in Item 201(d) for these situations? Why or why not?

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<sup>238</sup> The proposal to delete the Item 201(d) requirements from Schedule 14A would also result in such information being omitted from information statements filed on Schedule 14C disclosing adoption of an equity compensation plan when shareholder consents are not being solicited.

<sup>239</sup> See, e.g., supra note 233.

## 18. Ratio of Earnings to Fixed Charges

Regulation S-K requires issuers that register debt securities to disclose the historical and pro forma ratios of earnings to fixed charges.<sup>240</sup> Regulation S-K also requires issuers that register preference equity securities to disclose the historical and pro forma ratio of combined fixed charges and preference dividends to earnings (collectively, “ratio of earnings to fixed charges”).<sup>241</sup> Regulation S-K further requires the filing of an exhibit setting forth the computation of any ratio of earnings to fixed charges.<sup>242</sup> These requirements only apply to non-SRCs.<sup>243</sup> In addition, Instruction 7 to “Instructions as to Exhibits” of Form 20-F requires foreign private issuers to disclose how any ratio of earnings to fixed charges presented in the filing was calculated. As discussed further below, U.S. GAAP and IFRS require disclosure of many of the components of this ratio, as well as information from which other ratios that convey reasonably similar information about an issuer’s ability to meet its financial obligations may be computed.

The Commission first adopted the requirement to present a ratio of earnings to fixed charges in 1954 in connection with the adoption of Form S-9, a short-form registration statement for registration of non-convertible, fixed-interest debt.<sup>244</sup> An issuer was required to have a minimum coverage ratio before it was permitted to use Form S-9. To demonstrate eligibility, the issuer was required to disclose the ratio in its filing. The Commission rescinded Form S-9 in

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<sup>240</sup> See Item 503(d) [17 CFR 229.503(d)] and Item 1010(a)(3) [17 CFR 229.1010(a)(3)] of Regulation M-A.

<sup>241</sup> See *id.*

<sup>242</sup> 17 CFR 229.601(b)(12).

<sup>243</sup> See Item 503(e) [17 CFR 229.503(e)] and Item 601(c) [17 CFR 229.601(c)] of Regulation S-K.

<sup>244</sup> See *Registration Statement*, Release No. 33-3509, (Jul. 21, 1954) [19 FR 4630].

1976. However, the Commission added a requirement to disclose the ratio in certain other forms, although use of those forms was not contingent upon a minimum coverage ratio.<sup>245</sup>

In 1980, the Commission issued a concept release that requested comment on whether the requirements for the presentation of historical and pro forma ratios should be retained or deleted.<sup>246</sup> Responses from commenters were mixed with a substantial number of commenters supporting retention of the requirement. Although they did not discuss specific reasons for their support, commenters “pointed out the disclosure as an analytical tool and a method for showing trends.”<sup>247</sup>

However, today, there are a variety of analytical tools available to investors that may accomplish a similar objective as the ratio of earnings to fixed charges.<sup>248</sup> This ratio measures the issuer’s ability to service fixed financing expenses – specifically, interest expense, including management’s approximation of the portion of rent expense that represents interest expense, and preference dividend requirements – from earnings. Other ratios that accomplish similar objectives include other variations of the ratio of earnings to fixed charges,<sup>249</sup> the interest coverage ratio,<sup>250</sup> and the debt-service coverage ratio,<sup>251</sup> which can be calculated based on information readily available in the financial statements.

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<sup>245</sup> See, e.g., Forms S-1, S-3, S-4, F-1, F-3 and F-4.

<sup>246</sup> See *Ratio of Earnings to Fixed Charges*, Release No. 33-6196 (Mar. 7, 1980) [45 FR 16498].

<sup>247</sup> See *Ratio of Earnings to Fixed Charges*, Release No. 33-6285 (Feb. 18, 1981) [46 FR 12757].

<sup>248</sup> See letter from Ernst & Young (Sept. 11, 2012) on the S-K Study, which states that the ratio of earnings to fixed charges “appears an anachronism in the age of sophisticated financial modeling and analysis, facilitated by the wealth of data available from issuer financial statements.” See also letter from CCMC (July 29, 2014).

<sup>249</sup> Other variations of the ratio of earnings to fixed charges include alternative earnings measures such as earnings before interest and taxes and alternative fixed charges measures such as total lease payments and one-third of lease payments (to approximate the interest component in lease payments).

<sup>250</sup> The interest coverage ratio is often calculated as earnings before interest and taxes divided by interest payments.

Further, the requirement to disclose the ratio of earnings to fixed charges, as opposed to the various components (e.g., income, interest expense, lease expense) of this ratio that investors may use as desired, may place undue emphasis on this particular measure. Commenters to the 1980 concept release observed shortcomings in the measure, such as the lack of uniformity of computation and the failure of the ratio to give effect to principal payments on debt and lease obligations.<sup>252</sup> Unlike other ratios, however, certain components of the ratio of earnings to fixed charges, such as the portion of rent expense that represents interest<sup>253</sup> and the amortization of capitalized interest, are not readily available elsewhere.

Moreover, while debt agreements may contain fixed charge coverage covenants,<sup>254</sup> debt investors often negotiate contractual agreements with issuers to obtain financial information to meet their needs,<sup>255</sup> which may be more relevant and useful than a prescribed disclosure of a

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<sup>251</sup> The debt-service coverage ratio is often calculated as operating income divided by total debt service.

<sup>252</sup> See *Ratio of Earnings to Fixed Charges*, *supra* note 247.

<sup>253</sup> In January 2016, the IASB issued IFRS 16, *Leases*, which is effective on January 1, 2019, with early application permitted in certain circumstances. Under IFRS 16, interest expense will be recognized for all leases with a term of more than 12 months, unless the underlying asset is of low value. In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)* (“ASU No. 2016-02”), which is effective for fiscal years beginning after December 15, 2018, with early application permitted. Under ASU No. 2016-02, leases with a term of more than 12 months will be classified into one of two types, with one type requiring recognition of an interest expense component (a finance lease) and the other type requiring recognition of lease expense without separate recognition of interest expense (an operating lease). Like IFRS 16, interest expense will not be recognized on leases with a term less than 12 months. Interested parties may still need to estimate the portion of lease expense that is viewed to represent interest for operating leases in order to determine the components of the ratio of earnings to fixed charges, which will be facilitated by disclosure of the weighted-average discount rate for operating leases required by ASU No. 2016-02.

<sup>254</sup> See Gerald T. Nowak P.C., *Negotiating the High-Yield Indenture*, (Feb. 17, 2009), available at [http://www.pli.edu/emktg/toolbox/HighYield\\_Indenture13.pdf](http://www.pli.edu/emktg/toolbox/HighYield_Indenture13.pdf) (noting that a typical high-yield credit agreement might require the debtor to maintain a certain level of revenue or a certain ratio of earnings to fixed charges). See also Li, Ningzhong, *Performance Measures in Earnings-Based Financial Covenants in Debt Contracts*, LONDON BUS. SCH. (2011) available at [http://www.olin.wustl.edu/docs/Faculty/Performance\\_measures\\_in\\_earnings\\_based\\_financial\\_covenants.pdf](http://www.olin.wustl.edu/docs/Faculty/Performance_measures_in_earnings_based_financial_covenants.pdf) (noting that fixed charge coverage covenants are common in loan documents).

<sup>255</sup> See letter from ABA (Mar. 6, 2015), which states: Many of [the financial metrics debt investors use to evaluate an issuer’s financial position and liquidity] are reflected in the measures of performance or liquidity that are

ratio of earnings to fixed charges. Companies are also required to discuss the material impacts of these covenants to the extent that they are reasonably likely to limit the company's ability to undertake additional financing or are reasonably likely to be breached.<sup>256</sup>

Based on the foregoing, we propose to delete Item 503(d) and Item 601(b)(12), with conforming revisions to Item 503(e), Item 601(c), the Exhibit Table in Item 601, Item 1010(a)(3), Item 1010(b)(2), Item 1010(c)(4), Item 3 of Form S-1, Item 3 of Form S-3, Item 3 of Form S-4, Item 3 of Form S-11, Item 3 of Form F-1, Item 3 of Form F-3, and Item 3 of Form F-4. We also propose to delete Instruction 7 to "Instructions as to Exhibits" of Form 20-F.

#### Request for Comment

54. As stated above, certain components of the ratio of earnings to fixed charges, such as the portion of rent expense that represents interest and the amortization of capitalized interest, are not readily available elsewhere.
- a. Are there any other components to the ratio of earnings to fixed charges that are not readily available in the notes to the financial statements?
  - b. For the components of the ratio that are not readily available in the notes to the financial statements, could they be estimated using information in the notes to the financial statements? If so, would estimation be burdensome for investors? How

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defined in the issuers' debt instruments. For investors in such instruments, a metric that is tied to a contractually defined covenant test is more useful than the SEC-mandated disclosure. Importantly, our experience is that market participants in unregistered debt offerings – initial purchasers as well as institutional investors – do not generally request or require that the SEC-prescribed ratio of earnings to fixed charges be included in the offering document; instead, issuers disclose one or more interest coverage ratios or similar financial metrics that are calculated with reference to the instruments governing the securities being offered.

<sup>256</sup> See *Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations*, Release No. 33-8350 (Dec. 19, 2003) [68 FR 75056].

consistent would these methods and estimates be compared to the methods used and amounts estimated by issuers?

### **19. Invitations for Competitive Bids**

Item 601(b)(26)<sup>257</sup> and Item 512(d)<sup>258</sup> of Regulation S-K both set forth disclosure requirements for competitive bids. However, Item 601(b)(26) differs from Item 512(d) in that it requires disclosure about the invitation of the competitive bid, whereas Item 512(d) requires issuers to undertake to distribute prior to opening bids a reasonable number of prospectuses and to amend the registration statement to reflect the results of the competitive bidding and the terms of the reoffering. We do not believe that the Item 601(b)(26) disclosure provides additional value to investors because those participating in the competitive bid would directly receive the invitation and all other investors would have access to the registration statement covering the securities offered at competitive bidding, as well as the results of the competitive bidding and the terms of reoffering. Based on the foregoing, we propose to delete Item 601(b)(26) and its accompanying reference in the Exhibit Table within Item 601.

### **20. Request for Comment**

55. We solicit comment on the foregoing proposed amendments to eliminate overlapping requirements. Should any proposed amendments not be adopted? Should any proposed amendments be modified? If so, which ones and why? Please be as specific as possible for each of the proposals on which you provide comments.

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<sup>257</sup> 17 CFR 229.601(b)(26). Item 601(b)(26) requires that where a registration statement covers securities to be offered at competitive bidding, any communication that is an invitation for competitive bid shall be filed as an exhibit.

<sup>258</sup> 17 CFR 229.512(d). Item 512(d) requires an undertaking by issuers to provide disclosure not later than the first use of a prospectus relating to the securities offered at competitive bidding, unless no further public offering and no reoffering of such securities is proposed to be made.

56. Are there other overlapping Commission disclosure requirements that: (1) require disclosures that convey reasonably similar information to or are encompassed by the disclosures that result from compliance with the overlapping, U.S. GAAP, IFRS, or Commission disclosure requirements or (2) require disclosures incremental to other U.S. GAAP or Commission disclosure requirements and may no longer be useful to investors? If so, what requirements do they overlap with and what action, if any, should we take to address the overlap?

#### **D. Overlapping Requirements – Proposed Integrations**

This section discusses Commission disclosure requirements that overlap with, but require information incremental to, other Commission disclosure requirements. In these cases, we propose to integrate the overlapping Commission disclosure requirements.

##### **1. Foreign Currency Restrictions**

If consolidation of foreign subsidiaries is deemed appropriate in the presence of foreign currency exchange restrictions, Rule 3A-02(d) of Regulation S-X requires disclosure of the effect of foreign subsidiaries' currency exchange restrictions upon the consolidated financial position and operating results of the issuer and its subsidiaries. To streamline Commission disclosure requirements, we propose to relocate this requirement to Rule 3-20(b) of Regulation S-X,<sup>259</sup> which addresses other currency considerations.

Rule 3-20(b), however, applies only to foreign private issuers, whereas Rule 3A-02(d) applies to all issuers. To prevent any loss of disclosure from the relocation of Rule 3A-02(d) to Rule 3-20(b), we propose to delete the reference to foreign private issuers in the title of Rule 3-

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<sup>259</sup> 17 CFR 210.3-20(b).

20, which would broaden the scope of Rule 3-20(b) and Rule 3-20(e) to all issuers.<sup>260</sup> We do not believe that this expansion of the scope would create additional burdens for domestic issuers. Rule 3-20(b) requires disclosure of easily-accessible information, such as the issuer’s reporting currency and the currency in which the issuer declares dividends. Rule 3-20(e) requires use of the same reporting currency for all periods presented. Even though Rule 3-20(e) currently applies only to foreign private issuers, Commission staff has historically requested issuers to use the same reporting currency for all periods presented.<sup>261</sup>

Rule 3-20(b) also sets forth requirements for foreign private issuers if their reporting currency is not the U.S. dollar. Despite the proposed expansion of the scope of Rule 3-20(b) discussed above, we do not intend to expand the instances in which a reporting currency other than the U.S. dollar would be permitted. We are therefore proposing amendments to Rule 3-20(a) to require that a non-foreign private issuer present its financial statements in U.S. dollars.

#### Request for Comment

57. Would disclosure of the reporting currency and the currency in which the issuer declares dividends result in significant burdens or costs for issuers? How would the requirement to use the same reporting currency for all periods presented affect the burdens and costs for issuers?
58. Foreign issuers that do not meet the definition of “foreign private issuer” would be required to report in U.S. dollars. Should such foreign issuers be permitted to report in a foreign currency?

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<sup>260</sup> The remaining paragraphs in Rule 3-20 specify the rule’s scope, so broadening the title to Rule 3-20 would have no effect on the application of these paragraphs.

<sup>261</sup> See section 6630.1 of the Division of Corporation Finance’s Financial Reporting Manual.



## 2. Restrictions on Dividends and Related Items

### a. Domestic Issuers

Commission requirements mandate disclosure about restrictions on the payment of dividends and related items in a number of locations:

- Item 201(c)(1) of Regulation S-K requires disclosure of restrictions (including restrictions on the ability of issuer's subsidiaries to transfer funds to it in the form of cash dividends, loans or advances) that currently or are likely to materially limit the issuer's ability to pay dividends on its common equity.<sup>262</sup>
- Rule 4-08(d)(2) of Regulation S-X requires disclosure of any restriction upon retained earnings that arises from the fact that upon involuntary liquidation the aggregate preferences of the preferred shares exceed the par or stated value of such shares.<sup>263</sup>
- Rule 4-08(e) of Regulation S-X requires disclosure related to the most significant restrictions of the issuer's payment of dividends.<sup>264</sup> Rule 4-08(e)(3) also requires, where restricted net assets, as defined by the rule, exceed 25 percent of consolidated net assets, a description of: (1) the restrictions on the ability of subsidiaries to transfer funds to the issuer, and (2) the amount of restricted net assets.<sup>265</sup>

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<sup>262</sup> In lieu of disclosures, Item 201(c)(1) permits a cross-reference to this information in the disclosures required by Item 303 of Regulation S-K and Regulation S-X.

<sup>263</sup> 17 CFR 210.4-08(d).

<sup>264</sup> 17 CFR 210.4-08(e).

<sup>265</sup> 17 CFR 210.4-08(e)(3).

We propose to streamline these disclosure requirements into a single requirement for the disclosure of material restrictions on dividends and related items to which an issuer and its subsidiaries are subject. To that end, we propose to: (1) delete the requirements in Item 201(c)(1) and Rule 4-08(d)(2) to disclose restrictions, and (2) revise Rule 4-08(e)(3) to require the dividend restrictions and related disclosures in subparagraphs (i) and (ii) when material, rather than when restricted net assets exceed the 25 percent threshold. Doing so would give rise to Bright Line Disclosure Threshold Considerations. In addition, we note that because disclosures required by Regulation S-K, unlike those required by Regulation S-X, may be provided outside of the audited financial statements, the proposed amendments give rise to Disclosure Location – Financial Statement Considerations.

Rule 5-04,<sup>266</sup> Rule 7-05,<sup>267</sup> and Rule 9-06<sup>268</sup> of Regulation S-X also refer to the definition of restricted net assets in Rule 4-08(e)(3) in determining when condensed financial information of the issuer (“parent only financial information”) is required to be disclosed. We are not changing the requirements in Rules 5-04, 7-05, and 9-06 of Regulation S-X for parent only financial information at this time. As such, we propose to move the definition of restricted net assets in Rule 4-08(e)(3) to a new Rule 1-02(dd) of Regulation S-X and make corresponding changes to the cross references in Rules 5-04, 7-05, and 9-06.

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<sup>266</sup> 17 CFR 210.5-04.

<sup>267</sup> 17 CFR 210.7-05.

<sup>268</sup> 17 CFR 210.9-06

## **b. Foreign Private Issuers**

Form 20-F requires disclosure of dividend restrictions, as follows:

- Item 10.F requires disclosure of any dividend restrictions.
- Instruction to Item 14.B requires disclosure of any limitations on the payment of dividends.

Foreign private issuers are already required to disclose dividend restrictions in the notes to the financial statements. Specifically, foreign private issuers that report under U.S. GAAP or Another Comprehensive Body of Accounting Principles with a reconciliation to U.S. GAAP must comply with Rule 4-08(e), as discussed above. Foreign private issuers that report under IFRS must comply with paragraph 79(a)(v) of IAS 1, *Presentation of Financial Statements*, which requires disclosure of restrictions on the distribution of dividends and the repayment of capital for each class of share capital. Item 5.B.1.(b) of Form 20-F also requires disclosure of an evaluation of the sources and amounts of cash flows, including the nature and extent of any restrictions on the ability of subsidiaries to transfer funds to the parent and the impact of such restrictions.

Based on the foregoing, we propose to delete the dividend restriction disclosure requirements in Item 10.F and the Instruction to Item 14.B of Form 20-F.<sup>269</sup> We note that

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<sup>269</sup> Item 5.B.1.(b) of Form 20-F requires disclosure of restrictions on a subsidiary's ability to transfer funds to the parent in the form of dividends, loans, or advances. Although this requirement is similar to Rule 4-08(e), which creates duplication for foreign private issuers that report under U.S. GAAP or Another Comprehensive Body of Accounting Principles with a reconciliation to U.S. GAAP, we do not propose its deletion because IFRS does not contain an equivalent requirement for foreign private issuers that report under IFRS.

Item 10.D.2 of Form 20-F requires disclosure of governmental laws, decrees, regulations, or other legislation which may affect the remittance of dividends, interest, or other payments to nonresident securityholders. Although this requirement covers dividend restrictions, we also do not propose amendments to it because,

because these disclosures, unlike those required by IFRS, may be provided outside the audited financial statements with related information such as the rights of security holders, the proposed amendments give rise to Disclosure Location – Prominence Considerations.

### **3. Geographic Areas<sup>270</sup>**

Item 101(d)(4) of Regulation S-K requires, when interim financial statements are presented, a discussion of the facts that indicate the three-year financial data for geographic performance may not be indicative of current or future operations. This requirement is similar to requirements in Instruction 3 to Item 303(a) and Instruction 4 to Item 303(b) to identify elements of income which are not necessarily indicative of the issuer’s ongoing business, except that there is no explicit reference to “geographic areas” in either item requirement. To streamline the requirements in Regulation S-K, we propose to revise Item 303 to add an explicit reference to “geographic areas” and delete Item 101(d)(4).<sup>271</sup> We note that because these disclosures are located in the business section of the filing, while the corresponding disclosures are in MD&A, their proposed elimination gives rise to Disclosure Location – Prominence Considerations.

### **4. Request for Comment**

59. We solicit comment on the foregoing proposed amendments to integrate overlapping Commission disclosure requirements. For each topic in this section:

- a. Do investors use the disclosures required by the Commission disclosure requirement?

If so, in what way?

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through its reference to interest and other payments to nonresident securityholders, its scope is broader than the requirements for the notes to the financial statements.

<sup>270</sup> Please refer to the related discussion in section III.C.12.

<sup>271</sup> One commenter on the Disclosure Effectiveness Initiative observed that material disclosures about geographic areas would already be provided under Item 303 of Regulation S-K. See letter from CCMC (July 29, 2014).

- b. Should any proposed amendments not be made? Should any proposed amendments be modified? If so, which ones and why? Please be as specific as possible for each of the proposed amendments on which you provide comments.
60. Are there additional Commission disclosure requirements that overlap with, but require information incremental to, other Commission disclosure requirements? If so, what requirements do they overlap with and what action, if any, should we take to address the overlap?

**E. Overlapping Requirements – Potential Modifications, Eliminations, or FASB Referrals**

This section discusses Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP for which we solicit comment to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP. The comments received in response to this release may inform both potential future Commission rulemaking and FASB standard-setting activities. Future amendments to these Commission disclosure requirements may depend on the outcome of any FASB standard-setting activities to address the Commission disclosure requirements. Our staff has discussed these overlapping requirements with the FASB staff.

Incorporating these overlapping Commission disclosure requirements into U.S. GAAP could alleviate any inconsistencies that currently arise when the corresponding Commission disclosure requirements are not simultaneously amended to conform to U.S. GAAP updates, as discussed in section V.A.

Because U.S. GAAP does not scale disclosure requirements by issuer status, incorporation into U.S. GAAP would result in the application of some of these requirements to

SRCs, as identified below. Incorporation into U.S. GAAP would also potentially result in the application of all such requirements to Regulation A issuers and crowdfunding issuers that report under U.S. GAAP. We solicit comment on the costs and benefits of this expanded scope below.

### **1. REIT Disclosures<sup>272</sup> – Tax Status of Distributions**

U.S. GAAP requires disclosure of a public entity's tax status.<sup>273</sup> For REITs, in addition to its tax status, Regulation S-X requires disclosure in the notes to the financial statements of the tax status of distributions per unit, for example as ordinary income, capital gain, or return of capital.<sup>274</sup>

### **2. Consolidation<sup>275</sup>**

Although Regulation S-X<sup>276</sup> and U.S. GAAP<sup>277</sup> both set forth disclosure requirements about consolidation matters, Regulation S-X incrementally requires disclosure of material changes in the entities included in or excluded from the consolidated financial statements.

### **3. Discount on Shares**

Regulation S-X<sup>278</sup> and U.S. GAAP<sup>279</sup> both set forth requirements about the presentation of items in the equity section of the financial statements. However, Regulation S-X incrementally requires discounts on shares to be presented separately as a deduction from the

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<sup>272</sup> Please refer to the related discussions in sections III.C.1 and V.B.3.

<sup>273</sup> See ASC 740-10-50-16.

<sup>274</sup> See Rule 3-15(c) of Regulation S-X.

<sup>275</sup> Please refer to the related discussion in sections II.B.2, III.C.2, and V.B.4.

<sup>276</sup> See Rule 3A-03(b) of Regulation S-X.

<sup>277</sup> See ASC 810-10-50.

<sup>278</sup> See Rule 4-07 of Regulation S-X [17 CFR 210.4-07]. Pursuant to Rule 4-02 of Regulation S-X, this separate presentation is only required if material.

<sup>279</sup> See ASC 505-10-45.

applicable accounts. Discounts on shares may arise, for example, from stock issuance costs, which are recognized as a reduction in equity.<sup>280</sup>

#### **4. Assets Subject to Lien**

Regulation S-X<sup>281</sup> and U.S. GAAP<sup>282</sup> both require disclosure in the notes to the financial statements of assets subject to lien and the obligation collateralized for the most recent audited balance sheet being filed. However, these U.S. GAAP disclosure requirements only apply to certain financial assets (e.g., repurchase agreements or securities lending transactions), whereas Rule 4-08(b) applies to all assets.

#### **5. Obligations<sup>283</sup>**

##### **a. Defaults Not Cured**

Regulation S-X requires disclosure in the notes to the financial statements of the facts and amounts related to defaults of obligations or breaches of covenants that existed at the most recent balance sheet date and have not been subsequently cured.<sup>284</sup> This disclosure requirement is incremental to U.S. GAAP, which sets forth classification requirements for obligations for which there has been a covenant violation<sup>285</sup> and more limited disclosure requirements.<sup>286</sup>

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<sup>280</sup> See SAB Topic 5:A, *Expenses of Offering*.

<sup>281</sup> See Rule 4-08(b) of Regulation S-X [17 CFR 210.4-08(b)].

<sup>282</sup> See ASC 860-30-50-1A and ASC 860-30-50-7.

<sup>283</sup> Please refer to the related discussion in section II.B.3. We note that the FASB has a project underway on simplifying the balance sheet classification of debt that may address these disclosures. See [http://www.fasb.org/jsp/FASB/FASBContent\\_C/ProjectUpdatePage&cid=1176164405275](http://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdatePage&cid=1176164405275).

<sup>284</sup> See Rule 4-08(c) of Regulation S-X [17 CFR 210.4-08(c)].

<sup>285</sup> See ASC 470-10-45-1 and ASC 470-10-45-11.

<sup>286</sup> See ASC 470-10-50-2, which requires disclosure of the circumstances surrounding a covenant violation in certain situations, but not the amount of the obligation.

## Request for Comment

61. Item 2.04 of Form 8-K requires disclosure of a triggering event that causes the increase or acceleration of a direct financial obligation, among other disclosures, if material. In addition, Part II, Item 3 of Form 10-Q and Part II, Item 13 of Form 20-F both require disclosure of material defaults and the amount of default for debt that exceeds 5 percent of total assets. Moreover, Item 303(a)(1) of Regulation S-K requires liquidity-related disclosures.<sup>287</sup> These disclosures, unlike those required by Rule 4-08(c), may be provided outside the audited financial statements, giving rise to Disclosure Location – Financial Statement Considerations. In addition, the disclosures under Form 8-K and Form 10-Q are required at different times than the annual disclosures required by Rule 4-08(c). In light of these requirements in Form 8-K, Form 10-Q, Form 20-F, and Item 303(a)(1), should the disclosure requirement in Rule 4-08(c) be eliminated, rather than retained, modified, or referred to the FASB for potential incorporation into U.S. GAAP?

### **b. Waived Defaults**

If a default of an obligation exists, but acceleration of the obligation has been waived for a period of time, Rule 4-08(c) requires disclosure of the amount of the obligation and the period of the waiver. This disclosure requirement is incremental to U.S. GAAP, which sets forth requirements for when to present debt subject to a covenant violation as a current liability on the

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<sup>287</sup> Item 303(a)(1) requires disclosure of any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the issuer's liquidity materially increasing or decreasing. In addition, if a material deficiency is identified, Item 303(a)(1) requires disclosure of the course of action that the issuer has taken or proposes to take to remedy the deficiency.



balance sheet,<sup>288</sup> but does not require disclosure of the amount of the obligation or the period of the waiver for all waived defaults.

**c. Changes in Obligations**

Regulation S-X<sup>289</sup> and U.S. GAAP<sup>290</sup> both require disclosure of issuances of debt subsequent to the balance sheet date. However, Rule 4-08(f) of Regulation S-X incrementally requires disclosure of significant changes in the authorized amounts of debt subsequent to the latest balance sheet date.

**d. Amounts and Terms of Financing Arrangements**

Regulation S-X<sup>291</sup> and U.S. GAAP<sup>292</sup> both require certain disclosures of an issuer's financing arrangements. However, Regulation S-X incrementally requires disclosure, if significant, of the amount and terms (including commitment fees and the conditions under which lines may be withdrawn) of unused lines of credit for short-term financing, the weighted average interest rate on short-term borrowings outstanding as of each balance sheet date, and the amount of any lines of credit which support a commercial paper borrowing or similar arrangement. It also requires similar disclosure of the amount and terms (including commitment fees and the conditions under which commitments may be withdrawn) of unused commitments for long-term financial arrangements.

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<sup>288</sup> See ASC 470-10-45-1 and ASC 470-10-45-11.

<sup>289</sup> See Rule 4-08(f) of Regulation S-X.

<sup>290</sup> See ASC 855-10-50-2 and ASC 855-10-55-2a.

<sup>291</sup> See Rule 5-02.19(b) [17 CFR 210.5-02.19(b)], Rule 5-02.22(b) [17 CFR 210. 5-02.22(b)], Rule 6-04.13(b) [17 CFR 210. 6-04.13(b)], Rule 7-03.16(b) [17 CFR 210. 9-03.16(b)], Rule 7-03.16(c) [17 CFR 210. 7-03.16(c)], Rule 9-03.13(a) [17 CFR 210. 9-03.13(a)], and Rule 9-03.16 [17 CFR 210. 9-03.16] of Regulation S-X.

<sup>292</sup> See ASC 470-10-50.

## 6. Preferred Shares

Regulation S-X<sup>293</sup> and U.S. GAAP<sup>294</sup> both require disclosure about preferred share preferences in involuntary liquidation. However, Regulation S-X requires disclosure in more circumstances than U.S. GAAP. Specifically, Regulation S-X requires disclosure when preferences are other than par or stated value, whereas U.S. GAAP requires disclosure when preferences are considerably in excess of par or stated value.

## 7. Income Tax Disclosures<sup>295</sup>

Regulation S-X<sup>296</sup> and U.S. GAAP<sup>297</sup> both require disclosures about income taxes in the notes to the financial statements.<sup>298</sup> However, Rule 4-08(h) includes certain incremental requirements, some of which gives rise to Bright Line Disclosure Threshold Considerations.

Specifically, although U.S. GAAP and Regulation S-X both require disclosure of the components of income tax expense, Rule 4-08(h) incrementally: (1) requires disclosure of the amount of domestic and foreign pre-tax income and income tax expense, (2) requires disaggregation of the foreign component of pre-tax income and income tax expense with the domestic component if it exceeds five percent of the respective total, and (3) defines “foreign” for purposes of this disclosure.

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<sup>293</sup> 17 CFR 210.4-08(d)(1).

<sup>294</sup> ASC 505-10-50-4.

<sup>295</sup> Please refer to the related discussion in sections II.B.4 and IV.B.2.

<sup>296</sup> See Rule 4-08(h) of Regulation S-X [17 CFR 210.4-08(h)].

<sup>297</sup> See ASC 740-10-50.

<sup>298</sup> We note that the FASB has an income tax disclosure project underway regarding income tax disclosures. See [http://www.fasb.org/jsp/FASB/FASBContent\\_C/ProjectUpdatePage&cid=1176164227426](http://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdatePage&cid=1176164227426).

In addition, although U.S. GAAP and Regulation S-X both require a reconciliation of the domestic federal statutory tax rate to the effective tax rate, Rule 4-08(h) incrementally: (1) requires disaggregation of reconciling items if they individually exceed five percent of the amount computed by multiplying pre-tax income by the applicable statutory income tax rate, (2) clarifies the statutory tax rate to use in the income tax rate reconciliation for foreign issuers, and (3) requires, when the statutory tax rate used differs from the U.S. federal corporate income tax rate, disclosure of the basis for using that rate.

Request for Comment<sup>299</sup>

62. Are there additional income tax disclosures that would be useful to investors? Please explain. As discussed above, Rule 4-08(h) requires disclosure of the amount of domestic and foreign pre-tax income and income tax expense. Would further disaggregation of foreign amounts be useful to investors? What, if any, burdens would such additional disclosure create for issuers? Issuers are currently required to provide foreign amounts. Would there be impediments to disaggregating these amounts by material jurisdiction? If so, what are the impediments?

**8. Related Parties**<sup>300</sup>

Regulation S-X<sup>301</sup> and U.S. GAAP<sup>302</sup> both require the amount of related party transactions to be disclosed in the financial statements. We note that Rule 4-08(k)(1) incrementally requires that these amounts be presented on the face of the financial statements, if

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<sup>299</sup> The S-K Concept Release also seeks input on updating and modernizing our business and financial disclosure requirements, including income tax disclosures. See sections IV.A.4 and IV.G.7 of the S-K Concept Release.

<sup>300</sup> Please refer to the related discussion in section II.B.6.

<sup>301</sup> See Rule 4-08(k) of Regulation S-X [17 CFR 210.4-08(k)].

<sup>302</sup> See ASC 850-10-50-1.

material,<sup>303</sup> giving rise to Disclosure Location – Prominence Considerations. In addition, in separate financial statements, Rule 4-08(k)(2) incrementally requires disclosure of the intercompany profits or losses on transactions with related parties that are not eliminated.

## **9. Repurchase and Reverse Repurchase Agreements<sup>304</sup>**

Regulation S-X<sup>305</sup> and U.S. GAAP<sup>306</sup> both set forth presentation and disclosure requirements for repurchase and reverse repurchase agreements in the financial statements. However, Regulation S-X incrementally requires: (1) the liabilities associated with repurchase agreements that are separately presented on the balance sheet to include accrued interest payable,<sup>307</sup> (2) disclosure of the interest rates associated with certain repurchase liabilities,<sup>308</sup> (3) information about counterparties and agreements with them, where there is a concentration of counterparties,<sup>309</sup> (4) separate presentation on the balance sheet of the carrying amount of reverse repurchase agreements,<sup>310</sup> and (5) disclosure of the nature of any provisions to ensure that the market value of the underlying assets remains sufficient to protect the issuer in the event of counterparty default.<sup>311</sup> Regulation S-X requires these incremental disclosures when a specified bright line threshold is met, giving rise to Bright Line Disclosure Threshold Considerations.

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<sup>303</sup> Pursuant to Rule 4-02 of Regulation S-X, this separate presentation is only required if material.

<sup>304</sup> Please refer to the related discussion in section III.C.3.

<sup>305</sup> See Rule 4-08(m) of Regulation S-X [17 CFR 210.4-08(m)].

<sup>306</sup> See ASC 860-30-45-2 and ASC 860-30-50.

<sup>307</sup> See Rule 4-08(m)(1)(i) of Regulation S-X.

<sup>308</sup> See Rule 4-08(m)(1)(ii)(A)(ii) of Regulation S-X.

<sup>309</sup> See Rule 4-08(m)(1)(iii) and Rule 4-08(m)(2)(ii) of Regulation S-X.

<sup>310</sup> See Rule 4-08(m)(2)(i)(A) of Regulation S-X.

<sup>311</sup> See Rule 4-08(m)(2)(i)(B)(2) of Regulation S-X.

## **10. Interim Financial Statements – Computation of Earnings Per Share<sup>312</sup>**

Although Commission disclosure requirements<sup>313</sup> and U.S. GAAP<sup>314</sup> both require disclosure in the notes to the financial statements of the computation of earnings per share, U.S. GAAP does not specifically require disclosure of the computation in interim financial statements.

## **11. Interim Financial Statements – Retroactive Prior Period Adjustments**

Regulation S-X requires disclosure, in interim period financial statements, of material retroactive changes to prior period financial statements.<sup>315</sup> Retroactive prior period adjustments arise due to:

- Changes in accounting principle, as discussed in sections II.B.11 and III.C.8.
- Corrections of errors. Regulation S-X<sup>316</sup> and U.S. GAAP<sup>317</sup> both require disclosure, in interim financial statements, of the effect of a correction of an error on income, income per share, and retained earnings.
- Changes in reporting entities.<sup>318</sup> Regulation S-X and U.S. GAAP<sup>319</sup> both require disclosure of the effect of changes in reporting entities on net income and per share

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<sup>312</sup> Please refer to the related discussion in section II.B.8.

<sup>313</sup> See Rule 10-01(b)(2) of Regulation S-X and Item 601(b)(11) of Regulation S-K.

<sup>314</sup> See ASC 260-10-50-1.

<sup>315</sup> See Rule 8-03(b)(5) and Rule 10-01(b)(7) [17 CFR 210.10-01(b)(7)] of Regulation S-X. Rule 8-03(b)(5) applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP, while Rule 10-01(b)(7) applies to non-SRCs.

<sup>316</sup> Regulation S-X only requires disclosure of the effect of a correction of an error on retained earnings for non-SRCs. U.S. GAAP requires disclosure of the effect on all financial statement lines items, not only income, income per share, and retained earnings.

<sup>317</sup> See ASC 250-10-50-7 and ASC 250-10-50-8.

amounts. However, Regulation S-X, unlike U.S. GAAP, explicitly requires such disclosures in the interim period of change and, for non-SRCs, incrementally requires disclosure of the effect on retained earnings.

Because U.S. GAAP does not scale disclosure requirements by SRC status, any incorporation of these requirements into U.S. GAAP would result in the application of these requirements to SRCs.

### Request for Comment

63. Would the application of the requirement to disclose the effect of retroactive prior period adjustments on retained earnings to SRCs result in additional costs? Please discuss any such costs. Would investors benefit from such disclosure? Does that affect your view as to whether we should refer this requirement to the FASB? If so, how?

## **12. Interim Financial Statements – Common Control Transactions<sup>320</sup>**

Regulation S-X<sup>321</sup> and U.S. GAAP<sup>322</sup> both set forth accounting and disclosure requirements for combinations of entities under common control. However, Rule 10-01(b)(3) incrementally requires non-SRCs to disclose the separate results of the combined entities for periods prior to the combination.<sup>323</sup> Because U.S. GAAP does not scale disclosure requirements

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<sup>318</sup> Examples of changes in reporting entity include: (1) changes in the specific subsidiaries that comprise the group of entities for which consolidated financial statements are presented, or (2) changes in the entities included in combined financial statements. See FASB ASC Master Glossary.

<sup>319</sup> See ASC 250-10-50-6.

<sup>320</sup> Please refer to the related discussion in section II.B.13.

<sup>321</sup> See Rule 10-01(b)(3) of Regulation S-X.

<sup>322</sup> See ASC 805-50-45-1 to 5.

<sup>323</sup> Should the FASB revise ASC 250-10-50-6 to address the incremental Commission disclosure requirements discussed in section III.E.11, such revisions would also address the incremental Commission disclosure requirements discussed in this section. Specifically, ASC 250-10-50-6 requires disclosure of the effect of a

by SRC status, any incorporation of these requirements into U.S. GAAP would result in the application of these requirements to SRCs.

#### Request for Comment

64. Would the application of this disclosure requirement to SRCs result in additional costs? Please discuss any such costs. Would investors benefit from such disclosure? Does that affect your view as to whether we should refer this requirement to the FASB? If so, how?

### **13. Products and Services**

Regulation S-K<sup>324</sup> and U.S. GAAP<sup>325</sup> both require disclosure of the amount of revenue from products and services. Regulation S-K, however, only requires this disclosure for products and services which account for 10 percent or more of consolidated revenue in each of the last three fiscal years.<sup>326</sup> U.S. GAAP, on the other hand, requires this disclosure for each product or service, or group of similar products and services, unless impracticable. We note that because disclosures required by Regulation S-K, unlike those required by U.S. GAAP, may be provided outside of the audited financial statements, these differences give rise to Disclosure Location –

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change in a reporting entity, of which a combination of entities under common control is an example. From this information, an investor can determine the separate results of the combined entities for periods prior to the combination, as required by Rule 10-01(b)(3).

However, as discussed in section III.E.11, ASC 250-10-50-6 does not explicitly apply to interim periods, while Rule 10-01(b)(3) does. Thus, any revision to U.S. GAAP to apply the provisions of ASC 250-10-50-6 to interim periods, to address the points raised in section E.E.11, would also address the points raised in this section.

<sup>324</sup> See Item 101(c)(1)(i) of Regulation S-K [17 CFR 229.101(c)(1)(i)].

<sup>325</sup> See ASC 280-10-50-40.

<sup>326</sup> If an issuer's revenue does not exceed \$50 million, Regulation S-K only requires disclosure for products and services which accounted for 15 percent or more of consolidated revenue.

Financial Disclosure Considerations. These differences also give rise to Bright Line Disclosure Threshold Considerations.

#### Request for Comment

65. Do issuers encounter challenges in disclosing revenue by products and services? If so, how significant are these challenges and how do issuers overcome these challenges, given that Regulation S-K does not provide an impracticability exception?

#### **14. Major Customers**

Regulation S-K<sup>327</sup> and U.S. GAAP<sup>328</sup> both require disclosures about major customers. However, Regulation S-K is more expansive in its requirements and differs from U.S. GAAP in two ways: (1) the threshold for disclosure and (2) the requirement to disclose a customer's name in certain instances. We note that because disclosures required by Regulation S-K, unlike those required by U.S. GAAP, may be provided outside of the audited financial statements, these differences give rise to Disclosure Location – Financial Disclosure Considerations. These differences also give rise to Bright Line Disclosure Threshold Considerations.

First, Item 101(c)(1)(vii) of Regulation S-K requires disclosure if loss of a customer, or a few customers, would have a material adverse effect on a segment. This threshold differs from U.S. GAAP in that it is qualitative and focuses on the impact on a segment. In contrast, U.S. GAAP requires disclosure, for each customer that comprises 10 percent or more of total revenue, of that fact. Although the requirements for SRCs in Item 101(h)(4)(vi) are more similar to U.S.

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<sup>327</sup> See Item 101(c)(1)(vii) [17 CFR 229.101(c)(1)(vii)] and Item 101(h)(4)(vi) [17 CFR 229.101(h)(4)(vi)] of Regulation S-K. Item 101(c)(1)(vii) applies to non-SRCs and Item 101(h)(4)(vi) applies to SRCs.

<sup>328</sup> See ASC 280-10-50-42.



GAAP in that they do not prescribe a segment focus, they also differ from U.S. GAAP in that they do not set forth a 10 percent bright line test for disclosure.

Second, Item 101(c)(1)(vii) requires disclosure of the name of any customer that represents 10 percent or more of the issuer's revenues and whose loss would have a material adverse effect on the issuer.<sup>329</sup> In 1999, the Commission considered deleting this requirement to conform to U.S. GAAP. However, the Commission determined to retain this requirement, as it continued to believe that the identity of major customers is material information to investors and that the disclosure allows a reader to better assess risks associated with a particular customer, as well as material concentrations of revenues related to that customer.<sup>330</sup>

Because U.S. GAAP does not scale disclosure requirements by SRC status, any incorporation of these requirements into U.S. GAAP would result in the application to SRCs of the disclosure threshold and the requirement to name a customer in certain instances.

#### Request for Comment

66. U.S. GAAP does not require identification of major customers by name because many constituents argued in the standard-setting process that it could be competitively harmful to either the enterprise or the customer.<sup>331</sup> In what way would such disclosures be competitively harmful? Does the fact that the Regulation S-K requirement to identify the customer is triggered where the loss would be material, whereas the U.S. GAAP

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<sup>329</sup> Item 101(h)(4)(vi) of Regulation S-K does not require disclosure of the name of major customers.

<sup>330</sup> See *Segment Reporting*, Release No. 33-7620, (Jan. 5, 1999) [64 FR 1728].

<sup>331</sup> Basis for Conclusions to SFAS No. 14, *Financial Reporting for Segments of a Business Enterprise*, paragraph 89.

disclosure is based on a bright line percentage of revenues, affect the determination of whether disclosure would be competitively harmful?

67. What would be the impact on SRCs if the disclosure threshold discussed above and requirement to disclose a customer's name in certain circumstances were to apply to SRCs? Would investors benefit from such disclosure? Does any potential impact affect your view as to whether we should refer this requirement to the FASB? If so, how?

### **15. Legal Proceedings**

U.S. GAAP requires disclosure of loss contingencies.<sup>332</sup> Regulation S-K requires disclosure of certain legal proceedings,<sup>333</sup> which are one type of loss contingency. In practice, to comply with Regulation S-K, issuers commonly repeat some or all of the disclosures provided in the notes to the financial statements under U.S. GAAP or include a cross-reference thereto.

Three commenters to the Disclosure Effectiveness Initiative generally noted similarities between the disclosures required by Item 103 of Regulation S-K and U.S. GAAP.<sup>334</sup> One commenter suggested removing any overlap between Item 103 and relevant accounting standards and financial reporting requirements.<sup>335</sup> Another commenter encouraged the Commission to coordinate with the FASB to determine, generally, whether differences between U.S. GAAP and the disclosures required by Regulation S-K continue to serve a purpose.<sup>336</sup>

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<sup>332</sup> See ASC 450.

<sup>333</sup> See Item 103 of Regulation S-K [17 CFR 229.103].

<sup>334</sup> See letters from CCMC (July 29, 2014); Society of Corporate Secretaries and Governance Professionals ("SCSGP") (Sept. 10, 2014); and Shearman & Sterling LLP ("Shearman") (Nov. 26, 2014).

<sup>335</sup> See letter from CCMC (July 29, 2014).

<sup>336</sup> See letter from SCSGP (Sept. 10, 2014).

As further described below, although Item 103 and U.S. GAAP have overlapping requirements, they differ in certain respects. Incorporation of Item 103 requirements into U.S. GAAP would have implications for investors, issuers, and other stakeholders.

The discussion below is organized as follows:

- Section III.E.15.a identifies differences between Item 103 and U.S. GAAP.
- Section III.E.15.b discusses the potential consequences of incorporating the Item 103 requirements into U.S. GAAP.
- Section III.E.15.c discusses other considerations related to Item 103.

**a. Differences**

The table below presents differences in: (1) the types of matters covered by Item 103 and U.S. GAAP and (2) other criteria. Each type of matter in part (1) of the table is subject to each of the other criteria discussed in part (2) of the table. These differences give rise to Disclosure Location – Financial Disclosure Considerations and Bright Line Disclosure Threshold Considerations.

Scope	Item 103	U.S. GAAP	Difference
<b>1. Types of Matters</b>			
Ordinary routine litigation	Requires disclosure of material legal proceedings other than ordinary routine litigation incidental to the business.	Encompasses all legal proceedings, including ordinary routine litigation.	U.S. GAAP is more expansive than Item 103. See consequence 3 in section III.E.15.b.
Proceedings known to be contemplated by governmental authorities	Requires disclosure of proceedings that are not only pending, but known to be contemplated.	Encompasses all legal proceedings, as well as unasserted claims probable of being asserted.	<p>U.S. GAAP is more expansive than Item 103, except for proceedings known to be contemplated which are not probable of being asserted. See consequence 3 in section III.E.15.b.</p> <p>For proceedings known to be contemplated which are not probable of being asserted, Item 103 is more expansive than U.S. GAAP. See consequences 1 and 2 in section III.E.15.b.</p>
Proceedings with any director, officer, affiliate, or shareholder	Requires disclosure of material proceedings when a director, officer, affiliate, shareholder with more than five percent ownership, or associate thereof is a party adverse to the issuer, or has a material interest adverse to the issuer.	Encompasses all legal proceedings, including matters with directors, officers, affiliates, shareholders with more than five percent ownership, or associates thereof.	U.S. GAAP is more expansive than Item 103. See consequence 3 in section III.E.15.b.
Bankruptcy, receivership, or similar proceeding	Requires a description of any material bankruptcy,	Disclosure not required.	Item 103 is more expansive than U.S. GAAP. See

Scope	Item 103	U.S. GAAP	Difference
	receivership, or similar proceeding.		consequence 2 in section III.E.15.b.
Environmental matters	<p>Notwithstanding the ordinary routine litigation exception above, requires disclosure of all proceedings, under federal, state, or local provisions related to environmental regulation.</p> <p>Includes proceedings involving capital expenditures or deferred charges that may be recognized on the balance sheet (rather than losses recognized on the income statement).</p>	<p>Encompasses all legal proceedings that affect the income statement, including environmental matters.</p> <p>Does not address legal proceedings involving capital expenditures or deferred charges.</p>	<p>For legal proceedings that affect the income statement, U.S. GAAP is more expansive than Item 103. See consequence 3 in section III.E.15.b.</p> <p>For legal proceedings involving capital expenditures or deferred charges, Item 103 is more expansive than U.S. GAAP. See consequence 2 in section III.E.15.b.</p>
<b>2. Other Criteria</b>			
Damages	Applies to proceedings that involve both monetary and non-monetary (e.g., injunctions) damages.	Covers matters that give rise to a liability – that is, monetary damages.	Item 103 is more expansive than U.S. GAAP. See consequence 2 in section III.E.15.b.
Quantitative Thresholds	For all matters other than (1) bankruptcies, receiverships, or similar proceedings and (2) environmental matters, does not require disclosure of material proceedings, where the amounts involved do not exceed 10 percent of the issuer’s consolidated current assets.	Does not provide quantitative thresholds.	<p>U.S. GAAP is more expansive than Item 103 where material proceedings fall below the 10 percent or the \$100,000 threshold. See consequence 3 in section III.E.15.b.</p> <p>Item 103 could be more expansive than U.S. GAAP where environmental</p>

Scope	Item 103	U.S. GAAP	Difference
	<p>For environmental matters involving a claim for damages, potential monetary sanctions, capital expenditures, or other charges, requires disclosure of proceedings that exceed 10 percent of the issuer's consolidated current assets.</p> <p>For environmental matters involving a governmental authority and potential monetary sanctions, requires disclosure if potential monetary sanctions exceed \$100,000.</p>		<p>proceedings exceed the 10 percent or \$100,000 thresholds but otherwise may not be material to the registrant. See consequences 1 and 2 in section III.E.15.b.</p>
Likelihood	<p>For all matters other than environmental matters, requires disclosure if material. Materiality depends on likelihood and magnitude.<sup>337</sup></p>	<p>Requires disclosure when the likelihood of loss is at least reasonably possible.</p>	<p>Item 103 is more expansive than U.S. GAAP, in low probability-high magnitude situations. See consequences 1 and 2 in section III.E.15.b.</p>

<sup>337</sup> See *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988) (stating that, in the case of speculative or contingent events, materiality will depend at any given time upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity).

## **b. Consequences**

In light of the differences between Item 103 and U.S. GAAP, as discussed above, incorporation of Item 103's requirements into U.S. GAAP would result in the following consequences. These consequences assume that the most expansive requirements from either Item 103 or U.S. GAAP are retained. Refer to the table above to identify the specific consequences associated with each difference between Item 103 and U.S. GAAP.

### 1. Disclosure of the Possible Range of Loss in More Circumstances

U.S. GAAP requires disclosure of the possible loss or range of loss in excess of amounts accrued<sup>338</sup> or a statement that such an estimate cannot be made.<sup>339</sup> Where the scope of proceedings or matters covered by Item 103 is more expansive than that of U.S. GAAP, incorporation of these incremental disclosure requirements into U.S. GAAP may benefit investors, as they would receive range of loss disclosures for matters previously outside the scope of U.S. GAAP. Provision of this disclosure, however, may create additional burdens for issuers and auditors to develop and audit additional estimates and disclosures.

### 2. Disclosure Subject to Audit/Review, Internal Control over Financial Reporting, and XBRL Tagging Requirements in More Circumstances

Certain disclosures made outside the audited financial statements would be included within the notes to the financial statements, giving rise to Disclosure Location – Financial Statement Considerations. Some issuers already include this information in their audited financial statements, and, thus, the additional burdens should not be significant for these issuers.

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<sup>338</sup> See ASC 450-20-25-2, which requires accrual of an estimated loss from a loss contingency if: (a) it is probable that a liability has been incurred at the date of the financial statements and (b) the amount of loss can be reasonably estimated.

<sup>339</sup> See ASC 450-20-50-3.

### 3. Disclosure of Factual Information in More Circumstances

Item 103 requires disclosure of the court or agency in which the proceedings are pending, the date instituted, the principal parties involved, the alleged factual basis to the proceeding, and the relief sought. Where the scope of U.S. GAAP is more expansive than that of Item 103, incorporation of these factual disclosure requirements into U.S. GAAP may benefit investors, as they would newly receive these factual disclosures for incremental matters previously outside the scope of Item 103. Provision of this disclosure, however, may create additional burdens for issuers and auditors to develop and audit additional disclosures.

#### **c. Other Considerations**

Under the National Environmental Policy Act of 1970 (“NEPA”),<sup>340</sup> Congress required all federal agencies to include consideration of the environment in regulatory action. In response to this mandate, the Commission adopted environmental compliance and litigation disclosure requirements.<sup>341</sup> The incorporation of Item 103’s requirements into U.S. GAAP could result in changes to required disclosures about environmental legal proceedings, such as replacement of the 10 percent and \$100,000 thresholds<sup>342</sup> related to environmental matters with a more general

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<sup>340</sup> 42 U.S.C. 4321 *et seq.*

<sup>341</sup> As a result of NEPA, the Commission issued an interpretive release in 1971 alerting companies to potential disclosure obligations that could arise from material environmental litigation and the material effects of compliance with environmental laws. The Commission later adopted more specific disclosure requirements relating to these matters and, in 1976, the Commission amended its forms to require disclosure of any material estimated capital expenditures for environmental control facilities.

See *Disclosures Pertaining to Matters Involving the Environment and Civil Rights*, Release No. 33-5170 (July 19, 1971) [36 FR 13989 (July 29, 1971)], *Disclosure with Respect to Compliance with Environmental Requirements and Other Matters*, Release No. 33-5386 (April 20, 1973) [38 FR 12100 (May 9, 1973)], *Disclosure of Environmental and Other Socially Significant Matters*, Release No. 33-5569 (Feb. 11, 1975) [40 FR 7013 (Feb. 18, 1975)], *Conclusions and Final Action on Rulemaking Proposals Relating to Environmental Disclosure*, Release No. 33-5704 (May 6, 1976) [41 FR 21632 (May 27, 1976)], *Natural Resources Defense Council et al., v. SEC*, 389 F. Supp. 689 (D.D.C. 1974).

<sup>342</sup> The Commission adopted the \$100,000 threshold in 1982. See *Adoption of Integrated Disclosure System*.



materiality threshold. We solicit comment about alternative thresholds in section III.B.2 in our discussion of Bright Line Disclosure Threshold Considerations.

#### Request for Comment

68. For the following disclosures, would inclusion of these disclosures in the audited financial statements create significant burdens for issuers and auditors? Would it require revision to standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”) or the American Bar Association Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for Information?<sup>343</sup> If so, how do auditors of issuers that currently include the above disclosures in the audited financial statements audit them?
- a. Proceedings known to be contemplated but which are not probable of being asserted.
  - b. Material bankruptcy, receivership, or similar proceeding.
  - c. Non-monetary damages.
  - d. Proceedings involving capital expenditures or deferred charges.
  - e. Environment proceedings in excess of the 10 percent or \$100,000 thresholds that may not be otherwise material to the registrant.
  - f. Low probability-high magnitude proceedings.
  - g. The court or agency in which the proceedings are pending, the date instituted, the principal parties involved, the alleged factual basis to the proceeding, and the relief sought.

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<sup>343</sup> See AU sec. 337C: Exhibit II – *American Bar Association Statement of Policy Regarding Lawyers’ Responses to Auditors’ Request for Information*.

## 16. Oil and Gas Producing Activities

Regulation S-K<sup>344</sup> and U.S. GAAP<sup>345</sup> both require issuers engaged in oil and gas producing activities to disclose information about those activities in the notes to the financial statements. However, Item 302(b) of Regulation S-K incrementally requires that the U.S. GAAP disclosures must be provided for each period presented. This requirement is only applicable to non-SRCs.<sup>346</sup> Because U.S. GAAP does not scale disclosure requirements by SRC status, any incorporation of these requirements into U.S. GAAP would result in the application of this requirement to SRCs.

### Request for Comment

69. Would the application of this disclosure requirement to SRCs impose additional costs?

Please describe any such costs. Would investors benefit from such disclosure? Does that affect your view as to whether we should refer this requirement to the FASB? If so, how?

## 17. Request for Comment

70. Do investors use the incremental disclosures required by the overlapping Commission disclosure requirements? If so, in what way?

71. Should we retain, modify, eliminate, or refer the foregoing incremental Commission disclosure requirements to the FASB for potential incorporation into U.S. GAAP? If so, which ones and why? If not, please discuss why not. Please be as specific as possible for each of the proposed referrals on which you provide comments.

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<sup>344</sup> See Item 302(b) of Regulation S-K [17 CFR 229.302(b)].

<sup>345</sup> See ASC 932-235-50.

<sup>346</sup> See Item 302(c) of Regulation S-K [17 CFR 229.302(c)].

72. For each topic in this section:
- a. What would be the potential costs and benefits of incorporating the incremental disclosure requirements into U.S. GAAP? Do these potential costs and benefits affect your views as to whether we should refer any or all of the foregoing disclosure requirements to the FASB for potential incorporation into U.S. GAAP? If so, which requirements and how?
  - b. Would the expansion of the disclosure requirements to Regulation A and crowdfunding issuers that report under U.S. GAAP result in additional costs and benefits? Please describe any such costs and benefits. Do any of these potential costs and benefits affect your views as to whether the disclosure requirements should be referred to the FASB? If so, how?
73. Are there other Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP? If so, what requirements do they overlap with and what action, if any, should we take to address the overlap?

#### **IV. Outdated Requirements**

##### **A. Background**

We have also preliminarily identified Commission disclosure requirements that have become obsolete as a result of the passage of time or changes in the regulatory, business, or technological environment. We propose to amend these outdated requirements. The proposed amendments are intended to simplify issuer compliance efforts. To reduce any loss of information or increased burdens for investors, we also propose to require additional disclosure of information which is expected to be readily available to issuers at minimal to no cost.

Section IV.B below discusses each outdated Commission disclosure requirement and the proposed amendment.

## **B. Proposed Amendments**

### **1. Stale Transition Dates**

In certain circumstances, when the Commission revised its disclosure requirements, it specified the date beyond which issuers are required to comply with the new requirements.<sup>347</sup> Given the passage of these transition dates, we propose to delete references to them in our disclosure requirements.

### **2. Income Tax Disclosures<sup>348</sup>**

In February 1992, the FASB revised its income tax disclosure requirements, as part of a broader project on the accounting for income taxes,<sup>349</sup> effective for fiscal years beginning after December 15, 1992. In October 1992, the Commission amended Regulation S-X<sup>350</sup> to clarify that parts of certain rules<sup>351</sup> do not apply to issuers that have adopted the new FASB standard.<sup>352</sup> Because all issuers are now required to apply the FASB's revised standard, we propose to eliminate the parts of Rule 4-08(h) that no longer apply: Rule 4-08(h)(1)(ii), the parenthetical at the end of Rule 4-08(h)(1), part of the introductory sentence of Rule 4-08(h)(2), and all of Rule 4-08(h)(3) of Regulation S-X.

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<sup>347</sup> See Rule 4-01(a)(3) of Regulation S-X [17 CFR 210.4-01(a)(3)] for non-SRCs and Note 6 to Rule 8-01 of Regulation S-X [17 CFR 210.8-01] for SRCs. See Forms S-3, F-1, F-3, F-4, and 20-F. See Exchange Act Rule 13a-10(g)(3) [17 CFR 240.13a-10(g)(3)], Exchange Act Rule 15d-2 [17 CFR 240.15d-2], and Exchange Act Rule 15d-10(g)(3) [17 CFR 240.15d-10(g)(3)].

<sup>348</sup> Please refer to the related discussions in sections II.B.4 and III.E.7.

<sup>349</sup> SFAS No. 109, *Accounting for Income Taxes*.

<sup>350</sup> See *Amendments to Rules and Forms*, Release No. 33-6958A, (Oct. 1, 1992) [57 FR 45287].

<sup>351</sup> See Rule 4-08(h)(1) [17 CFR 210.4-08(h)(1)] and 4-08(h)(2) of Regulation S-X [17 CFR 210.4-08(h)(2)].

<sup>352</sup> Rule 4-08(h)(3) of Regulation S-X [17 CFR 210.4-08(h)(3)].

### 3. Available Information

#### a. Public Reference Room

Various Commission disclosure requirements and forms require issuers to disclose the availability of their filings for reading or copying at the Commission's Public Reference Room and the Public Reference Room's physical address and phone number.<sup>353</sup> However, the Commission staff has observed that the Commission's Public Reference Room is rarely used by the public to obtain or review issuer filings,<sup>354</sup> as paper filings are now only permitted (and sometimes required) in very limited circumstances.<sup>355</sup> Generally, issuers are required to file most filings electronically and, with the widespread availability of the Internet, investors can access for free substantially all issuers' Commission filings on EDGAR. As a result, we propose to delete the requirements to identify the Public Reference Room and disclose its physical address and phone number.<sup>356</sup>

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<sup>353</sup> See Item 101(e)(2) of Regulation S-K [17 CFR 229.101(e)(2)] for non-SRCs and Item 101(h)(5)(iii) of Regulation S-K [17 CFR 229.101(h)(5)(iii)] for SRCs. The Commission's Securities Act registration statements filed on Forms S-1, S-3, S-11, S-4, F-1, F-3, and F-4 require similar disclosures. Regulation AB also has similar disclosure requirements for asset-backed issuers. See Item 1118(b) of Regulation AB [17 CFR 229.1118(b)] and Forms SF-1 [17 CFR 239.44] and SF-3 [17 CFR 239.45]. In addition, Forms N-1A [17 CFR 239.15A and 274.11A], N-2 [17 CFR 239.14 and 274.11a-1], N-3 [17 CFR 239.17a and 274.11b], N-5 [17 CFR 239.24 and 274.5], N-6 [17 CFR 239.17c and 274.11d], and N-8B-2 [17 CFR 274.12] have similar disclosure requirements.

<sup>354</sup> Commission staff who currently operate the Public Reference Room indicate that it is now primarily used by legal publishers who wish to review paper Forms 144 [17 CFR 239.144] (filings made by an affiliate of an issuer as notice of the proposed sale of securities in reliance on Rule 144), which are still permitted to be filed in paper form. See <http://www.sec.gov/answers/form144.htm>.

<sup>355</sup> See Rules 14 [17 CFR 232.14], 101 [17 CFR 232.101], and 102 [17 CFR 232.102] of Regulation S-T.

<sup>356</sup> We also propose to delete the requirement to disclose how to send a written request by mail to the SEC's Public Reference Room to obtain certain hard copy information. Disclosure of how to obtain this information electronically would still be required.

Three commenters on the Disclosure Effectiveness Initiative recommended deleting the requirements to identify the Public Reference Room and disclose its location and phone number. See letters from ABA (Mar. 6, 2015); CCMC (July 29, 2014); and SCSGP (Sept. 10, 2014).

Although we are proposing to delete the requirements to identify the Public Reference Room, its physical address, and its phone number, the Public Reference Room will remain open and available for interested persons to access Commission filings.

Additionally, electronic filers are required to disclose the Commission’s Internet address and that electronic SEC filings are available there. We intend to retain this requirement but propose to delete the qualifier “if you are an electronic filer” as all but a limited number of issuers are now required to file electronically.<sup>357</sup> We also propose to expand this requirement to Forms 20-F and F-1, which do not currently call for such disclosure, to align the requirements for foreign private issuers with domestic issuers. While these proposed amendments would impose additional disclosure burdens on certain classes of issuers (i.e., paper filers and foreign private issuers), we believe the cost of providing this information would be minimal.

#### Request for Comment

74. Are the disclosures to identify the Public Reference Room and disclose its physical address and phone number useful to investors?
75. Are there significant burdens and costs associated with disclosing the Commission’s Internet address and a statement that electronic SEC filings are available there?

#### **b. Issuer Internet Address**

In 2002, the Commission recognized that “[a]n efficient and economical method for companies to make information available about themselves to many investors is through their Internet websites.”<sup>358</sup> The Commission believed that it was important for issuers to make investors aware of the different sources, including corporate websites, that provide access to information about the issuer.<sup>359</sup> Consequently, the Commission revised Regulation S-K to

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<sup>357</sup> See Rules 100 [17 CFR 232.100] and 101 [17 CFR 232.101] of Regulation S-T.

<sup>358</sup> See *Acceleration of Periodic Report Filing Dates and Disclosure Concerning Websites Access to Reports*, Release No. 33-8128 (Sept. 5, 2002) [67 FR 58480].

<sup>359</sup> *Id.*

require accelerated and large accelerated filers<sup>360</sup> to disclose their Internet address, if they have one, in their annual reports filed on Form 10-K,<sup>361</sup> and to encourage other filers to do so.<sup>362</sup> Various forms also encourage filers to disclose their Internet address, if available.<sup>363</sup>

In the 2002 adopting release, the Commission noted that commenters supported extending this disclosure requirement to all issuers, including smaller issuers and foreign private issuers.<sup>364</sup> The Commission indicated it would “continue to study this issue and consider extending the requirement to all reporting companies after evaluating [its] initial experience with the requirement by accelerated filers.”<sup>365</sup>

The Commission staff has observed that many non-accelerated filers already disclose their Internet addresses annually in their Form 10-Ks. This current practice, combined with the minimal costs of disclosing an Internet address, suggest that such a requirement would impose limited burden on issuers. In addition, the Commission has provided guidance about the liability framework for certain types of disclosures on company websites, including hyperlinked and archived data, so that investors could gain the benefits of Internet disclosure.<sup>366</sup> We also believe that such a requirement would help ensure that investors are aware of an additional resource for information about issuers.

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<sup>360</sup> Rule 12b-2 of the Exchange Act defines the terms accelerated filer and large accelerated filer.

<sup>361</sup> See Item 101(e)(3) of Regulation S-K [17 CFR 229.101(e)(3)].

<sup>362</sup> See id. See also Item 101(h)(5)(iii) of Regulation S-K [17 CFR 229.101(h)(5)], which encourages SRCs to disclose their internet addresses, if available.

<sup>363</sup> See Forms S-3, S-4, F-3, F-4. See also Forms SF-1 and SF-3 for asset-backed issuers.

<sup>364</sup> See Release No. 33-8128, supra note 358, at n.138.

<sup>365</sup> Id.

<sup>366</sup> See, e.g., *Commission Guidance on the Use of Company Web Sites*, Release No. 34-58288 (Aug. 1, 2008) [73 FR 45862].

Based on the foregoing, we propose to amend Items 101(e) and 101(h)(5) of Regulation S-K and Forms S-3, S-4, F-1, F-3, F-4, 20-F, SF-1, and SF-3 to require all issuers to disclose their Internet addresses (or, in the case of asset-backed issuers, the address of the specified transaction party), if they have one.

#### Request for Comment

76. Are there significant burdens and costs associated with disclosing the issuer's Internet address? Are the burdens or costs that may be imposed on non-accelerated filers, including SRCs, different from those that may be borne by accelerated and large accelerated filers?

### **4. Market Price Disclosure**

#### **a. Item 201(a)(1) of Regulation S-K**

Item 201(a)(1) of Regulation S-K<sup>367</sup> requires issuers to disclose the following:

- The principal U.S. market(s) where its common equity is traded. Foreign issuers must also disclose the principal established foreign public trading market, if applicable. Where applicable, issuers must disclose that there is no established public trading market for their common equity.<sup>368</sup>
- If the principal U.S. market is an exchange, issuers must disclose the high and low sale prices for their common equity for each quarter within the two most recent fiscal years and subsequent interim period.<sup>369</sup>

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<sup>367</sup> 17 CFR 229.201(a)(1).

<sup>368</sup> Item 201(a)(1)(i) of Regulation S-K [17 CFR 229.201(a)(1)(i)].

<sup>369</sup> Item 201(a)(1)(ii) of Regulation S-K [17 CFR 229.201(a)(1)(ii)].



- If the principal U.S. market is not an exchange, issuers must disclose the high and low bid quotations for the same periods as above. Where applicable, issuers must identify the source of the quotations and include appropriate qualifying language.<sup>370</sup>
- Foreign issuers that identify a principal established foreign trading market for common equity are also required to provide market price disclosure comparable to that of a domestic issuer. If the primary U.S. market for the foreign issuer trades using American Depositary Receipts (“ADRs”), then foreign issuers must disclose prices based on the ADRs.<sup>371</sup>
- When Item 201(a)(1) disclosure is included in a Securities Act registration statement or an Exchange Act proxy or information statement, issuers must also disclose the price for their common equity as of the latest practicable date.<sup>372</sup>

Today, the daily market prices of most publicly traded common equity securities, including those quoted on an automated quotation system, are readily available for free on numerous websites, including the exchanges’ or quotation systems’ websites.<sup>373</sup> On these websites, investors can view daily closing prices, up to the previous day, and intra-day quotes, which would be more up-to-date than the prices required by Item 201(a)(1)(v) of Regulation S-K. Additionally, many of these websites allow users to download the daily historical data over

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<sup>370</sup> Item 201(a)(1)(iii) of Regulation S-K [17 CFR 229.201(a)(1)(iii)]. This paragraph requires qualification where the over-the-counter quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions. Reference to quotations must be qualified by appropriate explanation where there is an absence of an established public trading market.

<sup>371</sup> Item 201(a)(1)(iv) of Regulation S-K [17 CFR 229.201(a)(1)(iv)].

<sup>372</sup> Item 201(a)(1)(v) of Regulation S-K [17 CFR 229.201(a)(1)(v)]. The Commission has required this or similar pricing disclosure since the 1960s. *See Guides for Preparation and Filing of Registration Statements*, Release No. 33-4936 (Dec. 9, 1968) [33 FR 18617].

<sup>373</sup> *See, e.g.*, [www.finance.yahoo.com](http://www.finance.yahoo.com); [www.google.com/finance](http://www.google.com/finance); [www.bloomberg.com](http://www.bloomberg.com); [www.nyse.com](http://www.nyse.com); [www.nasdaq.com](http://www.nasdaq.com); [www.londonstockexchange.com](http://www.londonstockexchange.com); [deutsche-boerse.com](http://deutsche-boerse.com); [www.otcbb.com](http://www.otcbb.com); and [www.otcm Markets.com](http://www.otcm Markets.com).

customized time horizons for their own consumption. These features result in more robust information than the disclosure required by Item 201(a)(1) of Regulation S-K.<sup>374</sup>

Based on the foregoing, we propose the following amendments to Item 201(a)(1) of Regulation S-K:

- Issuers with one or more classes of common equity would be required to disclose the principal U.S. market(s) where each class is traded and the trading symbol(s) used by the market(s) for each class of common equity. Foreign issuers also would be required to identify the principal established foreign public trading market, if any, and the trading symbol(s), for each class of their common equity.
- Issuers with common equity that is not traded on an exchange must indicate, as applicable, that any over-the-counter quotations in such trading systems reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions.
- Issuers with no class of common equity traded in an established public trading market would be required to state such fact and disclose the range of high and low bid information, if applicable, for each quarter over the last two fiscal years and any subsequent interim period.<sup>375</sup> Also, such issuers would be required to disclose the source and explain the nature of such quotations.

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<sup>374</sup> Some commenters on the Disclosure Effectiveness Initiative have also suggested that the stock price disclosures are obsolete and should be eliminated. See, e.g., letters from ABA (Mar. 6, 2015); Corporate Governance Committee Business Roundtable (Apr. 15, 2015); CCMC (July 29, 2014); CFA Institute (Nov. 12, 2014); IBM Corporation (Aug. 7, 2014); SCSGP (Sept. 10, 2014); and Shearman (Nov. 26, 2014).

<sup>375</sup> Item 201(a)(1)(i) currently notes that the existence of limited or sporadic quotations should not, by itself, be deemed to constitute an established public trading market.

As proposed to be amended, Item 201(a)(1) would eliminate the detailed disclosure requirement of sale or bid prices for most issuers whose common equity is traded in an established public trading market and replace it with disclosure of the trading symbol.<sup>376</sup> The proposed amendments would also align Item 201(a)(1) with Item 501(b)(4) of Regulation S-K.<sup>377</sup>

**b. Item 9.A.4 of Form 20-F**

Foreign private issuers that file Form 20-F are subject to disclosure requirements similar to those included in Item 201(a)(1) of Regulation S-K. Item 9.A.4 of Form 20-F requires the following price history of the stock to be offered or listed for both the U.S. market and the principal trading market outside the United States, as applicable:

- The annual high and low market prices for the last five full financial years;
- Quarterly high and low market prices for the last two full financial years and any subsequent period; and
- Monthly high and low market prices for the last six months;

For preemptive share issuances, the issuer must disclose the market prices for the first trading day in the most recent six months, the last trading day before the announcement of the

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<sup>376</sup> Form N-2, which is used for registration of closed-end management investment companies, includes disclosure requirements relating to sales prices and bid information that are similar to those in Item 201(a)(1) of Regulation S-K. Item 1, Instruction 1 and Item 8.5(b) of Form N-2. In addition to these requirements, Form N-2 requires disclosure of information relating to net asset value and discount or premium to net asset value. Item 8.5(b), Instructions 4 and 5 and Item 8.5(c) through (e) of Form N-2. Disclosure of sales prices and bid information is needed in registration statements on Form N-2 so that the required premium/discount disclosure can be fully understood. Accordingly, we are not proposing to change the requirements in Form N-2 relating to sales prices and bid information.

<sup>377</sup> 17 CFR 229.501(b)(4). Item 501(b)(4) of Regulation S-K requires prospectus cover page disclosure of the trading symbol(s) and market(s) for securities being offered and registered on a Securities Act registration statement.

offering, and for the latest practicable date. If an issuer's securities are "not regularly traded in an organized market," the issuer must discuss any lack of liquidity.

We propose to amend Item 9.A.4 to be consistent with the proposals related to Item 201(a)(1) of Regulation S-K. Specifically, we propose to amend Item 9.A.4 to require disclosure of the U.S. and principal market(s) where the issuer's common equity trades and the trading symbol(s) assigned to the issuer's common equity that is traded in the U.S. market and principal market. For those issuers whose common equity is not traded in any established public trading market, disclosure of that fact would still be required.

#### Request for Comment

77. Is disclosure of trading symbols an adequate substitute for the current required disclosures in Item 201(a)(1) of Regulation S-K and Item 9.A.4 of Form 20-F? Why or why not?
78. Would elimination of the detailed disclosure of sale or bid prices place a burden on retail investors? Would the proposed disclosures help retail investors by facilitating their research?
79. Where a class of common equity is traded in multiple markets, should issuers have to provide disclosure only for the principal established public trading market or every established public trading market? Why?
80. Should foreign issuers be required to disclose the trading symbol(s) for both the principal U.S. market and the principal established foreign public trading market(s), as applicable? Why or why not?
81. How do investors and issuers currently understand the term "established public trading market?" Is further guidance needed to determine what constitutes "limited or sporadic

quotations” and whether a quotation or trading medium is an established public trading market?

82. Is there uncertainty in the current marketplace regarding the determination of the principal established public trading market?

### **5. Exchange Rate Data**

Item 3.A.3 of Form 20-F requires foreign private issuers to provide exchange rate data where the financial statements required to be provided in the Form 20-F are prepared in a currency other than the U.S. dollar. In these situations, the exchange rate between the financial reporting currency and the U.S. dollar must be provided:

- At the latest practicable date;
- The high and low exchange rates for each month during the previous six months; and
- For the five most recent financial years and any subsequent interim period for which financial statements are presented, the average rates for each period, calculated by using the average of the exchange rates on the last day of each month during the period.

Exchange rate information is readily available for free on a number of websites.<sup>378</sup> These websites allow investors to obtain exchange rate data for the relevant periods, and investors may obtain information that is more current than the information provided in the Form 20-F. In addition, although certain exchange rate information, such as the average exchange rates for each of the five most recent financial years and any subsequent interim period, may be more difficult to obtain and necessitate investors to calculate the averages themselves, we do not expect that investors would face significant challenges in deriving this information.

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<sup>378</sup> See, e.g., [www.finance.yahoo.com](http://www.finance.yahoo.com); [www.google.com/finance](http://www.google.com/finance); [www.bloomberg.com](http://www.bloomberg.com); and [www.reuters.com/finance](http://www.reuters.com/finance).

Based on the foregoing, we proposed to delete Item 3.A.3 of Form 20-F.

Request for Comment

83. Is the exchange rate information that is available on websites an adequate substitute for the current required disclosures? Why or why not?
84. Would the proposed amendments place a burden on retail investors?
85. What are the burdens and costs on registrants associated with disclosing this information?

**6. Foreign Private Issuer Initial Public Offering – Age of Financial Statements**

Form F-1, through its reference to Item 8.A.4 of Form 20-F, requires that audited financial statements for an initial public offering by a foreign private issuer must not be older than 12 months as of the date of the filing.<sup>379</sup> Audited financial statements for all other foreign private issuer offerings or listings must not be older than 15 months at the time of the offering or listing.<sup>380</sup>

Instruction 2 to Item 8.A.4 states that we will waive the 12-month requirement if the foreign private issuer adequately represents that it is not required to comply with the 12-month requirement in any jurisdiction outside the United States and that complying with the requirement is impracticable or involves undue hardship. However, the issuer must still comply with the 15-month requirement in these circumstances.

In light of this instruction, the Commission staff has almost always granted these waiver requests. Based on the foregoing, we propose to amend Instruction 2 to Item 8.A.4 to remove the requirement that foreign private issuers in these situations seek a waiver. This amendment

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<sup>379</sup> This age of financial statements requirement is more stringent than the requirements for domestic issuers, which permit the age of financial statements to exceed 12 months for a period of between 45 days and 90 days after the fiscal year end, depending on the issuer's filer status and other conditions if the issuer is a smaller reporting company. See Rule 8-08 of Regulation S-X [17 CFR 210.8-08](applicable to SRCs) and Rule 3-12 of Regulation S-X [17 CFR 210.3-12] (applicable to non-SRCs).

<sup>380</sup> Item 8.A.4 of Form 20-F.

would enable foreign private issuers that file the above representations as an exhibit to the registration statement, as currently required, to forgo the 12-month requirement and instead comply with the 15-month requirement without incurring the time and expense associated with the waiver process.

### **C. Request for Comment**

86. We solicit comment on the foregoing proposed amendments to address outdated requirements. Is our approach to these outdated requirements appropriate? Please be as specific as possible for each of the proposed amendments on which you provide comments.
87. Are there other Commission disclosure requirements that are outdated? If so, why is the requirement outdated and how should it be amended?

## **V. Superseded Requirements**

### **A. Background**

As accounting, auditing, and disclosure requirements change over time, inconsistencies may arise between the newer requirements and existing Commission disclosure requirements. We propose amendments to update Commission disclosure requirements to reflect, as applicable, recent legislation, more recently updated Commission disclosure requirements, or more recently updated U.S. GAAP requirements, as discussed in section I.C.2.<sup>381</sup>

The Commission staff has observed in its filing reviews that, in practice, issuers typically navigate these inconsistencies by complying with the requirement that was updated more recently. This is particularly the case with respect to changes in U.S. GAAP requirements,

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<sup>381</sup> Some of the proposed amendments to eliminate superseded Commission disclosure requirements apply to both issuers that report under U.S. GAAP and IFRS. We do not expect our proposed amendments to conform these requirements to U.S. GAAP to cause confusion for issuers that report under IFRS because U.S. GAAP and IFRS are substantially converged for these topics.

as the Commission has designated the FASB as the private-sector accounting standard setter for U.S. financial reporting purposes, as discussed in section I.C.1. As such, we anticipate that these proposed amendments generally will not affect current disclosure practices. Periodically, however, issuers and their advisers express confusion about how the more recently updated requirements affect existing Commission disclosure requirements and seek guidance from the Commission staff. In these situations, the proposed amendments should help simplify compliance by updating superseded Commission disclosure requirements and addressing any potential confusion by codifying Commission staff guidance. In turn, investors and other users should benefit from greater consistency across issuers.

Section V.B below discusses each Commission disclosure requirement that we believe is superseded and the proposed amendment.<sup>382</sup>

## **B. Proposed Amendments**

### **1. Auditing Standards**

Section 103(a) of the Sarbanes-Oxley Act authorized the PCAOB to establish auditing and related professional practice standards used by registered public accountants when conducting audits of issuers.<sup>383</sup> Prior to the creation of the PCAOB, public accounting firms conducted audits of issuers pursuant to Generally Accepted Auditing Standards (“GAAS”)<sup>384</sup> and many Commission rules continue to refer to those standards. In addition, section 10A of the Exchange Act also refers to GAAS in its requirements for audits. The standards of the PCAOB are different from GAAS.

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<sup>382</sup> This section also includes proposed technical corrections of non-existent or incorrect references.

<sup>383</sup> Pub. L. 107-204, 116 Stat. 745 (2002). Pursuant to section 2(a)(7) of the Sarbanes-Oxley Act, an issuer is defined as an issuer with securities registered under section 12 of the Exchange Act or required to file reports under section 15(d) of the Exchange Act. 15 U.S.C. 7201(a)(7).

<sup>384</sup> These standards are currently promulgated by the American Institute of Certified Public Accountants.



In 2004, the Commission published interpretive guidance explaining that references to GAAS in Commission rules and staff guidance, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission.<sup>385</sup> The Commission also stated its intent to codify this interpretation in the future.<sup>386</sup>

We propose to codify the 2004 interpretation by amending Rule 1-02(d) of Regulation S-X to refer to “the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”)” as it relates to the audit of issuers and to note that, for different types of non-issuers, the Commission requires PCAOB auditing standards or GAAS or permits the use of either.<sup>387</sup> We are also proposing amendments to Rule 436(d)(4) of Regulation C and General Instructions E(c)(3) and G(f)(1) and Instruction 2 to Item 8.A.2 of Form 20-F to replace the references to GAAS with “the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”)” and to state that financial statements of entities other than the issuer must be audited in accordance with applicable professional standards. Additionally, we propose amending Rule 2-01(f)(7)(ii)(B) of Regulation S-X to update its language to make it consistent with current auditing standards, Rules 2-02(b)(1), 8-03, and 10-01 of Regulation S-X to refer to “applicable professional standards” instead of GAAS, and Rules 10A-1(b)(3)<sup>388</sup> and 13b2-2(b)(2)<sup>389</sup> of the Exchange Act to replace the references to GAAS with “the standards of the

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<sup>385</sup> See *Commission Guidance Regarding the Public Company Accounting Oversight Board’s Auditing and Related Professional Practice Standard No. 1*, Release No. 34-49708 (May 14, 2004) [69 FR 29064]. Subsequently, section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) amended the Sarbanes-Oxley Act to establish the PCAOB’s authority to oversee the independent public accountants that audit registered brokers and dealers. See Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>386</sup> *Id.*

<sup>387</sup> The auditing standards of the PCAOB apply to all issuers and only some entities that are not issuers as defined by the Sarbanes-Oxley Act (e.g., broker-dealers). For other non-issuers, GAAS is permitted.

<sup>388</sup> 17 CFR 240.10A-1(b)(3).

<sup>389</sup> 17 CFR 240.13b2-2(b)(2).

Public Company Accounting Oversight Board.” Related to auditing, we are also proposing an amendment to Instruction E(c)(3) of Form 20-F to clarify the auditor independence requirement by replacing the reference to U.S. standards for auditor independence with “qualified and independent in accordance with Article 2 of Regulation S-X.”

## **2. Statement of Cash Flows**

In October 1992, to conform to changes in U.S. GAAP,<sup>390</sup> the Commission amended various rules and forms to replace references to “changes in financial position” and “funds flows” with “cash flows.”<sup>391</sup> The 1992 amendments inadvertently failed to amend the title of Rule 3-02 of Regulation S-X, which continues to refer to changes in financial position. We propose to replace that reference in the title of Rule 3-02.

## **3. Gain or Loss on Sale of Properties by REITs<sup>392</sup>**

Regulation S-X requires REITs to present separately all gains and losses on the sale of properties outside of continuing operations in the income statement.<sup>393</sup> U.S. GAAP, however, restricts that presentation to gains and losses on disposals that meet the definition of discontinued operations.<sup>394</sup>

Prior to 2014, application of Regulation S-X often resulted in the same presentation as U.S. GAAP because most REIT dispositions met the definition of discontinued operations, such that any gains or losses were presented outside of continuing operations in compliance with both requirements. In 2014, the FASB narrowed the definition of discontinued operations in U.S.

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<sup>390</sup> In November 1987, the FASB superseded APB Opinion No. 19, *Reporting Changes in Financial Position*, with its issuance of SFAS No. 95, *Statement of Cash Flows*.

<sup>391</sup> See *Amendments to Rules and Forms*, Release No. 33-6958A, (Oct. 1, 1992) [57 FR 45287].

<sup>392</sup> Please refer to the related discussions in sections III.C.1 and III.E.1.

<sup>393</sup> See Rule 3-15(a)(1) of Regulation S-X [17 CFR 210.3-15(a)(1)].

<sup>394</sup> ASC 205-20-45-1B.

GAAP,<sup>395</sup> such that it now more frequently results in a presentation that differs from that under Regulation S-X. We propose to update Regulation S-X by eliminating Rule 3-15(a)(1).

#### **4. Consolidation**<sup>396</sup>

The Commission provided guidance on the presentation of consolidated and combined financial statements when it first issued Regulation S-X in 1940.<sup>397</sup> Since that time, certain U.S. GAAP consolidation requirements have changed significantly, creating inconsistencies between Regulation S-X and U.S. GAAP.<sup>398</sup> To address these inconsistencies, we propose the amendments discussed below.

##### **a. Difference in Fiscal Periods**

Regulation S-X prohibits the consolidation of an entity if its fiscal period differs substantially, for example by more than 93 days, from that of the issuer.<sup>399</sup> U.S. GAAP,

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<sup>395</sup> See Accounting Standards Update (“ASU”) No. 2014-08, *Presentation of Financial Statements (Topic 205) and Property, Plant, and Equipment (Topic 360): Reporting Discontinued Operations and Disclosures of Disposals of Components of an Entity*. ASU No. 2014-08 is effective for public business entities on a prospective basis to: (1) all disposals (or classifications as held for sale) of components of an entity that occur within annual periods beginning on or after December 15, 2014, and interim periods within those years and (2) all businesses that, on acquisition, are classified as held for sale that occur within annual periods beginning on or after December 15, 2014, and interim periods within those years. Early adoption is permitted, but only for disposals (or classifications as held for sale) that have not been reported in financial statements previously issued or available for issuance.

<sup>396</sup> Please refer to the related discussions in sections II.B.2, III.C.2, and III.E.2.

<sup>397</sup> See *Adoption of Regulation S-X*, 5 FR 954 (March 6, 1940) [5 FR 954].

<sup>398</sup> For example, Accounting Research Bulletin (“ARB”) No. 51, *Consolidated Financial Statements* (“ARB No. 51”), was issued in 1959. More recently, the FASB has issued SFAS No. 94, *Consolidation of All Majority-Owned Subsidiaries – an amendment of ARB No. 51, with related amendments of APB Opinion No. 18 and ARB No. 43, Chapter 12*; FASB Interpretation No. 46, *Consolidation of Variable Interest Entities – an interpretation of ARB No. 51*; FASB Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities – an interpretation of ARB No. 51*; SFAS No. 167, *Amendments to FASB Interpretation No. 46(R)*; and ASU No. 2015-02, *Consolidation (Topic 810): Amendments to the Consolidation Analysis*.

<sup>399</sup> See Rule 3A-02(b) [17 CFR 210.3A-02(b)] and Rule 3A-02(b)(1) [17 CFR 210.3A-02(b)(1)] of Regulation S-X.

however, requires consolidation despite different fiscal periods.<sup>400</sup> Thus, we propose to update Regulation S-X by deleting the consolidation prohibition in Rule 3A-02(b).

Regulation S-X permits the combination of entities under common control even if their fiscal periods differ by more than 93 days, but requires the recasting of the latest fiscal year to within 93 days and disclosure of amounts excluded or included more than once as a result of the recasting.<sup>401</sup> Under U.S. GAAP, the fiscal periods of combined entities must differ by less than about three months.<sup>402</sup> Thus, we propose to update Regulation S-X by deleting Rule 3A-02(b)(2).

#### **b. Bank Holding Company Act of 1956**

The Bank Holding Company Act of 1956 (“BHC Act”)<sup>403</sup> prohibits a bank holding company from certain holdings and activities.<sup>404</sup> When a bank becomes involved in a prohibited activity, for example through a business combination or possession of collateral, the bank holding company may temporarily continue these activities, as long as the bank holding company disposes of the restricted activities within the grace period afforded by the BHC Act.<sup>405</sup>

Regulation S-X prohibits consolidation of subsidiaries of issuers subject to the BHC Act when a divestiture has been made or it is substantially likely that the divestiture will be necessary in order to comply with provisions of the BHC Act.<sup>406</sup> U.S. GAAP, however, does not provide

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<sup>400</sup> ASC 810-10-15-11.

<sup>401</sup> 17 CFR 210.3A-02(b)(2).

<sup>402</sup> ASC 810-10-45-10 and ASC 810-10-45-12.

<sup>403</sup> 12 U.S.C. 1841, *et seq.*

<sup>404</sup> 12 U.S.C. 1843.

<sup>405</sup> *Id.*

<sup>406</sup> See Rule 3A-02(c) of Regulation S-X [17 CFR 210.3A-02(c)].

such an exception to consolidation.<sup>407</sup> Instead, U.S. GAAP requires consolidation of such subsidiaries until their disposal, but provides for their separate presentation in the financial statements prior to disposal if they meet the criteria for “held for sale” classification.<sup>408</sup> Thus, we propose to delete Rule 3A-02(c).

### **c. Intercompany Transactions Generally**

Regulation S-X provides disclosure requirements for intercompany transactions that are not eliminated.<sup>409</sup> U.S. GAAP, however, requires the elimination of intercompany transactions from consolidated financial statements.<sup>410</sup> Accordingly, we propose to update Regulation S-X by deleting this disclosure requirement in Rule 3A-04.

### **d. Intercompany Transactions in Separate Financial Statements**

When separate financial statements of a subset of a consolidated group, such as a parent, subsidiaries, or investees, are presented, Regulation S-X contemplates the elimination of some transactions between the subset of the consolidated group presented in the separate financial statements and other entities in the consolidated group.<sup>411</sup> U.S. GAAP, however, does not permit elimination of these transactions in the separate financial statements.<sup>412</sup> Rather, U.S. GAAP

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<sup>407</sup> ASC 810-10-15-10a. See also paragraph C2.a of SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* (August 2001), which eliminated the pre-existing exception from consolidation for subsidiaries under temporary control under ARB No. 51.

<sup>408</sup> See ASC 360-10-45-9, ASC 360-10-45-14, and ASC 205-20-45.

<sup>409</sup> Specifically, if an issuer does not eliminate intercompany transactions from its financial statements, it must explain why and how the transactions are treated. See Rule 3A-04 of Regulation S-X [17 CFR 210.3A-04].

<sup>410</sup> See ASC 323-10-35-5a and ASC 810-10-45-1.

<sup>411</sup> This provision is implicit in the first sentence of Rule 4-08(k)(2) of Regulation S-X [17 CFR 210.4-08(k)(2)], which requires disclosure of which intercompany amounts are eliminated or not eliminated.

<sup>412</sup> U.S. GAAP requires elimination of intercompany transactions only in consolidated financial statements. See ASC 810-10-45-1.

treats these transactions as related party transactions for which disclosure is required.<sup>413</sup>

Accordingly, we propose to delete this requirement in Rule 4-08(k)(2).

#### **e. Dividends Per Share in Interim Financial Statements**

Regulation S-X requires, for interim periods, the presentation of dividends per share on the face of the income statement.<sup>414</sup> U.S. GAAP permits this disclosure in the notes to the financial statements, but prohibits it on the face of the financial statements.<sup>415</sup> Because of this prohibition under U.S. GAAP, the requirement under Regulation S-X results in a presentation that does not comply with U.S. GAAP.

To address this issue, we propose to eliminate the requirement to present dividends per share on the face of the income statement for interim periods in Rule 8-03(a)(2) and Rule 10-01(b)(2). Because we believe that the presentation of interim dividends per share is useful, however, we propose to require its presentation alongside disclosure of changes in stockholders' equity. To effect this relocation of the interim dividends per share disclosure, as discussed in section III.C.16, we propose to extend Rule 3-04 of Regulation S-X, which requires annual disclosure of changes in stockholders' equity and the amount of dividends per share for each class of shares, to interim periods.<sup>416</sup>

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<sup>413</sup> See ASC 850-10-50-1.

<sup>414</sup> See Rule 8-03(a)(2) [17 CFR 210.8-03(a)(2)] and Rule 10-01(b)(2) [17 CFR 210.10-01(b)(2)] of Regulation S-X. Rule 8-03(a)(2) specifically applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP, while Rule 10-01(b)(2) applies to non-SRCs.

<sup>415</sup> See ASC 260-10-45-5.

<sup>416</sup> Rule 3-04 of Regulation S-X [17 CFR 210.3-04] provides that annual disclosures of changes in stockholders' equity, including dividends per share amounts, may be provided in a note to the financial statements or in a separate financial statement. The option to present dividend per share disclosures in a separate financial statement does not comply with U.S. GAAP, which, as discussed above, prohibits this per share presentation on the face of financial statements. However, we see benefits in continuing to provide (and extending to interim periods) an option to present dividends per share on the face of the statement of stockholders' equity, if an issuer elects to present changes in stockholders' equity in a separate financial statement, irrespective of the prohibition under U.S. GAAP. We believe that the presentation of dividends per share alongside disclosure of

This proposed amendment may create some additional burden for issuers, including Regulation A issuers, because it would require disclosure of dividends per share for each class of shares, rather than only for common stock. The proposed amendment, as discussed in section III.C.16, would also require disclosure of changes in stockholders' equity in interim periods.<sup>417</sup> However, we expect this burden would be minimal, as the required information is already available from the preparation of other aspects of the interim financial statements. The proposed amendments may also give rise to Disclosure Location Considerations in that issuers will now disclose dividends in a separate financial statement or in the notes, instead of the face of the income statement.

#### Request for Comment

88. Should we retain the option to present dividends per share on the face of the statement of stockholders' equity, despite the U.S. GAAP prohibition?

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changes in stockholders' equity facilitates investor understanding of stockholders' equity, as dividends are distributed from stockholders' equity. In addition, the proposed amendments would address the more significant issue in Regulation S-X associated with the requirement to present interim dividends per share on the income statement, which is unrelated to dividends, a component of stockholders' equity.

For Regulation A issuers, we propose amendments directly to Forms 1-A and 1-SA to require interim disclosures of changes in stockholders' equity and dividends per share amounts to address the inconsistency described above with U.S. GAAP, rather than to refer to Rule 3-04. The proposed amendments to Form 1-A would apply to all Regulation A issuers and the proposed amendments to Form 1-SA would apply to all Regulation A issuers in a Tier 2 offering, even though Rule 8-03(a)(2) only applies to Regulation A issuers in a Tier 2 offering that report under U.S. GAAP. However, we do not expect any increased burdens for Regulation A issuers in a Tier 2 offering that report under IFRS, as such issuers are already required to present a condensed statement of changes in equity and dividend amounts either in the aggregate or per share, pursuant to paragraphs 8 and 16A(f), respectively, of IAS 34, *Interim Financial Reporting*. We expect the burdens for Regulation A issuers in a Tier 1 offering that report under U.S. GAAP on Form 1-A to be minimal, as the required information already would be available from the preparation of the interim financial statements.

<sup>417</sup> ASC 505-10-50-2 requires disclosure of changes in the separate accounts comprising stockholders' equity during at least the most recent annual fiscal period and any subsequent interim period presented. The proposed amendments would require disclosure of changes in stockholders' equity for each period presented, which would include comparative periods.

89. Should we extend requirements to disclose changes in stockholders' equity to interim periods, as proposed? Would doing so pose any significant burdens and costs on issuers? Would the proposed requirements benefit investors? If so, how?

**f. Interim Financial Statements – Pro Forma Business Combination Information**<sup>418</sup>

Regulation S-X<sup>419</sup> and U.S. GAAP<sup>420</sup> both require supplemental pro forma information about business combinations in the notes to interim financial statements. In 2010, the FASB clarified that the pro forma financial information should reflect the business combination as if it occurred at the beginning of the preceding fiscal year.<sup>421</sup> At the time, the Commission staff acknowledged that the U.S. GAAP clarification diverged from Regulation S-X, but stated that it did not object to application of Regulation S-X in a manner consistent with U.S. GAAP, while it considered ways to update Regulation S-X.<sup>422</sup> To update Regulation S-X, we propose to delete reference in Rule 8-03(b)(4) and Rule 10-01(b)(4) to when a business combination should be assumed to have occurred in pro forma financial information.

**5. Development Stage Entities**

Regulation S-X requires presentation in interim periods of cumulative financial information from inception for development stage companies.<sup>423</sup> In June 2014, the FASB

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<sup>418</sup> Please refer to the related discussion in section III.C.9.

<sup>419</sup> See Rule 8-03(b)(4) [17 CFR 210.8-03(b)(4)] and Rule 10-01(b)(4) [17 CFR 210.10-01(b)(4)] of Regulation S-X. Rule 8-03(b)(4) specifically applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP, while Rule 10-01(b)(4) applies to non-SRCs.

<sup>420</sup> See ASC 270-10-50-7, which refers to ASC 805-10-50-2h.3 for purposes of interim disclosures.

<sup>421</sup> ASU No. 2010-29, *Business Combinations (Topic 805): Disclosure of Supplementary Pro Forma Information for Business Combinations (a consensus of the FASB Emerging Issues Task Force)*.

<sup>422</sup> See SEC Observer comments at Emerging Issues Task Force Meeting, as cited in ASU No. 2010-29, paragraph BC7.

<sup>423</sup> See Rule 8-03(b)(6) [17 CFR 210.8-03(b)(6)] and Rule 10-01(a)(7) [17 CFR 210.10-01(a)(7)] of Regulations S-X. Rule 8-03(b)(6) specifically applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP, while and Rule 10-01(a)(7) applies to non-SRCs.



eliminated the U.S. GAAP requirement for development stage companies to present cumulative financial information from inception.<sup>424</sup> To update Regulation S-X, we propose to eliminate this requirement in Rule 8-03(b)(6) and Rule 10-01(a)(7).

## **6. Insurance Companies<sup>425</sup>**

### **a. Statutory Accounting Requirements**

Regulation S-X permits mutual life insurance companies and their wholly-owned stock insurance company subsidiaries to prepare financial statements in accordance with statutory accounting requirements.<sup>426</sup> The Commission originally provided this alternative because, prior to 1995, U.S. GAAP did not address accounting by mutual life insurance companies.<sup>427</sup> In 1995, the FASB issued SFAS No. 120, *Accounting and Reporting by Mutual Life Insurance Enterprises and by Insurance Enterprises for Certain Long-Duration Participating Contracts* (“SFAS No. 120”), which sets forth the accounting requirements for mutual life insurance companies and does not permit use of statutory accounting in U.S. GAAP financial statements.<sup>428</sup> Currently, no issuers under the Securities Act or the Exchange Act rely on Rule

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<sup>424</sup> ASU No. 2014-10, *Development Stage Entities (Topic 915): Elimination of Certain Financial Reporting Requirements, Including an Amendment to Variable Interest Entities guidance in Topic 810, Consolidation*. The amendments related to the elimination of the concept of development stage entities and cumulative financial information from inception disclosures were effective for public business entities on a retrospective basis for annual reporting periods beginning after December 15, 2014, and interim periods therein.

<sup>425</sup> Please refer to the related discussions in sections II.B.9 and III.C.6.

<sup>426</sup> See Rule 7-02(b) of Regulation S-X [17 CFR 210.7-02(b)].

<sup>427</sup> See *Notice of Adoption of Revision of Regulation S-X and Amendment of Forms 10 and 10-K to Revise Requirements as to Form and Content and Certification of Financial Statements of Life Insurance Companies*, Release No. 33-5456 (Feb. 14, 1974) [39 FR 10118].

<sup>428</sup> SFAS No. 120 extended the requirements of SFAS No. 60, *Accounting and Reporting by Insurance Enterprises* (“SFAS No. 60”), SFAS No. 97, *Accounting and Reporting by Insurance Enterprises for Certain Long-Duration Contracts and for Realized Gains and Losses from the Sale of Investments*, and SFAS No. 113, *Accounting and Reporting for Reinsurance of Short-Duration and Long-Duration Contracts* (“SFAS No. 113”) to mutual life insurance companies.

7-02(b) of Regulation S-X as a basis to report under statutory accounting requirements.<sup>429</sup> We, therefore, propose to eliminate Rule 7-02(b).

#### **b. Reinsurance Recoverable**

Regulation S-X requires insurance company balance sheets to separately present an asset called “reinsurance recoverable on paid losses.”<sup>430</sup> This requirement aligned with SFAS No. 60, *Accounting and Reporting by Insurance Enterprises*, which required that amounts recoverable from reinsurers on paid losses be classified as an asset, but that amounts recoverable from reinsurers on unpaid losses be classified as a reduction of liabilities.<sup>431</sup> In 1992, the FASB issued SFAS No. 113, which established that reinsurance receivables on unpaid losses are also assets.<sup>432</sup> SFAS No. 113 further provided that amounts recoverable from reinsurers on unpaid losses may be presented together with other reinsurance receivables or separately.<sup>433</sup> To conform to SFAS No. 113, we propose to delete the reference to paid losses in Rule 7-03(a)(6).

#### **c. Separate Account Assets**

Regulation S-X requires the amount of assets held in separate accounts – defined as assets used to fund liabilities related to variable annuities, pension funds, and similar activities –

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<sup>429</sup> Some insurance companies sponsoring variable annuity contracts for registration on Forms N-3 and N-4 under the Investment Company Act and the Securities Act and some insurance companies offering variable life insurance contracts for registration on Form N-6 under the Investment Company Act and Securities Act prepare financial statements under statutory accounting requirements. These companies are permitted to do so in certain circumstances by the applicable form requirements. Specifically, each of these forms requires financial statements of the insurance company and states that if the insurance company would not have to prepare financial statements in accordance with U.S. GAAP except for use in the registration statement being filed or other specified registration statements used for variable insurance contracts, then its financial statements may be prepared in accordance with statutory accounting requirements. See Form N-3, Item 28(b), Instruction 1; Form N-4, Item 23(b), Instruction 1; Form N-6, Item 24(b), Instruction 1. The proposed elimination of Rule 7-02(b) would not change these forms.

<sup>430</sup> See Rule 7-03(a)(6) of Regulation S-X [17 CFR 210.7-03(a)(6)].

<sup>431</sup> See Paragraph 38 of SFAS No. 60.

<sup>432</sup> See Paragraphs 74 and 75 of SFAS No. 113.

<sup>433</sup> See Paragraph 76, which was codified in ASC 944-20-50-5.

to be separately reported as a summary total, rather than included in other lines, on the balance sheet.<sup>434</sup> U.S. GAAP, however, defines differently separate account assets that are required to be reported as a summary total.<sup>435</sup> We propose to replace the reference to variable annuities, pension funds, and similar activities in Rule 7-03(a)(11) with a reference to U.S. GAAP for assets to be reported as a summary total.

## **7. Bank Holding Companies<sup>436</sup>**

### **a. Net Presentation**

Regulation S-X requires federal funds sold and securities purchased under resale agreements or similar arrangements to be presented on the balance sheet gross of federal funds purchased and securities sold under agreement to repurchase.<sup>437</sup> U.S. GAAP permits net presentation under certain conditions.<sup>438</sup> To conform with U.S. GAAP, we propose to delete this requirement in Rule 9-03.3 of Regulation S-X.

### **b. Goodwill**

Regulation S-X requires that goodwill net of amortization be presented on the balance sheet or disclosed in a note to the financial statements,<sup>439</sup> with goodwill amortization presented on the income statement.<sup>440</sup> However, in June 2001, the FASB issued a standard that prohibits

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<sup>434</sup> See Rule 7-03(a)(11) of Regulation S-X [17 CFR 210.7-03(a)(11)].

<sup>435</sup> See ASC 944-80-25-1 to 5.

<sup>436</sup> Please refer to the related discussion in section II.B.10.

<sup>437</sup> See Rule 9-03.3 of Regulation S-X [17 CFR 210.9-03.3].

<sup>438</sup> See ASC 210-20-45. Where amounts are presented net, ASC 210-20-50-3(a) requires disclosure in the notes to the financial statements of the gross amounts.

<sup>439</sup> See Rule 9-03.10(1) of Regulation S-X [17 CFR 210.9-03.10(1)]. In referring to goodwill, Rule 9-03.10(1) uses the phrase “Excess of cost over tangible and identifiable intangible assets acquired.”

<sup>440</sup> See Rule 9-04.14(c) of Regulation S-X [17 CFR 210.9-04.14(c)].

amortization of goodwill.<sup>441</sup> To update Regulation S-X, we propose to eliminate the parenthetical reference to net of amortization in Rule 9-03.10(1) of Regulation S-X.<sup>442</sup> We also propose to delete the reference to goodwill amortization in Rule 9-04.14(c).

## 8. Discontinued Operations

Regulation S-X and Regulation S-K contain specific requirements related to discontinued segments and disposed segments, respectively.<sup>443</sup> For purposes of these Commission disclosure requirements, the term “segments” refers to discontinued operations that are presented separately on the income statement, as prescribed by a now-superseded requirement in U.S. GAAP.<sup>444</sup> Since the adoption of these Commission disclosure requirements, the definition of “discontinued operations” under U.S. GAAP has changed multiple times and no longer incorporates the term “segment.”<sup>445</sup>

To update Commission disclosure requirements, we propose to replace the reference to “segments” in Instruction 1 to Rule 11-02(b) of Regulation S-X and Item 302(a)(3) of Regulation S-K with the more appropriate term, “discontinued operations.”

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<sup>441</sup> See SFAS No. 142, *Goodwill and Other Intangible Assets*.

<sup>442</sup> We also propose to clarify Rule 9-03.10(1) by replacing the phrase “Excess of cost over tangible and identifiable intangible assets acquired” with “goodwill.”

<sup>443</sup> Specifically Instruction 1 to Rule 11-02(b) of Regulation S-X [17 CFR 210.11-02(b)] states that the historical income statement used in pro forma financial information shall not report operations of discontinued segments, among other items. Item 302(a)(3) of Regulation S-K [17 CFR 229.302(a)(3)] requires a description of the effect of any disposals of segments of a business, among other items.

<sup>444</sup> See APB Opinion No. 30, *Reporting the Results of Operations – Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions*.

<sup>445</sup> See ASC 205.

## 9. Pooling-of-Interests

In April 2009, following the FASB’s elimination of the pooling-of-interests method of accounting,<sup>446</sup> the Commission adopted technical amendments to certain rules and forms to, among other items, eliminate references to pooling-of-interests and replace them with references to combinations of entities under common control.<sup>447</sup> The 2009 amendments inadvertently omitted to replace such references in Rule 11-02(c)(2)(ii) of Regulation S-X,<sup>448</sup> Rule 405 of Regulation C, Item 4A(b)(1)(iii) of Form F-1, Instruction 1 to paragraphs (e) and (f) of Item 3 of Form F-4, Item 10(c)(3) of Form F-4, the introduction to Item 12 of Form F-4, and Item 12(b)(2)(iv) of Form F-4. We propose to update these references accordingly.<sup>449</sup>

## 10. Statement of Comprehensive Income

Various Commission disclosure requirements and forms refer to “income statements” and variations thereof. In June 2011, the FASB replaced the income statement with the statement of comprehensive income.<sup>450</sup> Comprehensive income is the change in equity of a business entity during the period from transactions and other events and circumstances from non-owner

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<sup>446</sup> See SFAS No. 141, *Business Combinations*.

<sup>447</sup> See *Technical Amendments to Rules, Forms, Schedules, and Codification of Financial Reporting Policies*, Release No. 33-9026, (Apr. 23, 2009) [74 FR 18612].

<sup>448</sup> 17 CFR 210.11-02(c)(2)(ii).

<sup>449</sup> We also propose to replace references to “acquired businesses” with “transferred businesses” in Item 4A(b)(1)(iii) of Form F-1, Item 10(c)(3) of Form F-4, the introduction to Item 12 of Form F-4, and Item 12(b)(2)(iv) of Form F-4, as combinations of entities under common control are not referred to as acquisitions. See ASC 805-50.

<sup>450</sup> See ASU No. 2011-05, *Comprehensive Income (Topic 220): Presentation of Comprehensive Income*. ASU No. 2011-05 was effective for public entities on a retrospective basis for fiscal years, and interim periods within those years, beginning after December 15, 2011.

The statement of comprehensive income may be presented as either: (1) a single statement of comprehensive income or (2) two separate but consecutive statements, comprised of the income statement and a separate statement, which begins with net income and separately presents the components of other comprehensive income, a total of other comprehensive income, and a total of comprehensive income.

sources.<sup>451</sup> In light of the FASB’s revision, various Commission disclosure requirements and forms that refer only to an income statement (or similar term) are no longer consistent with U.S. GAAP because they do not address the presentation of comprehensive income.

To update Commission disclosure requirements, we propose to replace (or, in some cases, supplement) the existing references to “income statement” and variations thereof with “statement of comprehensive income” in our rules and forms. We also propose to clarify the two presentation options for the statement by defining the term “statement of comprehensive income” in Regulation S-X.<sup>452</sup>

We further propose to amend Rule 5-03, Rule 7-04, and Rule 9-04 of Regulation S-X to add line items to present comprehensive income and related items in the statement of comprehensive income.

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<sup>451</sup> See ASC Glossary.

<sup>452</sup> The proposed amendments apply to the following rules: Rule 1-02 [17 CFR 210.1-02], Rule 3-02 [17 CFR 210.3-02], Rule 3-03 [17 CFR 210.3-03], Rule 3-04 [17 CFR 210.3-04], Rule 3-05, Rule 3-12 [17 CFR 210.3-12], Rule 3-14 [17 CFR 210.3-14], Rule 3-17 [17 CFR, 210.3.17], Rule 4-08 [17 CFR 210.4-08], Rule 4-10 [17 CFR 210.4-10], Rule 5-02 [17 CFR 210.5-02], Rule 5-03 [17 CFR 210.5-03], Rule 5-04 [17 CFR 210.5-04], Rule 6-07 [17 CFR 210.6-07], Rule 6A-04 [17 CFR 210.6A-04], Rule 6A-05 [17 CFR 210.6A-05], Rule 7-03 [17 CFR 210.7-03], Rule 7-04 [17 CFR 210.7-04], Rule 7-05 [17 CFR 210.7-05], Rule 8-02 [17 CFR 210.8-02], Rule 8-03 [17 CFR 210.8-03], Rule 8-05 [17 CFR 210.8-05], Rule 8-06 [17 CFR 210.8-06], Rule 9-03 [17 CFR 210.9-03], Rule 9-04 [17 CFR 210.9-04], Rule 9-05 [17 CFR 210.9-05], Rule 9-06 [17 CFR 210.9-06], Rule 10-01 [17 CFR 210.10-01], Rule 11-02 [17 CFR 210.11-02], Rule 11-03 [17 CFR 210.11-03], Rule 12-16 [17 CFR 210.12-16], Rule 12-17 [17 CFR 210.12-17], Rule 12-18 [17 CFR 210.12-18], Rule 12-28 [17 CFR 210.12-28], and Rule 12-29 [17 CFR 210.12-29] of Regulation S-X, Item 10 [17 CFR 229.10], Item 302 [17 CFR 229.302], and Item 303 [17 CFR 229.303] of Regulation S-K, Item 1010 [17 CFR 229.1010] of Regulation M-A, Securities Act Rule 158 [17 CFR 230.158], Exchange Act Rule 15c3-1g [17 CFR 240.15c3-1g], Exchange Act Rule 17a-5 [17 CFR 240.17a-5], Exchange Act Rule 17a-12 [240.17a-12], Exchange Act rule 17g-3 [17 CFR 240.17g-3], and Exchange Act Rule 17h-1T [17 CFR 240.17h-1T]. The proposed amendments also apply to the following forms: Form 1-A [17 CFR 239.90], Form 1-K [17 CFR 239.91], Form 1-SA [17 CFR 239.92], Form 20-F [17 CFR 249.220f], Form 11-K [17 CFR 249.311], and Form X-17A-5 [17 CFR 249.617].

Investment companies generally do not have any other comprehensive income. ASC 220-10-15-3(a) states that entities that have no items of other comprehensive income are not required to report other comprehensive income or comprehensive income. Accordingly, we are not proposing to include references to “statement of comprehensive income” within the rules and forms applicable to investment companies, other than a reference within Rule 6-07 of Regulation S-X to allow for statements of operations to be replaced with statements of comprehensive income, where applicable.

In addition, U.S. GAAP requires accumulated other comprehensive income to be separately presented in the equity section of the balance sheet.<sup>453</sup> We propose to amend Rule 5-02.30(a)<sup>454</sup> and Rule 7-03(a)(23)(a)<sup>455</sup> of Regulation S-X to include accumulated other comprehensive income in its list of balance sheet line items.<sup>456</sup> We also propose to delete the reference in Rule 7-03(a)(23)(a) to unrealized appreciation or depreciation of equity securities, as it is a component of accumulated other comprehensive income and, under U.S. GAAP, is required to be presented separately either on the face of the financial statements or in the notes thereto.<sup>457</sup>

## 11. Extraordinary Items

Various Commission disclosure requirements and forms refer to extraordinary items. In January 2015, the FASB eliminated extraordinary items from U.S. GAAP.<sup>458</sup> To update Commission disclosure requirements, we propose to delete references to extraordinary items in our rules and forms.<sup>459</sup>

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<sup>453</sup> See ASC 220-10-45-14.

<sup>454</sup> 17 CFR 210.5-02.30(a).

<sup>455</sup> 17 CFR 210.7-03(a)(23)(a).

<sup>456</sup> We do not propose to amend Rule 9-03 of Regulation S-X. Through its reference to Rule 5-02.30, which we propose to amend, Rule 9-03 would be effectively updated if we adopt the proposed amendment to Rule 5-02.30.

<sup>457</sup> See ASC 220-10-45-14A.

<sup>458</sup> See ASU No. 2015-01, *Income Statement – Extraordinary and Unusual Items (Subtopic 225-20): Simplifying Income Statement Presentation by Eliminating the Concept of Extraordinary Items*. Previously, ASC 225-20-45-2 defined “extraordinary items” as an event or transaction that is unusual in nature and infrequent in occurrence, and ASC 225-20-45-3 required separate presentation of the effect of the extraordinary item on the income statement. ASU No. 2015-01 is effective for public business entities on a prospective or retrospective basis for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2015. Early adoption is permitted provided that the ASU is applied from the beginning of the fiscal year of adoption.

<sup>459</sup> The proposed amendments apply to the following rules: Rule 1-02(w)(3) [17 CFR 210.1-02(w)(3)], Rule 1-02(bb)(1)(ii) [17 CFR 210.1-02(bb)(1)(ii)], Rule 3-01(c)(2) [17 CFR 210.3-01(c)(2)], Rule 3-01(c)(3) [17 CFR 210.3-01(c)(3)], Rule 3-15(a)(1) [17 CFR 210.3-15(a)(1)], Rule 3A-02(b)(2) [17 CFR 210.3A-02(b)(2)], Rule 5-03(b) [17 CFR 210.5-03(b)], Rule 7-04 [17 CFR 210.7-04], Rule 8-03(a)(2) [17 CFR 210.8-03(a)(2)], Rule 8-04(b)(3) [17 CFR 210.8-04(b)(3)], Rule 9-04 [17 CFR 210.9-04], Rule 10-01(b)(4) [17 CFR 210.10-01(b)(4)],

## 12. Cumulative Effect of Changes in Accounting Principles<sup>460</sup>

Various Commission disclosure requirements and forms refer to a line on the income statement for a cumulative effect of a change in accounting principle. A change in accounting principle is a change from one generally accepted accounting principle to another generally accepted accounting principle when there are two or more generally accepted accounting principles that may be used or when the accounting principle formerly used is no longer generally accepted.<sup>461</sup> Prior to 2005, U.S. GAAP ordinarily required that the cumulative effect, or total effect on prior periods, of a change in accounting principle be reported separately in a single line in the income statement in the period the change took effect.<sup>462</sup> In 2005, the FASB eliminated from U.S. GAAP the requirement to report cumulative effect of a change in

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Rule 11-02(b)(7) [17 CFR 210.11-02(b)(7)], and Instruction 1 to Rule 11-02 [17 CFR 210.11-02] of Regulation S-X, Item 10(b)(2) [17 CFR 229.10(b)(2)], Item 302(a)(1) [17 CFR 229.302(a)(1)], and Item 302(a)(3) [17 CFR 229.302(a)(3)] of Regulation S-K, Securities Act Rule 405, Exchange Act Rule 3a51-1(a)(2)(i)(A)(3) [17 CFR 240.3a51-1(a)(2)(i)(A)(3)], Exchange Act Rule 12b-2 [17 CFR 240.12b-2], Exchange Act Rule 13a-10(b) [17 CFR 240.13a-10(b)], and Exchange Act 15d-10(b) [17 CFR 240.15d-10(b)]. The proposed amendments also apply to Form X-17A-5 [17 CFR 249.617].

Rule 3a51-1 of the Exchange Act contains a net income measure that is used in evaluating whether certain equity securities are penny stocks, which currently excludes “extraordinary and non-recurring items” from the net income calculation. As a result of the proposed amendment, the reference to “extraordinary items” will be deleted, but the exclusion of non-recurring items from net income will remain. The deletion of the “extraordinary items” reference from net income calculations under Rule 3a51-1 is not intended to affect the application of the rule, as the Commission believes that non-recurring items encompass items that would have been “extraordinary items” previously. Thus, the calculation of net income for purposes of Rule 3a51-1 should not change.

While the FASB has eliminated the concept of extraordinary items from U.S. GAAP for general purpose financial reporting, the concept of extraordinary expenses is still relevant for investment companies, particularly in disclosure of expense ratios in registration statements. Certain investment company registration forms eliminate extraordinary expenses from expense ratios in the fee table in order to disclose to investors the ongoing level of expense that can be expected. We believe it is appropriate to continue requiring that extraordinary expenses be excluded in the fee table and require footnote disclosure reflecting extraordinary expenses if they would have a material effect. Thus, the investment company registration forms (Form N-1A, Form N-3, Form N-4 [17 CFR 239.17b and 274.11c], and Form N-6) that reference extraordinary items in relation to expenses and the related historical U.S. GAAP definition are being amended to include a definition of extraordinary expenses, consistent with the historical U.S. GAAP definition. With these proposed amendments, we do not intend to change the content required to be presented in these forms.

<sup>460</sup> Please refer to the related discussions in sections II.B.11 and III.C.8.

<sup>461</sup> See ASC Glossary.

<sup>462</sup> See APB Opinion No. 20, *Accounting Changes*.



accounting principle in the income statement.<sup>463</sup> U.S. GAAP now requires, unless impracticable or otherwise provided for in a newly issued accounting standards update, retrospective application of a change in accounting principle to all prior periods, with the cumulative effect reported in the opening balance of retained earnings for the earliest period presented.<sup>464</sup>

To update Commission disclosure requirements, we propose to eliminate references to cumulative effect of a change in accounting principle.<sup>465</sup>

### **13. Published Report Regarding Matters Submitted to Vote of Security Holders**

Prior to 2009, Forms 10-K and 10-Q required disclosure of the voting results for matters that were submitted to shareholders.<sup>466</sup> Issuers were able to satisfy this disclosure requirement by providing the disclosure within the forms or by referring to a report containing the voting results and filing such report as an exhibit to the applicable form pursuant to Regulation S-K.<sup>467</sup>

In 2009, the Commission eliminated the requirement to disclose shareholder voting results in Forms 10-K and 10-Q and added it to Item 5.07 of Form 8-K.<sup>468</sup> As such, we propose to eliminate Item 601(b)(22) of Regulation S-K and its accompanying inclusion in the Exhibit Table within Item 601, as these requirements are no longer applicable.

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<sup>463</sup> See SFAS No. 154, *Accounting Changes and Error Corrections*. This is now reflected in ASC 250, *Accounting Changes and Error Corrections*.

<sup>464</sup> See ASC 250-10-45-5. Where impracticable or otherwise provided for in a newly issued accounting standards update, U.S. GAAP requires prospective application such that the existing line on the income statement for a cumulative effect of a change in accounting principle is unnecessary.

<sup>465</sup> The proposed amendments apply to the following rules: Rule 1-02, Rule 3-01, Rule 3-15, Rule 5-03, Rule 7-04, Rule 8-03, Rule 8-04, Rule 9-04, Rule 10-01, Rule 11-02, and Instruction 1 to Rule 11-02 of Regulation S-X, Item 302 of Regulation S-K, Securities Act Rule 405, Exchange Act Rule 12b-2, Exchange Act Rule 13a-10(b), and Exchange Act Rule 15d-10(b). The proposed amendments also apply to Form X-17A-5.

<sup>466</sup> These requirements were contained in Item 4, Part I of Form 10-K and Item 4, Part II of Form 10-Q prior to 2009.

<sup>467</sup> See Item 601(b)(22) of Regulation S-K [17 CFR 229.601(b)(22)].

<sup>468</sup> See *Proxy Disclosure Enhancements*, Release No. 33-9089, (Dec. 16, 2009) [74 FR 68334]. In addition, the Form 8-K containing the voting results must be filed within four business days after the meeting at which the votes took place.

We also propose to eliminate Item 5 of Form 10-D<sup>469</sup> regarding disclosure of matters submitted to a vote of security holders. In 2009, when the Commission adopted Item 5.07 of Form 8-K, it did not exclude asset-backed issuers from the requirements; however, Item 5 of Form 10-D was not revised or eliminated following the adoption of Item 5.07 of Form 8-K.<sup>470</sup> Rather, current Item 5 of Form 10-D contains a reference to Item 4 of Part II to Form 10-Q, which, as stated above, was eliminated with the adoption of Item 5.07 to Form 8-K.<sup>471</sup> As such, we propose to eliminate Item 5 of Form 10-D.

#### **14. Selected Financial Data for Foreign Private Issuers that Report under IFRS**

Prior to 2005, Form 20-F required all foreign private issuers, including those that reported under IFRS, to present five years of selected financial data under their primary basis of accounting and U.S. GAAP.<sup>472</sup> As a result of two amendments, foreign private issuers that report under IFRS are now only required to present selected financial data under IFRS for those periods for which the issuer has prepared financial statements in accordance with IFRS.

Specifically:

- In April 2005, the Commission amended Form 20-F to allow foreign private issuers to present two years of financial statements, instead of three, in the year that they first adopt

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<sup>469</sup> 17 CFR 249.312.

<sup>470</sup> A Form 10-D is a periodic distribution report for asset-backed issuers that is typically filed three weeks or more after the end of a reporting period. Reporting on Form 8-K provides users of the information with a date certain upon which disclosure of the results of a vote is required and reduces delay between the end of a meeting and when voting results are disclosed in periodic reports. See 17 FR 68334 at 68350. Investors in asset-backed securities may vote for a variety of reasons, such as to amend the terms of the securities (e.g., maturity date), substitute transaction parties, or to trigger a review of the underlying assets.

<sup>471</sup> Current Item 4 of Part II to Form 10-Q refers to mine safety disclosure requirements.

<sup>472</sup> Item 3.A of Form 20-F provides an exception from presenting up to the earliest two of the five years of selected financial data under the primary basis of accounting and U.S. GAAP if the issuer represents that such information cannot be provided without unreasonable effort or expense.

IFRS.<sup>473</sup> At the time, the Commission created a new General Instruction G(c), which states that, for first-time IFRS adopters, selected financial data prepared under IFRS is only required for the two most recent financial years.

- In December 2007, the Commission eliminated the reconciliation requirement for foreign private issuers that prepare financial statements in accordance with IFRS.<sup>474</sup> In adopting amendments to Form 20-F to reflect the elimination of the reconciliation requirement, the Commission also clarified that selected financial data based on the U.S. GAAP reconciliation is only required if the issuer prepares its financial statements using a basis of accounting other than IFRS.<sup>475</sup>

However, General Instruction G(c) of Form 20-F continues to require an issuer that reports under IFRS to present selected financial data in accordance with U.S. GAAP for the five most recent years. To update Form 20-F, we propose to amend: (1) General Instruction G(c) of Form 20-F to delete the requirement to present selected financial data in accordance with U.S. GAAP and (2) Instruction 2 to Item 3.A of Form 20-F to explicitly state that selected financial data is required only for the periods for which the issuer has prepared financial statements in accordance with IFRS.

## **15. Canadian Regulation A Issuers**

Foreign private issuers that report under IFRS must comply with IFRS requirements for form and content within the financial statements rather than the specific presentation and

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<sup>473</sup> See *First-Time Application of International Financial Reporting Standards*, Release No. 33-8567 (Apr. 12, 2005) [70 FR 20674].

<sup>474</sup> See *Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance With International Financial Reporting Standards Without Reconciliation to U.S. GAAP*, Release 33-8879, (Dec. 21, 2007) [73 FR 986] (“2007 Adopting Release”).

<sup>475</sup> See Instruction 2 to Item 3.A of Form 20-F.

disclosure provisions in Regulation S-X.<sup>476</sup> Regulation A permits Canadian issuers to report under IFRS.<sup>477</sup> However, in certain places, Forms 1-A and 1-SA inadvertently refer all Regulation A issuers, including Canadian issuers that report under IFRS, to rules in Regulation S-X, rather than IFRS, for the form and content within the financial statements.<sup>478</sup> As we did not intend for the form and content requirements in Regulation S-X to apply to Canadian Regulation A issuers reporting under IFRS, we propose to amend such references to Regulation S-X in Forms 1-A and 1-SA only to apply to Regulation A issuers that report under U.S. GAAP.

## **16. Non-Existent or Incorrect References**

Various Commission disclosure requirements contain non-existent or incorrect references. We propose to update them as follows:

- Rule 5-02 of Regulation S-X refers in four places<sup>479</sup> to Rule 4-05 of Regulation S-X, which no longer exists. We propose to delete these references.
- Rule 5-02.22(a) of Regulation S-X refers to Rule 4-06 of Regulation S-X, which no longer exists. We propose to delete this reference.
- Rule 7-04.9 of Regulation S-X on income tax expense refers to Rule 4-08(g) of Regulation S-X, which addresses summarized financial information of investments accounted for under the equity method of accounting. This reference should be to Rule 4-08(h) of Regulation S-X, which addresses income tax expense. We propose to update this reference accordingly.

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<sup>476</sup> See 2007 Adopting Release.

<sup>477</sup> Paragraph (a)(2) of Part F/S of Form 1-A, Item 7(b) of Form 1-K, and Item 3 of Form 1-SA.

<sup>478</sup> Paragraphs (b)(5) and (c)(1)(i) of Part F/S of Form 1-A and Item 3 and Item 3(d) of Form 1-SA.

<sup>479</sup> See the header to current assets, Rule 5-02.6(a)(2), Rule 5-02.6(a)(3), and the header to current liabilities.

- Rule 9-03.7(e)(3) of Regulation S-X refers to Rule 4-08(L)(3), which no longer exists. We propose to delete this reference.
- Item 512(a)(4) of Regulation S-K provides that a post-effective amendment need not be filed to include on Form F-3 the financial statements and information required by Rule 3-19 of Regulation S-X, if such financial statements and information are filed or furnished on reports incorporated by reference in the Form F-3.<sup>480</sup> However, Rule 3-19 no longer exists. When the Commission revised Form 20-F in 1999, it replaced references to Rule 3-19 with references to Item 8.A of Form 20-F as the source for foreign private issuer financial statement requirements, but inadvertently omitted to replace the reference in Item 512(a)(4).<sup>481</sup> We propose to update Item 512(a)(4) accordingly.
- General Instruction J(1)(e) to Form 10-K is blank. Although the Commission deleted the instruction in 2011,<sup>482</sup> it did not reserve the instruction. We propose to clarify that General Instruction J(1)(e) is reserved.
- General Instruction J(1)(f) to Form 10-K permits asset-backed issuers to omit Item 5 of Form 10-K, but the Instruction incorrectly describes Item 5. We propose to conform the description in Instruction J(1)(f) to the title of Item 5 of Form 10-K: Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.
- Paragraph (c)(1)(i) of Part F/S of Form 1-A refers to the age of interim financial statements discussed in paragraphs (b)(3)-(4) of Part F/S. However, paragraphs (b)(3)-

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<sup>480</sup> See Item 512(a)(4) [17 CFR 229.512(a)(4)].

<sup>481</sup> See *International Disclosure Standards*, Release No. 33-7745 (Sept. 28, 1999) [64 FR 53900].

<sup>482</sup> See *Mine Safety Disclosure*, Release No. 33-9286 (Dec. 21, 2011) [76 FR 81762].

(4) address the age of both interim and annual financial statements. To correct this reference, we propose to delete “interim” in paragraph (c)(1)(i).

- Forms F-1, F-3, F-4, F-6,<sup>483</sup> F-7,<sup>484</sup> F-8,<sup>485</sup> F-10,<sup>486</sup> F-80,<sup>487</sup> 20-F, and 40-F<sup>488</sup> include references to incorrect telephone numbers and offices at the Commission. We propose to update these references to the correct telephone numbers and offices.

### Request for Comment

90. We solicit comment on the foregoing proposed amendments to address superseded requirements. Should any proposed amendments not be made? Should any proposed amendments be modified? If so, which ones and why? Please be as specific as possible for each of the proposed amendments on which you provide comments.
91. Are there other superseded Commission disclosure requirements? If so, which requirements have been superseded and how should they be addressed?

### **VI. General Request for Comment**

We request and encourage any interested person to submit comments regarding the proposals, specific issues discussed in this release, and other matters that may have an effect on the proposals. With regard to any comments, we note that such comments are of particular assistance if accompanied by supporting data and analysis of the issues addressed in those comments.

### **VII. Economic Analysis**

This section analyzes the expected economic effects of the proposals relative to the

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<sup>483</sup> 17 CFR 239.36.

<sup>484</sup> 17 CFR 239.37.

<sup>485</sup> 17 CFR 239.38.

<sup>486</sup> 17 CFR 239.40.

<sup>487</sup> 17 CFR 239.41.

<sup>488</sup> 17 CFR 249.240f.

current baseline, which consists of both the regulatory framework of disclosure requirements in existence today and the current use of such disclosure by investors and other users. As discussed above, we are proposing amendments to certain of our disclosure requirements that may have become redundant, duplicative, overlapping, outdated, or superseded, in light of other Commission disclosure requirements, U.S. GAAP, IFRS, or changes in the information environment. We are also soliciting comment on certain Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP. These proposals are a result of the Division of Corporation Finance's Disclosure Effectiveness Initiative and part of our efforts to implement title LXXII, section 72002(2) of the Fixing America's Surface Transportation Act.

The discussion below addresses the potential economic effects of the proposals, including the likely benefits and costs, as well as the likely effects on efficiency, competition, and capital formation.<sup>489</sup>

#### **A. Baseline and Affected Parties**

Our baseline includes the current disclosure requirements in Regulation S-K, Regulation S-X, and other rules and Commission forms promulgated under the Securities Act, the Exchange Act, and the Investment Company Act. The parties that are likely to be affected by the proposals include investors and other users, auditors, and entities subject to Regulation S-K, Regulation S-

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<sup>489</sup> Section 2(b) of the Securities Act [15 U.S.C. 77b(b)] and section 3(f) of the Exchange Act [17 U.S.C. 78c(f)] require the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, section 23(a)(2) of the Exchange Act [17 U.S.C. 78w(a)(2)] requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.

X, and other rules and Commission forms promulgated under the Securities Act, the Exchange Act, and the Investment Company Act.

The proposals affect both domestic issuers and foreign private issuers. We estimate approximately 7,600 issuers that file on domestic forms<sup>490</sup> and 800 foreign private issuers that file on F-forms would be affected by the proposals. Among the issuers that file on domestic forms, 26% are large accelerated filers, 18% are accelerated filers, 18% are non-accelerated filers, and 38% are SRCs. About 12% of issuers that file on domestic forms are also EGCs. Among the foreign private issuers that file on F-forms, 38% are large accelerated filers, 22% are accelerated filers, and 40% are non-accelerated filers.<sup>491</sup> About 15% of foreign private issuers that file on Forms 20-F and 40-F are also EGCs. With respect to foreign private issuer accounting standards, 43% of foreign private issuers report under U.S. GAAP, 56% report under IFRS, and less than 1% report under Another Comprehensive Body of Accounting Principles with a reconciliation to U.S. GAAP.<sup>492</sup>

Certain proposals also affect requirements applicable to:

- Fewer than 100 asset-backed issuers.

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<sup>490</sup> This number includes fewer than 50 foreign private issuers that file on domestic forms, approximately 100 business development companies, and a portion of the approximately 12,000 investment advisers, as discussed further below.

<sup>491</sup> Approximately 16% of foreign private issuers that file on F-forms are Canadian issuers that file on Form 40-F under the multijurisdictional disclosure system. Form 40-F does not require disclosure of large accelerated, accelerated, or non-accelerated filer status. Accordingly, these amounts exclude foreign private issuers that file on Form 40-F.

<sup>492</sup> The number of domestic and foreign private issuers affected by the proposals is estimated as the number of unique companies, identified by Central Index Key (CIK), that filed Forms 10-K, Form 20-F, and Form 40-F with the Commission during calendar year 2015. The estimates for the percentages of SRCs, accelerated filers, large accelerated filers, and non-accelerated filers are based on information from Form 10-K, Form 20-F, and Form 40-F. The number of EGCs is estimated by analyzing several types of filings filed with the Commission during calendar year 2015. The estimates for the percentages of foreign private issuers' basis of accounting used to prepare the financial statements are calculated from the information in Forms 20-F and 40-F. These estimates do not include issuers that filed initial registration statements during calendar year 2015, which would also be affected by the proposals.



- Issuers that rely on Regulation A exemptions.<sup>493</sup>
- Approximately 4,100 investment companies, including approximately 100 business development companies, and the portion of the approximately 12,000 investment advisers to which Regulation S-X and Regulation S-K apply.
- Up to approximately 4,200 registered broker-dealers.<sup>494</sup>
- 10 NRSROs.

This release also solicits comment on certain Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP.<sup>495</sup> One potential outcome of this feedback is a referral of these incremental requirements to the FASB for potential incorporation into U.S. GAAP. While a referral alone would have no effect on issuers, any changes to U.S. GAAP that may result from such a referral would potentially affect all entities that report under U.S. GAAP, including crowdfunding issuers and those outside the scope of our regulatory authority. Any potential changes to U.S. GAAP would be subject to the FASB's standard-setting process, as discussed in section I.C.

## **B. Potential Costs and Benefits**

In this section, we discuss the anticipated economic benefits and costs of the proposals in

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<sup>493</sup> Between June 19, 2015 and July 5, 2016, approximately 48 Regulation A offerings have been qualified. Over the same time period, approximately 108 Regulation A offering statements have been filed. Withdrawals and post-qualification amendments are excluded.

<sup>494</sup> The proposed amendments to Exchange Act Rules 17a-5, 17a-12, and 17h-1T, and Part III of Form X-17A-5 collectively affect approximately 4,230 broker-dealers who must file annual reports with the Commission. The proposed amendments to Part II of Form X-17A-5 affect approximately 470 broker-dealers, based on the number of broker-dealers who filed Part II as of September 30, 2015. The proposed amendments to Part IIA of Form X-17A-5 affect approximately 3,685 broker-dealers, based on the number of broker-dealers who filed Part IIA as of September 30, 2015. The proposed amendments to Part IIB of Form X-17A-5 affect approximately 4 broker-dealers, based on the number of broker-dealers who filed Part IIB as of September 30, 2015.

<sup>495</sup> As discussed in section III.E, we are not proposing amendments to this category of disclosure requirements in this release. Rather, the comments received in response to this release may inform both potential future Commission rulemaking and FASB standard-setting activities.

each category of redundant, duplicative, overlapping, outdated, and superseded disclosure requirements.

### **1. Redundant or Duplicative Requirements**

We have preliminarily identified redundant or duplicative Commission disclosure requirements that require substantially the same disclosures as U.S. GAAP, IFRS, or other Commission disclosure requirements. The proposed amendments would eliminate certain redundant or duplicative Commission disclosure requirements.

Elimination of Commission disclosure requirements that are considered redundant or duplicative with U.S. GAAP, IFRS, or other Commission disclosure requirements would simplify issuer compliance efforts by reducing the number of rules to consider. To the extent that the redundant or duplicative requirements result in duplicative disclosures, elimination of these requirements also would be potentially beneficial to investors and other users. Academic research suggests that duplication is associated with less efficient price discovery<sup>496</sup> and that individuals invest more in firms with more concise financial disclosures.<sup>497</sup> Thus, to the extent that the proposed amendments alleviate duplication and do not affect the completeness of financial disclosures,<sup>498</sup> they could result in improved price discovery, enhance the allocative efficiency of the market, and facilitate capital formation.

The potential adverse effects of these proposed amendments on investors and other users

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<sup>496</sup> See A. Cazier and R. Pfeiffer, *Say Again? Assessing Redundancy in 10-K Disclosures* (Working paper, 2015), available at [https://www2.aaahq.org/AM/display.cfm?Filename=SubID\\_2229.pdf&MIMEType=application%2Fpdf](https://www2.aaahq.org/AM/display.cfm?Filename=SubID_2229.pdf&MIMEType=application%2Fpdf).

<sup>497</sup> See A. Lawrence, *Individual Investors and Financial Disclosure*, *Journal of Accounting and Economics* 56, 2013 at 13–147.

<sup>498</sup> Recent academic research has suggested that more complete financial disclosures benefit investors and firms. See, e.g., C. Leuz and P. Wysocki, *The Economics of Disclosure and Financial Reporting Regulation: Evidence and Suggestions for Future Research* (Working paper, 2015), available at <http://research.chicagobooth.edu/~media/7628D551E7424DC08524879103870C12.pdf>.

are likely to be limited as these parties would still receive substantially the same information from issuers. However, potential costs to investors may arise if U.S. GAAP were to change in such a way that information previously required by Commission disclosure requirements is no longer provided under U.S. GAAP.<sup>499</sup> The potential for such changes may be mitigated by the FASB's transparent, public standard-setting process and our oversight of the FASB.<sup>500</sup>

## **2. Overlapping Requirements**

We have preliminarily identified Commission disclosure requirements that are related to, but not the same as, U.S. GAAP, IFRS, or other Commission disclosure requirements. For certain of these overlapping requirements, the proposed amendments would: (a) delete the overlapping Commission disclosure requirements or (b) integrate them with other related Commission disclosure requirements. For certain other overlapping requirements, we are soliciting comment on certain Commission disclosure requirements to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP. We discuss below the economic effects of the proposals and provide examples of requirements affected by the proposals.

First, some proposals may give rise to Disclosure Location Considerations. Where proposals relocate existing disclosure from outside the financial statements to within the financial statements, issuers may incur additional costs to comply with audit and/or interim review and internal control over financial reporting requirements, whereas investors and other

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<sup>499</sup> See discussion of current FASB projects with the potential to broadly affect the proposed amendments in section I.C.3.

<sup>500</sup> See discussion in section I.C.

users may benefit to the extent that information is considered more reliable.<sup>501</sup>

The relocation of existing disclosures, for example, from outside the financial statements to within the financial statements or from the face of the financial statements to the notes to the financial statements, may also affect the prominence of the disclosures. Some experimental research provides indirect evidence that users may treat information differently depending on the location of the disclosure. For instance, research shows a weaker relation between equity prices and disclosed items (in the notes to the financial statements) versus recognized items (on the face of the financial statements).<sup>502</sup> Additionally, experimental research on laboratory participants shows that positioning pro-forma (non-GAAP) earnings earlier than U.S. GAAP earnings in an earnings announcement influences a nonprofessional investor's judgment.<sup>503</sup> Other research on the effect of disclosure location shows recognized and disclosed items are treated equivalently by

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<sup>501</sup> In contrast, some proposed amendments may require disclosure to be moved from inside the financial statements to outside the financial statements. In this case, the potential economic effects would be similar to the effects discussed above but in the opposite direction.

<sup>502</sup> See, e.g., R. M. Harper Jr., W. G. Mister, and J. R. Strawser, *The Impact of New Pension Disclosure Rules on Perceptions of Debt*, *Journal of Accounting Research* 25, 1987 at 327 (showing that financial statement users do not treat pension information included in a note to the financial statements as they would a balance sheet liability); C. Viger, R. Belzile, and A. A. Anandarajan, *Disclosure versus Recognition of Stock Option Compensation: Effect on the Credit Decisions of Loan Officers*, *Behavioral Research in Accounting* 20, 2008 at 93-113 (showing that loan officers are more affected by the same earnings recognized in the income statement than disclosed in the notes to the financial statements); M. Müller, E.J. Riedl, and T. Sellhorn, *Recognition versus Disclosure of Fair Values*, *The Accounting Review* 90, 2015 at 2411-2447, (showing a lower association between equity prices and disclosed investment property fair values relative to recognized investment property fair values. The authors also find that reduced information processing costs and higher readability mitigates the discount applied to disclosed fair values); D. Aboody, *Recognition versus Disclosure in the Oil and Gas Industry*, *Journal of Accounting Research* 34, 1996, at 21-32 (using the disclosure requirements for oil and gas companies, which requires the firm-specific effect of a macroeconomic event to be recognized in the financial statements for firms adopting the full cost method, but only requires disclosure in the notes to the financial statements for firms following the successful efforts method, to show that the effect of note disclosure on price differs from the effect of recognition on price); and H. Espahbodi, P. Espahbodi, Z. Rezaee, and H. Tehranian, *Stock Price Reaction and Value Relevance of Recognition versus Disclosure: The Case of Stock-Based Compensation*, *Journal of Accounting and Economics* 33 (3), 2002 at 343-373 (examining the equity price reaction to the announcements related to accounting for stock-based compensation to assess the value relevance of recognition (on the face of the financial statements) versus disclosure (in the notes to the financial statements) and concluding that recognition and disclosure are not substitutes).

<sup>503</sup> See, e.g., W. B. Elliot, *Are Investors Influenced by Pro Forma Emphasis and Reconciliations in Earnings Announcements?* *The Accounting Review* 81 (1), 2006 at 113-133.

investors.<sup>504</sup>

The relocation of existing disclosures from outside the financial statements to within the financial statements may also subject the disclosures to XBRL tagging requirements. Issuers may incur additional costs to comply with these requirements, whereas investors and other users may benefit from more readily-available information in structured formats. In general, we believe the marginal costs of applying XBRL data tagging likely would be relatively low, as issuers already have implemented software enabled processes and controls to structure previously mandated disclosures.

Furthermore, the relocation of existing disclosures may affect the extent of information that investors receive. Since the PSLRA does not provide a safe harbor for forward-looking information located within the financial statements, issuers may be less likely to voluntarily supplement those disclosures with forward-looking information as compared with disclosures made outside the audited financial statements. However, issuers retain the option of providing forward-looking information outside the financial statements if they so choose.

Second, some proposed deletions, such as those related to bright line disclosure thresholds, may change the mix of information available to investors. Bright line thresholds set forth explicit quantitative criteria for disclosure. If the bright line thresholds are consistent with the preferences of investors and other users, they will result in disclosure at an appropriate level

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<sup>504</sup> P. Y. Davis-Friday, L. B. Folami, C. S. Liu, and H. F. Mittelstaedt, *The Value Relevance of Financial Statement Recognition vs. Disclosure: Evidence from SFAS No. 106*, *The Accounting Review*, 74 (4), 1999 at 403–423 (testing whether market agents treat disclosed and recognized amounts equivalently by examining firms' obligations for postretirement benefits other than pensions before and after formal recognition. This research focuses on a sample of 229 firms that elected disclosure of the postretirement benefit liability in the year(s) prior to adoption of SFAS 106). The authors find that both post-retirement benefit liabilities disclosed prior to adoption of SFAS No. 106, *Employers' Accounting for Postretirement Benefits Other than Pensions*, and those recognized subsequent to adoption significantly contribute to explaining stock prices, thus suggesting that market agents treat disclosed and recognized amounts equivalently).

of detail. If the bright line thresholds differ from the preferences of investors and other users, they will result in too much or too little detail.

The economic effects of replacing the bright line thresholds with new criteria will depend on the nature of the new criteria. If the new criteria are more consistent with the preferences of investors and other users, the changes may benefit them. If the new criteria are less consistent with the preferences of investors and other users, the changes may have negative impacts on them. On one hand, bright line thresholds may be easier to apply. On the other hand, although other criteria may require more judgment, may be more difficult to apply, and may lead to more variation in disclosure, they may also permit more tailored information to be presented.

**a. Deletion of Commission Disclosure Requirements**

When we believe that Commission disclosure requirements: (1) require disclosures that convey reasonably similar information to or are encompassed by the disclosures that result from compliance with the overlapping U.S. GAAP, IFRS, or Commission disclosure requirements or (2) require disclosures incremental to the overlapping U.S. GAAP or Commission disclosure requirements and are no longer useful to investors, we are proposing to eliminate the requirements.

In addition to the economic effects of changing disclosure location and bright line disclosure thresholds, as discussed above, potential costs to investors may arise if U.S. GAAP were to change in such a way that information previously required by Commission disclosure requirements is no longer provided under U.S. GAAP.<sup>505</sup> As noted above, the potential for such changes may be mitigated by the FASB's transparent, public standard-setting process and the

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<sup>505</sup> See discussion of current FASB projects with the potential to broadly affect the proposals in section I.C.3.

Commission's oversight of the FASB.<sup>506</sup>

The effects of the proposed deletion of these overlapping Commission disclosure requirements may also depend on the level of overlap between the requirements. On the one hand, eliminating overlapping requirements may reduce search costs and lead to more efficient information processing for investors. This, in turn, may lead to better informed investment decisions and an increase in allocative efficiency. On the other hand, to the extent eliminating a requirement results in a loss of information incremental to the overlapping requirement, it could result in a loss of information for investors.

The examples below illustrate the potential effects of the proposed elimination of Commission disclosure requirements on issuers, investors, and other users.

One example of an item we propose to delete due to its sufficient overlap with another item is Item 101(d)(3) of Regulation S-K. Item 101(d)(3) requires risk disclosures outside the financial statements relating to geographic areas. We believe this provision requires disclosures that are largely encompassed by the disclosures that result from compliance with other parts of Regulation S-K. More specifically, Item 101(d)(3) requires disclosure of "any" risks associated with an issuer's foreign operations. This requirement is similar to Item 503(c) of Regulation S-K, which requires disclosure of "significant" risk factors. Item 101(d)(3) also requires disclosures of a segment's dependence on foreign operations. This requirement is similar to Item 303(a) of Regulation S-K, which requires disclosure of trends and uncertainties by segment, if appropriate to an understanding of the issuer as a whole.

Since Item 101(d)(3) is more expansive than other parts of Regulation S-K, the economic effects of the deletion would depend on the nature of the incremental information required by

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<sup>506</sup> See discussion in section I.C.

Item 101(d)(3). Research shows that international corporate diversification may affect issuers' stock market performance and valuation. For example, the required rate of return among U.S. firms listed on the NYSE has been shown to reflect the benefit of geographical diversification.<sup>507</sup> There is also a positive correlation between the level of foreign operations and firm value,<sup>508</sup> and studies have found that the positive impact of intangible assets on firm value can be enhanced by foreign operations to the extent the intangible assets may be used across multiple countries.<sup>509</sup> Therefore, some investors may want incremental information on foreign operations. Deletion of Item 101(d)(3) may adversely affect this group of investors. However, if the requirements in Item 101(d)(3), such as the requirement to disclose "any" risk associated with foreign operations, tend to yield immaterial disclosures, deletion of Item 101(d)(3) would benefit investors by eliminating immaterial information, reducing search costs, and facilitating more efficient information processing.<sup>510</sup>

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<sup>507</sup> See T. Agmon and D. R. Lessard, *Investor Recognition of Corporate International Diversification*, *Journal of Finance* 32(4), 1977 at 1049–1055 (arguing that multinational firms have an advantage relative to single-country firms because of their ability to overcome the barriers to portfolio capital flows). The empirical results of the study support the notion that U.S. investors recognize the international composition of the activities of U.S.-based corporations.

<sup>508</sup> See V. Errunza and L. Senbet, *International Corporate Diversification, Market Valuation and Size-Adjusted Evidence*, *Journal of Finance* 34, 1984 at 727–745 (developing a model where international corporate intermediation through direct foreign investment can undo barriers to international capital flows faced by individual investors and lead to a positive valuation effect associated with the degree of international involvement). The authors tested the model using generalized least squares and maximum likelihood procedures, controlling for the size and price to earnings effects, and obtain results consistent with the theoretical valuation effect.

<sup>509</sup> See R. Morck and B. Yeung, *Why Investors Value Multinationality*, *Journal of Business*, 64 (2), 1991 at 165–187 (examining the value of multinationality as reflected in Tobin's Q). The authors find that the positive impact of research and development and advertising spending on Q is enhanced by multinationality, but multinationality itself has no significant impact on Q, supporting the notion that multinational corporations have intangible assets that can be used internationally.

<sup>510</sup> See D. Hirshleifer and S. Teoh, *Limited Attention, Information Disclosure, and Financial Reporting*, *Journal of Accounting and Economics* 36, 2003 at 337–386 (developing a theoretical model where investors have limited attention and processing power). The authors show that with partially attentive investors, means of presenting information may have an impact on stock price reactions, misvaluation, long-run abnormal returns, and corporate decisions.



Another example of an item we propose to delete because it results in reasonably similar disclosures as other requirements is Item 101(c)(1)(xi) of Regulation S-K. Item 101(c)(1)(xi) requires disclosure of the amount spent on research and development activities for all periods presented.<sup>511</sup> Although Commission disclosure requirements use different terminology than U.S. GAAP,<sup>512</sup> the meaning under U.S. GAAP is either no different or broader in scope than that in Regulation S-K. The most notable difference in terminology is Regulation S-K's reference to "customer-sponsored" research and development activities, as compared to U.S. GAAP's reference to "research and development performed on behalf of others." Since the U.S. GAAP terminology is broader in scope, deletion of Item 101(c)(1)(xi) of Regulation S-K and Item 101(h)(4)(x) of Regulation S-K should not change the information available to investors and other users.

Finally, an example of a change that might affect the extent of information disclosed as a result of the disclosure no longer being subject to the PSLRA safe harbor involves Item 303(b) of Regulation S-K. Item 303(b) requires seasonality disclosures outside of the financial statements in interim periods. U.S. GAAP<sup>513</sup> similarly requires seasonality disclosures, but this disclosure is required in the notes to the interim financial statements. Eliminating the seasonality disclosure requirements in Item 303(b) would result in the removal of this information from MD&A, with the effect that investors and other users would likely have this disclosure available only in the

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<sup>511</sup> Item 101(c)(1)(xi) of Regulation S-K for non-smaller reporting companies and Item 101(h)(4)(x) of Regulation S-K for smaller reporting companies.

<sup>512</sup> See ASC 730-10-50-1 and ASC 730-20-50-1.

<sup>513</sup> ASC 270-10-45-11 states: Revenues of certain entities are subject to material seasonal variations. To avoid the possibility that interim results with material seasonal variations may be taken as fairly indicative of the estimated results for a full fiscal year, such entities shall disclose the seasonal nature of their activities, and consider supplementing their interim reports with information for 12-month periods ended at the interim date for the current and preceding years.

notes to the financial statements, unless issuers voluntarily provide it in both locations. In addition, as discussed above, investors may not receive certain forward-looking information that may be supplementally provided on a voluntary basis in connection with seasonality disclosure in MD&A, as issuers do not receive safe harbor protection under the PSLRA for information disclosed in the notes to the financial statements.

#### **b. Integration of Commission Disclosure Requirements**

When we believe that Commission disclosure requirements overlap with, but require information incremental to, other Commission disclosure requirements, the proposed amendments integrate the Commission disclosure requirements. In addition to the economic effects of changing disclosure location and bright line disclosure thresholds, as discussed above, integration of overlapping Commission disclosure requirements would simplify issuer compliance efforts by reducing the number of rules to consider and the extent of disclosures that need to be provided. Integration of these requirements should also facilitate more efficient information processing by investors.

One example to illustrate the potential effects of the proposed integration of Commission disclosure requirements is Item 101(d)(4) of Regulation S-K. Item 101(d)(4) requires, when interim financial statements are presented, a discussion of the facts that indicate that the three-year financial data for geographic performance may not be indicative of current or future operations. This requirement is similar to requirements in Instruction 3 to Item 303(a) of Regulation S-K and Instruction 4 to Item 303(b) of Regulation S-K to identify elements of income which are not necessarily indicative of the issuer's ongoing business, except that there is no explicit reference to "geographic areas" in either item requirement. To integrate the requirements into one location of Regulation S-K, we propose to amend Item 303 explicitly to

refer to “geographic areas.” As noted above, integration of these requirements should facilitate more efficient information processing by investors. We note, however, that to the extent that some investors focus more on the business description section or find it is easier to interpret geographic performance information when presented with other business description disclosures, these investors might be negatively affected if this information is relocated to MD&A.

**c. Potential Modification, Elimination or FASB Referral of Commission Disclosure Requirements**

When we believe that the Commission disclosure requirements overlap with, but require information incremental to, U.S. GAAP requirements, we solicit comment on certain Commission disclosure requirements to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP. The comments received in response to this proposal may inform both potential future Commission rulemaking and FASB standard-setting activities. If the disclosure requirements are ultimately added to U.S. GAAP and removed from Commission rules, some information would be relocated from outside the financial statements to within the financial statements, giving rise to Disclosure Location Considerations, potentially impacting issuers, investors, and other users.

In addition to the economic effects of changing disclosure location and bright line disclosure thresholds, as discussed above, a movement of disclosure requirements from Commission rules to U.S. GAAP may potentially increase costs to investors if U.S. GAAP were to change in a way that this information is no longer provided, as discussed above.<sup>514</sup> As noted above, the potential for such changes may be mitigated by the FASB’s transparent, public

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<sup>514</sup> See discussion of current FASB projects with the potential to broadly affect the proposals in section I.C.3.

standard-setting process and the Commission's oversight of the FASB.<sup>515</sup> The specific economic effects of any potential amendments to our disclosure requirements if these incremental disclosures are subsequently incorporated into U.S. GAAP would be considered in connection with any future rulemaking in this area.

As an alternative to referring these requirements to the FASB for potential incorporation into U.S. GAAP, we could simply eliminate the overlapping requirements and forego disclosure of the incremental information. Although such an alternative would simplify issuer compliance efforts, it also may result in less informed investment decisions and diminished investor protections. To help inform commenters' assessment of possible future changes to Commission disclosure requirements, we provide below salient examples examined in academic studies of potential economic uses of the incremental information from some of the overlapping provisions.

**Waived Defaults:** If a default of an obligation exists, but acceleration of the obligation has been waived for a period of time, Rule 4-08(c) of Regulation S-X requires disclosure of the amount of the obligation and the period of the waiver.<sup>516</sup> This disclosure requirement is incremental to U.S. GAAP, which sets forth requirements for when to present debt subject to a covenant violation as a current liability on the balance sheet, but does not require disclosure of the amount of the obligation and the period of the waiver for all waived defaults. Waivers often come with additional fees and concessions,<sup>517</sup> which likely vary with the amount of the obligation and the period of the waiver. These additional concessions typically include

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<sup>515</sup> See discussion in section I.C.

<sup>516</sup> 17 CFR 210.4-08(c).

<sup>517</sup> See, e.g., M. Beneish and E. Press, *Cost of Technical Violation of Accounting-Based Debt Covenants*, *The Accounting Review* 68, 1993 at 233–257.

restrictions on investing and financing.<sup>518</sup> Therefore, information on the amount of the obligation and the period of waiver might be beneficial to investors and other users.

**Major Customers:** Regulation S-K and U.S. GAAP both require disclosures about major customers. However, the requirements in Regulation S-K and U.S. GAAP differ in the following respects. First, Item 101(c)(1)(vii) of Regulation S-K requires disclosure if loss of a customer, or a few customers, would have a material adverse effect on a segment, whereas U.S. GAAP requires disclosure, for each customer that comprises 10 percent or more of total revenue, of that fact. Second, Item 101(c)(1)(vii) of Regulation S-K requires disclosure of the name of any customer that represents 10 percent or more of the issuer's revenue and whose loss would have a material adverse effect on the issuer. Since the requirements in Regulation S-K differ from the current requirement in U.S. GAAP, the incorporation of these requirements into U.S. GAAP would potentially change the disclosure threshold and add a requirement to name certain customers.

Academic research shows that customer-supplier linkages affect stock performance – for instance, financial distress affecting the customer often spreads to suppliers.<sup>519</sup> Academic research also shows that the customer-supplier relationship has significant effects on firm capital structure and investment activities, which may affect an investor's valuation of the firm. For instance, a firm is more likely to make relationship-specific investments when its supply-chain partner has lower leverage.<sup>520</sup> Further, information on supply chain partners may inform

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<sup>518</sup> See G. Nini, D. C. Smith, and A. Sufi, *Creditor Control Rights and Firm Investment Policy*, *Journal of Financial Economics* 92 (3), 2009 at 400–420.

<sup>519</sup> M. G. Hertz, Z. Li, M. Officer, and K. Rodgers, *Inter-Firm Linkages and the Wealth Effects of Financial Distress along the Supply Chain*, *Journal of Financial Economics* 87, 2008 at 374-387. Specifically, bankruptcy filings of customers are associated with negative price effects to suppliers.

<sup>520</sup> See, e.g., Jayrant R. Kale and Husayn Shahrur, *Corporate Capital Structure and the Characteristics of Suppliers and Customers*, *Journal of Financial Economics* 83, 2007 at 321–365. A firm may need to encourage

portfolio decisions.<sup>521</sup> Therefore, incremental audited information on customers might be beneficial to investors and other users.

**Amounts and Terms of Financing Arrangements:** Regulation S-X<sup>522</sup> and U.S. GAAP<sup>523</sup> both require certain disclosures of an issuer's financing arrangements. However, Rule 5-02.19(b) incrementally requires disclosure of the amount and terms (including commitment fees and the conditions under which lines may be withdrawn) of unused lines of credit for short-term financing, the weighted average interest rate on short-term borrowings outstanding as of each balance sheet date, and the amount of any lines of credit which support a commercial paper borrowing or similar arrangement. Rule 5-02.22(b) requires similar disclosure of the amount and terms (including commitment fees and the conditions under which commitments may be withdrawn) of unused commitments for long-term financial arrangements.

Research shows that credit lines and short-term financing offer sources of liquidity to companies, affect investment decisions, and affect capital structure. With respect to saving cash, firms that may face capital market frictions save more cash out of cash flow,<sup>524</sup> while those with access to credit lines do not.<sup>525</sup> Among firms with access to credit lines, those with higher cash flows and cash holdings have smaller drawdowns from their credit lines, suggesting a

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its supply chain partners to make relationship-specific investments. These relationship-specific investments may lose value if the firm goes into liquidation or bankruptcy. To reduce the chance of liquidation, the authors argue that the firm could reduce the debt in its capital structure, thereby reducing the risk that is associated with the relationship-specific investment. The authors find support for their argument.

<sup>521</sup> For example, recent academic research has suggested that public information about concentrated sales relationships may be profitably incorporated into equity trading strategies. See, D. Alldredge and D. Cicero D, *Attentive Insider Trading*, *Journal of Financial Economics* 115, 2015 at 84–101.

<sup>522</sup> 17 CFR 210.5-02.19(b) and 17 CFR 210. 5-02.22(b).

<sup>523</sup> ASC 470-10-50.

<sup>524</sup> H. M. Almeida, M. Campello, and M. Weisbach, *The Cash Flow Sensitivity of Cash*, *Journal of Finance* 59, 2004 at 1777–1804.

<sup>525</sup> A. Sufi, *Bank Lines of Credit in Corporate Finance: An Empirical Analysis*, *Review of Financial Studies* 22, 2009 at 1057–1088.

substitution effect between internal and external liquidity.<sup>526</sup> Also among firms with credit lines, an increase in cash leads to an increase in investment activity, while for those without credit lines, increases in cash are associated with a decrease in investment (increase in savings).<sup>527</sup> Availability of unused loan commitment financing affects capital structure decisions in that it is positively related to firm leverage and negatively related to the cost of funds.<sup>528</sup> Therefore, detailed information about a firm's credit lines and short-term financing might be beneficial to investors and other users.

### 3. Outdated Requirements

Outdated requirements are Commission disclosure requirements that we believe have become obsolete as a result of the passage of time or changes in the regulatory, business, or technological environment. The proposed amendments would eliminate certain outdated Commission disclosure requirements. Elimination of outdated disclosure requirements would simplify issuer compliance efforts by reducing the number of rules to consider and the extent of disclosures that need to be provided. In some cases, the proposed amendments also would require additional disclosure of information to reduce any loss of information or decrease the burden for investors and other users to retrieve such information from other sources. Such information is expected to be readily available at minimal to no cost to issuers.

The effect of these proposed amendments on investors and other users will depend on the information. If investors do not use the deleted information to make informed decisions,

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<sup>526</sup> M. Campello, G. Erasmo, J. Graham, and C Harvey, *Liquidity Management and Corporate Investment During a Financial Crisis*, *Review of Financial Studies* 24 (6), 2011 at 1944–1979. This study surveys 800 chief financial officers in early 2009 on how they manage liquidity and investment.

<sup>527</sup> *Id.*

<sup>528</sup> R. L. Shockley, *Bank Loan Commitments and Corporate Leverage*, *Journal of Financial Intermediation* 4, 1995 at 272–301.

these amendments may have limited effect on investors, or the amendments may have a positive effect on investors since elimination of such disclosures may reduce search costs and facilitate more efficient information processing. This, in turn, could enhance the allocative efficiency of the market and facilitate capital formation. If the information is used by investors but can be retrieved from alternative sources with little or no cost to investors (e.g., share prices), the effects of these revisions on investors should be minimal. In other cases where the information is less readily available from alternative sources (e.g., average exchange rates for each of the five most recent financial years and any subsequent interim period), these amendments may lead to a loss of information for investors and other users with a potentially adverse effect on the cost of capital of issuers. We do not expect these potential adverse effects to be significant as we attempt to propose deletion of only those requirements that call for information that is either no longer relevant or is readily available or can be derived from alternative sources, and may, in fact, be more robust than the information currently required to be disclosed. As noted above, some proposed amendments require additional disclosure of information (e.g., the issuer's Internet address, if available) to mitigate the loss of information or decrease the burden for investors and other users.

One example of outdated disclosure is the disclosure of historical market price information. We propose substituting this disclosure with disclosure of the issuer's ticker symbol, which can be used to obtain information on stock price, among other information. This additional disclosure may help reduce any loss of information as well as facilitate access to additional information while imposing minimal or no cost on issuers and saving them the expense of disclosing information that is readily available in more up to date form from alternative sources.



#### **4. Superseded Requirements**

Superseded requirements are Commission disclosure requirements that we believe are inconsistent with recent legislation, more recently updated Commission disclosure requirements, or more recently updated U.S. GAAP requirements. The proposed amendments would conform existing Commission disclosure requirements to the more recent requirements.

Elimination or amendment of Commission disclosure requirements that are inconsistent with recent legislation, more recently updated Commission disclosure requirements, or more recently updated U.S. GAAP may simplify issuer compliance efforts by resolving some confusion for issuers. Where there are superseded requirements, issuers may need to expend time and resources seeking advice from outside professionals or guidance from Commission staff as to compliance with such requirements. To the extent that, in practice, many issuers already comply with the more recently adopted requirements, we do not expect these costs to be significant. In addition, investors and other users may benefit from the reduction in the variation of disclosure practices that could result from confusion about the superseded requirements among issuers.

One example of superseded disclosure is the requirement to report the cumulative effect of a change in accounting principle in the income statement, which the FASB eliminated from U.S. GAAP in 2005. Instead, U.S. GAAP now requires the cumulative effect of retrospectively-applied changes in accounting principle to be reflected in the opening balance of retained earnings for the earliest period presented. The Commission disclosure requirements, by contrast, continue to refer to a line on the income statement for a cumulative effect of a change in accounting principle. Eliminating references to the cumulative effect of a change in accounting principle in the income statement in the Commission disclosure requirements would resolve this

contradiction and remove any resulting issuer confusion.

As another example, Rule 10-01(b)(2) of Regulation S-X requires, for interim periods, the presentation of dividends per share applicable to common stock on the face of the income statement. These rules are inconsistent with U.S. GAAP, which prohibits presentation of dividends per share on the face of the income statement. We propose to delete Rule 10-01(b)(2) to conform to U.S. GAAP. We also propose to create a new requirement to disclose the amount of dividends per share for each class of shares, rather than only for common stock, as part of changes in stockholders' equity for interim periods.<sup>529</sup> Investors and other users may benefit from the additional information on dividends per share for each class of shares for interim periods. Shareholders may use dividends to value an issuer.<sup>530</sup> Information about dividends is also important for debtholders.<sup>531</sup> There may also be different dividend preferences based on an investor's characteristics.<sup>532</sup> Therefore, dividend disclosure is likely to be important to investors. The proposed amendments, however, may give rise to Disclosure Location Considerations, in that issuers would now disclose dividends in a separate financial statement or in the notes, instead of the face of the income statement. The proposed amendments may create additional costs for issuers to prepare the additional information (i.e., dividends per share for other classes

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<sup>529</sup> See *supra* notes 414, 415, and 416.

<sup>530</sup> See M. Miller and F. Modigliani, *Dividend Policy, Growth, and the Valuation of Shares*, *Journal of Business* 34 (4), 1961 at 411-433 (providing an early theory of the effects of dividend policy on share price). See also, F. Black, *The Dividend Puzzle*, *The Journal of Portfolio Management* 2(2), 1976 at 5-8 (discussing reasons why firms pay dividends).

<sup>531</sup> See P. Healy and K. Palepu, *Effectiveness of Accounting-Based Dividend Covenants*, *Journal of Accounting and Economics* 12, 1990 at 97-123 (examining the effectiveness of dividend covenants in mitigating conflicts of interests between stockholders and bondholders). See also, H. Fan and S. Sundaresan, *Debt Valuation, Renegotiation, and Optimal Dividend Policy*, *Review of Financial Studies* 13 (4), 2000 at 1057-1099 (developing a theoretical framework for optimal dividend policy and capital structure).

<sup>532</sup> See R. Pettit, *Taxes, Transactions Costs and the Clientele Effect of Dividends*, *Journal of Financial Economics* 5 (3), 1977 at 419-436 (showing that individuals' preferences for dividends are influenced by their age and their tax rates on dividends and capital gains).

of stock). However, such costs would be limited to the extent that the required information is already available from the preparation of other aspects of the interim financial statements. Disclosure of additional information may also lead to additional costs for issuers, including Regulation A issuers, to comply with internal control over financial reporting, audit, and XBRL tagging requirements, as applicable.

### **C. Anticipated Effects on Efficiency, Competition and Capital Formation**

As discussed above, the proposals may improve capital allocation efficiency by enabling investors and other users to make more efficient investment decisions. For example, the proposals may reduce search costs for investors by eliminating information that is redundant, duplicative, overlapping, outdated or superseded and therefore no longer useful to investors. Given that investors may have limited attention and limited information processing capabilities,<sup>533</sup> elimination of such information may facilitate more efficient investment decision-making. In addition, elimination of these disclosure requirements may reduce issuer compliance costs and encourage capital formation. The reduction in compliance costs might be particularly beneficial for smaller and younger issuers that are resource constrained. A better disclosure environment may make the U.S. capital markets more competitive relative to markets in other countries. However, we do not expect such effect to be substantial.

However, eliminating information could result in increased information asymmetries between issuers and investors. Such asymmetries may increase the cost of capital, reduce capital formation, and hamper efficient allocation of capital across companies. If a useful disclosure is no longer required, low-quality firms will be less likely to disclose information that signals their lower quality; this will make it more difficult for higher quality firms to distinguish their quality

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<sup>533</sup> See supra note 510.

even with voluntary disclosures. Such negative effects might be more pronounced among smaller and younger issuers that suffer more from information asymmetries. Overall, though, to the extent that we are proposing to eliminate disclosure that is redundant, duplicative, overlapping, outdated, or superseded, we do not think these effects are likely.

#### **D. Request for Comments**

In addition to our request for comments in sections II through VI of this release, we request comment on various aspects of the costs and benefits of our proposals. We also request comment on any effect the proposals may have on efficiency, competition, and capital formation. In particular, we appreciate any data or analysis that may help quantify the potential costs and benefits identified.

### **VIII. Paperwork Reduction Act**

#### **A. Background**

Certain provisions of the proposed amendments contain a “collection of information” within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>534</sup> The Commission is submitting the proposed amendments to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.<sup>535</sup> The hours and costs associated with preparing, filing, and sending the schedules and forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. The titles for the collections of information are:

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<sup>534</sup> 44 U.S.C. 3501 et seq.

<sup>535</sup> 44 U.S.C. 3507(d) and 5 CFR 1320.11.

Title	OMB Control No.
Regulation S-X <sup>536</sup>	3235-0009
Regulation S-K	3235-0071
Rule 405 of Regulation C	3235-0074
Rule 436 of Regulation C	3235-0074
Form S-1	3235-0065
Form S-3	3235-0073
Form S-11	3235-0067
Form S-4	3235-0324
Form F-1	3235-0258
Form F-3	3235-0256
Form F-4	3235-0325
Form F-6	3235-0292
Form F-7	3235-0383
Form F-8	3235-0378
Form F-10	3235-0380
Form F-80	3235-0404
Form SF-1	3235-0707
Form SF-3	3235-0690
Form 1-A	3235-0286

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<sup>536</sup> The paperwork burdens from Regulation S-X and Regulation S-K are imposed through the forms that are subject to the disclosure requirements in both regulations and are reflected in the analysis of these forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burden imposed by Regulation S-X and Regulation S-K to be a total of one hour for each regulation.

Title	OMB Control No.
Form 1-K	3235-0720
Form 1-SA	3235-0721
Exchange Act Rule 10A-1	3235-0468
Exchange Act Rule 12b-2	3235-0062
Schedule 14A	3235-0059
Schedule 14C	3235-0057
Exchange Act Rule 15c3-1g	3235-0200
Exchange Act Rule 17a-5 and Form X-17A-5	3235-0123
Exchange Act Rule 17a-12	3235-0498
Exchange Act Rule 17h-1T	3235-0410
Form 10	3235-0064
Form 20-F	3235-0288
Form 40-F	3235-0381
Form 10-Q	3235-0070
Form 10-K	3235-0063
Form 11-K	3235-0082
Form 10-D	3235-0604
Form N-5	3235-0169
Form N-1A	3235-0307
Form N-2	3235-0026
Form N-3	3235-0316
Form N-4	3235-0318

Title	OMB Control No.
Form N-6	3235-0503
Form N-8B-2	3235-0186

We adopted all of the existing regulations, schedules, and forms pursuant to the Securities Act, the Exchange Act, or the Investment Company Act. The regulations, schedules, and forms set forth the disclosure requirements for registration statements, periodic reports, and proxy and information statements filed by issuers to help investors make informed investment and voting decisions. Certain other forms and reports are filed by broker-dealers, entities regulated by the Investment Company Act and the Investment Advisors Act, and NRSROs in connection with the Commission's oversight of such entities.

We are proposing amendments as part of an initiative by the Division of Corporation Finance to review disclosure requirements applicable to issuers to consider ways to improve the requirements for the benefit of investors and issuers. We are also proposing these amendments as part of our efforts to implement title LXXII, section 72002(2) of the FAST Act.

Compliance with the proposed amendments would be mandatory. Responses to the collection would not be kept confidential, and there would be no mandatory retention period for the information disclosed.

#### **B. Summary of the Proposed Amendments' Impacts on Collection of Information**

We propose amendments to certain of our disclosure requirements that may have become redundant, duplicative, overlapping, outdated, or superseded, in light of other Commission disclosure requirements, U.S. GAAP, IFRS, or changes in the information environment.

By eliminating the redundancy, duplication, and overlap in current Commission disclosure requirements, respondents would need to consider fewer rules and requirements in

their compliance efforts even as they are preparing a substantially similar level of disclosures. As such, except for the proposed amendment to eliminate the requirement to disclose the ratio of earnings to fixed charges, which may decrease the paperwork burden, we believe that the proposed elimination of these redundant, duplicative, and overlapping Commission requirements would marginally reduce, if at all, respondents' overall paperwork burden.

Similarly, we expect that the proposed amendments to eliminate outdated requirements would marginally reduce the information collection burden on respondents by eliminating any efforts that were undertaken to prepare these disclosures. With the exception of the proposed amendments to require the disclosure of an issuer's website address and the ticker symbol of their common equity that is publicly traded, the proposed amendments related to outdated requirements would have no change or a minimal reduction in the paperwork burden associated with preparing such information when respondents are providing information in response to Forms 10, 10-K, 20-F, S-1, and F-1.

Finally, we believe that our proposed amendments to update superseded Commission disclosure requirements would marginally reduce, if at all, respondents' collection of information burden, except for the extension of the application of Rule 3-04 of Regulation S-X to interim period disclosures,<sup>537</sup> which we estimate may marginally increase the paperwork burden. While we intend to eliminate any existing confusion related to contradictory and inconsistent requirements, in many instances, we believe respondents are not providing information in response to the requirements that we are proposing to delete. Instead, we believe they provide information in response to U.S. GAAP or other Commission disclosure requirements that have

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<sup>537</sup> The extension of Rule 3-04 of Regulation S-X addresses both overlapping and superseded disclosure issues and is presented in both sections III.C.16 and V.B.5.



been updated more recently, rather than the superseded requirement subject to the proposed amendments. As a result, we do not believe these proposed amendments would result in a change to respondents' overall paperwork burden.

### **C. Estimate of Burdens**

#### **1. Forms 10, 10-K, 10-Q, 20-F, and 1-SA**

We believe the proposed amendments to eliminate the requirement to disclose the market prices for an issuer's common equity for the two most recent fiscal years would nominally reduce affected issuers current paperwork burdens. We estimate that issuers currently expend an average of 2 hours internally preparing the market price disclosure for inclusion in their Forms 10-K and 20-F. As such, we estimate that affected issuers would experience a 2 hour reduction in their annual paperwork burden.<sup>538</sup>

We believe the proposed amendments to require that issuers disclose their ticker symbol and internet address would result in a minimal increase in their paperwork burden. We estimate that these proposed requirements would increase the paperwork burden by 0.1 hours per year for the disclosure of the issuer's internet address and 0.05 hours per year for the disclosure of the issuer's ticker symbol.<sup>539</sup> We also estimate that there are 8,862 annual responses made in connection with Forms 10-K and 20-F. The table below illustrates the overall impact on respondents filing Forms 10-K and 20-F as a result of these proposed amendments.

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<sup>538</sup> Although the proposed additional requirement to disclose an issuer's ticker symbol would create a minimal paperwork burden increase, such increase would be far outweighed by the reduction in burden associated with the elimination of two years' worth of market price disclosure.

<sup>539</sup> The burden estimate for the issuer's Internet address and ticker symbol as it applies to Form 10 filers is not an annual burden because these registration statements are only filed upon the initial registration of a class of securities under the Exchange Act.

	Number of responses (A)	Reduction in incremental burden hours/form (B)	Total incremental burden hours reduction (C)=(A)*(B)	Internal company time (D)=(C)
Form 10-K	8,137	(1.85)	(15,053.45)	(15,053.45)
Form 20-F	725	(1.85)	(1,341.25)	(1,341.25)

The proposed amendments to eliminate the requirement to disclose the market prices for an issuer's common equity for the two most recent fiscal years would not reduce the paperwork burden for the overwhelming majority of Form 10 filers.<sup>540</sup> Form 10 filers would be subject to the proposed requirements, if adopted, to disclose their ticker symbols or anticipated ticker symbols, if known, and internet address. We estimate that there are 238 annual responses made in connection with Form 10. The table below illustrates the overall impact on respondents filing Form 10 as a result of these proposed amendments.

	Number of responses (A)	Increase in incremental burden hours/form (B)	Total incremental burden hours increase (C)=(A)*(B)	Internal company time (D)=(C)
Form 10	238	0.15	37.5	37.5

The proposed amendments discussed in sections III.C.16 and V.B.5, if adopted, would extend to interim periods the requirements under Rule 3-04 of Regulation S-X to disclose changes in stockholders' equity and dividends per share for each class of shares, rather than only for common stock. Currently, these disclosures are not required for interim periods. While this creates a new disclosure requirement for issuers, the information being required is generally readily available from the issuer's preparation of other aspects of its interim financial statements. As a result, we estimate that this proposed amendment would increase the paperwork burdens by

<sup>540</sup> Most filers of Form 10 do not have a class of common equity publicly traded at the time the registration statement is filed. Issuers that already have a class of common equity publicly traded are typically able to file a Form 8-A to register new classes of securities under the Exchange Act.

0.5 hours each time such information is required for inclusion.<sup>541</sup> We also estimate that there are 23,333 annual responses in connection with Forms 10, 10-Q, and 1-SA. The table below illustrates the overall impact on respondents filing Forms 10, 10-Q, and 1-SA, as a result of the proposed application of Rule 3-04 to interim period disclosures.<sup>542</sup>

	Number of responses (A)	Increase in incremental burden hours/form (B)	Total incremental burden hours increase (C)=(A)*(B)	Internal company time (D)=(C)
Form 10	238	0.5	119	119
Form 10-Q	22,907	0.5	11,453.5	11,453.5
Form 1-SA	188	0.5	94	94

## 2. Forms S-1, S-3, S-4, S-11, SF-1, SF-3, F-1, F-3, F-4, and 1-A

The proposed amendments to eliminate the market prices disclosure and require the disclosure of the ticker symbol for an issuer's common equity and the issuer's internet address have the same paperwork burden effect for Forms S-1, S-4, S-11, F-1, and F-4.<sup>543</sup> As such, we estimate that there would be a corresponding reduction in the burden estimate for these forms. We estimate that there are approximately 1,751 annual responses made in connection with the referenced forms. The table below illustrates the overall impact on respondents filing the referenced forms as a result of these proposed amendments.

<sup>541</sup> As Form 10-Q is filed for the first three quarters of an issuer's fiscal year, the annual burden increase is estimated to be 1.5 hours annually. As such, there is no increase to the paperwork burdens associated with preparing annual reports filed on Forms 10-K or 20-F. However, for registration statements filed on Form 10 and 20-F, to the extent that interim period disclosures are made, the issuer would experience an increase in paperwork burden.

<sup>542</sup> While this proposal would not impact foreign private issuers that file a Form 20-F as an annual report, it may impact those that file the form to register a class of securities when they would be required to provide interim period disclosures. However, the staff has observed that this does not occur frequently. As such, we have not included Form 20-F in this estimate.

<sup>543</sup> The information subject to the proposals discussed in this paragraph are incorporated by reference into Forms S-3 and F-3 and not provided in direct response to a form item requirement. As such, the proposals do not affect the paperwork burdens associated with Forms S-3 and F-3.

	Number of responses (A)	Reduction in incremental burden hours/form (B)	Total incremental burden hours reduction (C)=(A)*(B)	Internal company time (D)=(C)
Form S-1	901	(1.85)	(1,666.85)	(1,666.85)
Form S-4	619	(1.85)	(1,145.15)	(1,145.15)
Form S-11	100	(1.85)	(185)	(185)
Form F-1	63	(1.85)	(116.55)	(116.55)
Form F-4	68	(1.85)	(125.8)	(125.8)

Additionally, we estimate that the paperwork burdens associated with Forms SF-1 and SF-3 would be minimally increased by the proposed amendment to disclose the issuer's internet address. We estimate that there are approximately 77 annual responses made in connection with the referenced forms. The table below illustrates the overall impact on respondents filing the referenced forms as a result of these proposed amendments.

	Number of responses (A)	Increase in incremental burden hours/form (B)	Total incremental burden hours increase (C)=(A)*(B)	Internal company time (D)=(C)
Form SF-1	6	0.1	0.6	0.6
Form SF-3	71	0.1	7.1	7.1

The proposed amendments discussed in sections III.C.16 and V.B.5 to extend Rule 3-04 of Regulation S-X to interim periods would also impact the paperwork burdens of registration statements filed on Forms 1-A, S-1, S-4, S-11, F-1, and F-4 because such forms require interim period financial disclosures, when applicable.<sup>544</sup> We believe that the estimated burden increase of 0.5 hours discussed above similarly applies to the referenced registration statements. We estimate that there are approximately 2,001 annual responses made in connection with the referenced forms. The table below illustrates the overall impact on respondents filing the referenced forms as a result of these proposed amendments.

<sup>544</sup> Filers of the referenced forms may have to provide interim period financial disclosures in order to comply with Rule 3-12 of Regulation S-X [17 CFR 210.3-12]. While the timing of the effectiveness of the registration statement or qualification of the offering statement may not trigger the requirement for interim period financial disclosure, we have used the full population of responses for our estimate to be conservative.

	Number of responses (A)	Increase in incremental burden hours/form (B)	Total incremental burden hours increase (C)=(A)*(B)	Internal company time (D)=(C)
Form S-1	901	0.5	450.5	450.5
Form S-4	619	0.5	309.5	309.5
Form S-11	100	0.5	50	50
Form F-1	63	0.5	31.5	31.5
Form F-4	68	0.5	34	34
Form I-A	250	0.5	125	125

The proposed amendment to eliminate the requirements to disclose the ratio of earnings to fixed charges, when an issuer registers debt securities, and the ratio of combined fixed charges and preference dividends to earnings, when an issuer registers preference securities, would reduce the current paperwork burden for issuers registering such securities on Forms S-1, S-3, S-4, S-11, F-1, F-3 and F-4. Depending on the size and complexity of the issuer, the paperwork burden associated with preparing this information for inclusion in the aforementioned registration statements varies greatly. We estimate that issuers expend an average of 4 hours preparing this disclosure for inclusion in their registration statements. For the purposes of this analysis, we assume that the ratio is prepared internally, and we have estimated that there are approximately 2,195 annual responses made in connection with the referenced forms. Based on this average, the table below illustrates the overall impact on respondents filing the referenced forms as a result of the proposed amendments.

	Number of responses (A) <sup>545</sup>	Reduction in incremental burden hours/form (B)	Total incremental burden hours (C)=(A)*(B)	Internal company time (D)=(C)
Form S-1	450	(4)	(1,800)	(1,800)
Form S-3	1,000	(4)	(4,000)	(4,000)
Form S-4	525	(4)	(2,100)	(2,100)
Form S-11	35	(4)	(140)	(140)
Form F-1	32	(4)	(128)	(128)

<sup>545</sup> The portion of registration statements filed on each referenced form that actually registers debt or preference securities varies from year to year. As a result, the numbers in this column are based on staff estimates using data samples obtained from EDGAR.

	Number of responses (A) <sup>545</sup>	Reduction in incremental burden hours/form (B)	Total incremental burden hours (C)=(A)*(B)	Internal company time (D)=(C)
Form F-3	98	(4)	(392)	(392)
Form F-4	55	(4)	(220)	(220)

#### **D. Request for Comment**

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate the accuracy of our assumptions and estimates of the burden of the proposed collection of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to, Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE,

Washington, DC 20549-1090, with reference to File No. S7-15-16. Requests for materials submitted to OMB by the Commission with regard to the collection of information should be in writing, refer to File No. S7-15-16 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington DC 20549-2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this proposed rule. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

### **IX. Initial Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act (“RFA”)<sup>546</sup> requires the Commission, in promulgating rules under section 553 of the Administrative Procedure Act, to consider the impact of those rules on small entities. The Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) in accordance with section 603 of the RFA.<sup>547</sup> This IRFA relates to amendments proposed as part of the Disclosure Effectiveness Initiative, which aims to review the Commission’s disclosure requirements applicable to issuers to consider ways to improve the requirements for the benefit of investors and issuers, and part of our efforts to implement title LXXII, section 72002(2) of the FAST Act.

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<sup>546</sup> 5 U.S.C. 601 *et seq.*

<sup>547</sup> 5 U.S.C. 603

## **A. Reasons for, and Objectives of, the Proposed Action**

The primary reason for, and objectives of, the proposed amendments is to update and simplify the Commission's current disclosure requirements. Specifically, the proposed amendments would:

- Eliminate certain Commission disclosure requirements that are redundant or duplicative of requirements in U.S. GAAP, IFRS, or other Commission disclosure requirements;
- Streamline certain overlapping Commission disclosure requirements by deleting or integrating provisions that address disclosure topics covered elsewhere in our rules or regulations.
- Revise certain Commission disclosure requirements that are outdated.
- Revise certain superseded Commission disclosure requirements to update and conform our rules with recent legislation, more recently updated Commission disclosure requirements, or more recently updated U.S. GAAP requirements.

Additionally, as discussed in section III.E above, we are soliciting comment on certain overlapping Commission disclosure requirements to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP.

The proposed amendments are also part of our efforts to implement title LXXII, section 72002(2) of the FAST Act.

## **B. Legal Basis**

We are proposing the rule and form amendments pursuant to sections 7, 10, 19(a), and 28 of the Securities Act, sections 3(b), 12, 13, 15, 23(a), and 36 of the Exchange Act, sections 8, 24(a), 24(g), 30, and 38 of the Investment Company Act, and title LXXII, section 72002(2) of the FAST Act.



### **C. Small Entities Subject to the Proposed Amendments**

The proposed amendments would affect small entities that file registration statements under the Securities Act, the Exchange Act, and the Investment Company Act and periodic reports, proxy and information statements, or other reports under the Exchange Act and the Investment Company Act. The RFA defines “small entity” to mean “small business,” “small organization,” or “small governmental jurisdiction.”<sup>548</sup>

For the purposes of the RFA, under our rules, an issuer of securities, other than an investment company, is a “small business” or “small organization” if it had total assets of \$5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities that does not exceed \$5 million.<sup>549</sup> We estimate that there are approximately 428 of such issuers that may be considered small entities. The proposed amendments would affect small entities conducting registered public or Regulation A offerings or that have a class of securities that are registered under section 12 of the Exchange Act.

An investment company, including a business development company, is considered to be a “small business,” for the purposes of the RFA, if it, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year.<sup>550</sup> We believe the proposed amendments would affect some small entities that are investment companies. We estimate that there are approximately 29 investment companies that would be subject to the proposed amendments that may be considered small entities.

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<sup>548</sup> 5 U.S.C. 601(6).

<sup>549</sup> See Securities Act Rule 157 [17 CFR 230.157] and Exchange Act Rule 0-10(a) [17 CFR 240.0-10(a)].

<sup>550</sup> 17 CFR 270.0-10(a).

For the purposes of the RFA, an investment adviser generally is a small entity if it: (1) has assets under management having a total value of less than \$25 million; (2) did not have total assets of \$5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of \$25 million or more, or any person (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year.<sup>551</sup> We estimate that there are approximately 515 investment advisors that would be subject to the proposed amendments that may be considered small entities.

For the purposes of the RFA, a broker-dealer is considered to be a “small business” if its total capital (net worth plus subordinated liabilities) is less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a-5(d) under the Exchange Act,<sup>552</sup> or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and that is not affiliated with any person (other than a natural person) that is not a small business or small organization.<sup>553</sup> The Commission estimates that there are approximately 1,349 broker-dealers that were “small” for the purposes Rule 0-10.<sup>554</sup>

The Commission has also stated, and continues to believe, that an NRSRO with total assets of \$5 million or less would qualify as a “small” entity for purposes of the RFA.<sup>555</sup>

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<sup>551</sup> See 17 CFR 275.0-7.

<sup>552</sup> See 17 CFR 240.17a-5(d).

<sup>553</sup> See 17 CFR 240.0-10(c).

<sup>554</sup> This estimate is based on the number of small broker-dealers as of December 31, 2014.

<sup>555</sup> See, e.g., *Final Rules: Nationally Recognized Statistical Rating Organizations*, Exchange Act Release No. 72936 (Aug. 27, 2014) [79 FR 55077].

Currently, there are 10 NRSROs and, based on their most recently filed annual reports pursuant to Rule 17g-3, two NRSROs are small entities under the above definition.

#### **D. Duplicative, Overlapping, or Conflicting Federal Rules**

We believe that the proposed amendments would not duplicate, overlap, or conflict with other federal rules.

#### **E. Reporting, Recordkeeping, and Other Compliance Requirements**

As noted above, the purpose of the proposed amendments is to update and simplify the Commission's disclosure requirements. As such, the proposed amendments do not impose any significant new disclosure obligations. If adopted, the majority of the proposed amendments would eliminate or integrate current Commission disclosure requirements and thus are expected to have a minimal effect on existing reporting, recordkeeping, and other compliance burdens for all issuers, including small entities. To the extent the proposed amendments do have an impact, it would likely be a reduction in these burdens.

#### **F. Significant Alternatives**

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish the stated objectives of our proposed amendments, while minimizing any significant adverse impact on small entities. Specifically, we considered the following alternatives: (1) establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements for small entities; (3) using performance rather than design standards; and (4) exempting small entities from coverage of all or part of the proposed amendments.

With respect to clarification, consolidation, and simplification of compliance and reporting requirements for small entities, the proposed amendments do not impose any

significant new disclosure obligations. As noted above, we are proposing amendments to certain of our disclosure requirements that may have become redundant, duplicative, overlapping, outdated, or superseded, in light of other Commission disclosure requirements, U.S. GAAP, IFRS, or changes in the information environment. The proposed amendments would simplify compliance for all issuers, including small entities.

For similar reasons, we do not believe it is necessary, and indeed would be contrary to the stated objectives of the proposed rulemaking, to establish different compliance or reporting requirements or timetables or to exempt small entities from all or part of the proposed amendments. We note in this regard that the Commission's existing disclosure requirements provide for scaled disclosure requirements and other accommodations for SRCs and EGCs, and the proposed amendments would not alter these existing accommodations.

Finally, with respect to use of performance rather than design standards, the proposed amendments to eliminate certain prescriptive Commission rules that call for information that duplicates or overlaps with information required by U.S. GAAP may result in issuers, including small entities, being provided with additional flexibility when preparing their disclosures. For instance, Rule 4-08(m) of Regulation S-X requires certain disclosures regarding repurchase agreements based on a 10 percent threshold and specified maturity levels. As we propose to delete the referenced requirements, as discussed in section III.C, under the proposed amendments issuers would be subject only to the corresponding the requirements in U.S. GAAP, which require similar disclosure but do not use similar bright line thresholds. While the proposed amendments do not use performance standards, they would have a similar effect—namely, to provide issuers, including small entities, with additional flexibility to present more tailored disclosures without meaningfully reducing the total mix of information provided to investors.

## **G. Solicitation of Comments**

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- How the proposed amendments can achieve their objective while lowering the burden on small entities;
- The number of small entities that may be affected by the proposed amendments;
- The existence or nature of the potential impact of the proposed amendments on small entities discussed in the analysis; and
- How to quantify the impact of the proposed amendments.

Respondents are asked to describe the nature of any impact of the proposed amendments on small entities and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

## **X. Small Business Regulatory Enforcement Fairness Act**

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or “SBREFA,”<sup>556</sup> we solicit data to determine whether the rule proposed amendments constitute a “major” rule. Under SBREFA, a rule is considered “major” where, if adopted, it results or is likely to result in:

- An annual effect on the economy of \$100 million or more (either in the form of an increase or a decrease);

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<sup>556</sup> 123 Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

Commenters should provide empirical data on: (1) the potential annual effect on the economy; (2) any increase in costs or prices for consumers or individual industries; and (3) any potential effect on competition, investment, or innovation.

## **XI. Statutory Authority**

The amendments contained in this document are being proposed under the authority set forth in sections 7, 10, 19(a), and 28 of the Securities Act, sections 3(b), 12, 13, 15, 23(a), and 36 of the Exchange Act, sections 8, 24(a), 24(g), 30, and 38 of the Investment Company Act, and title LXXII, section 72002(2) of the FAST Act.

### **Text of Proposed Amendments**

#### **List of Subjects**

##### *17 CFR Part 210*

Accountants, Accounting, Banks, banking, Employee benefit plans, Holding companies, Insurance companies, Investment companies, Oil and gas exploration, Reporting and recordkeeping requirements, Securities, Utilities.

##### *17 CFR Part 229*

Reporting and recordkeeping requirements, Securities.

##### *17 CFR Part 230*

Investment companies, Reporting and recordkeeping requirements, Securities.

##### *17 CFR Part 239*

Reporting and recordkeeping requirements, Securities.

##### *17 CFR Part 240*

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

*17 CFR Part 249*

Brokers, Reporting and recordkeeping requirements, Securities.

*17 CFR Part 274*

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons stated in the preamble, the SEC is proposing to amend title 17, chapter II of the Code of the Federal Regulations as follows:

**PART 210 – FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975**

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

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j-1, 78l, 78m, 78n, 78o(d), 78q, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-20, 80a-29, 80a-30, 80a-31, 80a-37(a), 80b-3, 80b-11, 7202 and 7262, unless otherwise noted.

2. Amend § 210.1-02 by:

- a. Revising paragraphs (d), (w)(3) and (bb)(1)(ii); and
- b. Adding paragraphs (cc) and (dd).

The revisions and additions read as follows:

**§ 210.1-02 Definitions of terms used in Regulation S-X (17 CFR part 210).**

\* \* \* \* \*

(d) Audit (or examination). The term audit (or examination), when used in regard to financial statements of issuers as defined by section 2(a)(7) of the Sarbanes-Oxley Act of 2002, means an examination of the financial statements by an independent accountant in accordance with the standards of the Public Company Accounting Oversight Board (United States)

(“PCAOB”) for the purpose of expressing an opinion thereon. When used in regard to financial statements of entities that are not issuers as defined by section 2(a)(7) of the Sarbanes-Oxley Act of 2002, the term means an examination of the financial statements by an independent accountant in accordance with either the standards of the PCAOB or U.S. generally accepted auditing standards (“U.S. GAAS”) as specified or permitted in the regulations and forms applicable to those entities for the purpose of expressing an opinion thereon. The standards of the PCAOB and U.S. GAAS may be modified or supplemented by the Commission.

\* \* \* \* \*

(w) \* \* \*

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes exclusive of amounts attributable to any noncontrolling interests exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

\* \* \* \* \*

(bb) \* \* \*

(1) \* \* \*

(ii) Net sales or gross revenues, gross profit (or, alternatively, costs and expenses applicable to net sales or gross revenues), income or loss from continuing operations, net income or loss, and net income or loss attributable to the entity (for specialized industries, other information may be substituted for sales and related costs and expenses if necessary for a more meaningful presentation); and

\* \* \* \* \*



(cc) Statement(s) of comprehensive income. The term statement(s) of comprehensive income means a financial statement that includes all changes in equity during a period except those resulting from investments by owners and distributions to owners. Comprehensive income comprises all components of net income and all components of other comprehensive income. The statement of comprehensive income may be presented either in a single continuous financial statement or in two separate but consecutive financial statements. A statement(s) of operations or variations thereof may be used in place of a statement(s) of comprehensive income if there was no other comprehensive income during the period(s).

(dd) Restricted net assets. The term restricted net assets shall mean that amount of the registrant's proportionate share of net assets of consolidated subsidiaries (after intercompany eliminations) which as of the end of the most recent fiscal year may not be transferred to the parent company by subsidiaries in the form of loans, advances or cash dividends without the consent of a third party (i.e., lender, regulatory agency, foreign government, etc.). Not all limitations on transferability of assets are considered to be restrictions for purposes of this paragraph, which considers only specific third party restrictions on the ability of subsidiaries to transfer funds outside of the entity. For example, the presence of subsidiary debt which is secured by certain of the subsidiary's assets does not constitute a restriction under this paragraph. However, if there are any loan provisions prohibiting dividend payments, loans or advances to the parent by a subsidiary, these are considered restrictions for purposes of computing restricted net assets. When a loan agreement requires that a subsidiary maintain certain working capital, net tangible asset, or net asset levels, or where formal compensating arrangements exist, there is considered to be a restriction under this paragraph because the lender's intent is normally to preclude the transfer by dividend or otherwise of funds to the parent company. Similarly, a

provision which requires that a subsidiary reinvest all of its earnings is a restriction, since this precludes loans, advances or dividends in the amount of such undistributed earnings by the entity. Where restrictions on the amount of funds which may be loaned or advanced differ from the amount restricted as to transfer in the form of cash dividends, the amount least restrictive to the subsidiary shall be used. Redeemable preferred stocks (§ 210.5-02, paragraph 27) and noncontrolling interests shall be deducted in computing net assets for purposes of this test.

3. Amend § 210.2-01 by revising paragraph (f)(7)(ii)(B) to read as follows:

**§ 210.2-01 Qualifications of accountants.**

\* \* \* \* \*

(f) \* \* \*

(7) \* \* \*

(ii) \* \* \*

(B) The partner conducting a quality review under applicable professional standards and any applicable rules of the Commission to evaluate the significant judgments and the related conclusions reached in forming the overall conclusion on the audit or review engagement. (“engagement quality reviewer” or “engagement quality control reviewer”);

\* \* \* \* \*

4. Amend § 210.2-02 by revising paragraph (b)(1) to read as follows:

**§ 210.2-02 Accountants’ reports and attestation reports.**

\* \* \* \* \*

(b) \* \* \*

(1) Shall state the applicable professional standards under which the audit was conducted;  
and

\* \* \* \* \*

5. Amend § 210.3-01 by revising paragraphs (c)(2) and (3) to read as follows:

**§ 210.3-01 Consolidated balance sheets.**

\* \* \* \* \*

(c) \* \* \*

(2) For the most recent fiscal year for which audited financial statements are not yet available the registrant reasonably and in good faith expects to report income attributable to the registrant, after taxes; and

(3) For at least one of the two fiscal years immediately preceding the most recent fiscal year the registrant reported income attributable to the registrant, after taxes.

\* \* \* \* \*

6. Amend § 210.3-02 by revising the section heading and paragraphs (a) and (b) to read as follows:

**§ 210.3-02 Consolidated statements of comprehensive income and cash flows.**

(a) There shall be filed, for the registrant and its subsidiaries consolidated and for its predecessors, audited statements of comprehensive income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed or such shorter period as the registrant (including predecessors) has been in existence.

(b) In addition, for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of comprehensive income and cash flows shall be provided. Such interim financial statements may be unaudited and need not be presented in greater detail than is required by § 210.10-01.

\* \* \* \* \*

7. Amend § 210.3-03 by revising the section heading and paragraphs (b), (d), and (e) to read as follows:

**§ 210.3-03 Instructions to statement of comprehensive income requirements.**

\* \* \* \* \*

(b) If the registrant is engaged primarily:

(1) In the generation, transmission or distribution of electricity, the manufacture, mixing, transmission or distribution of gas, the supplying or distribution of water, or the furnishing of telephone or telegraph service; or

(2) In holding securities of companies engaged in such businesses, it may at its option include statements of comprehensive income and cash flows (which may be unaudited) for the twelve-month period ending on the date of the most recent balance sheet being filed, in lieu of the statements of comprehensive income and cash flows for the interim periods specified.

\* \* \* \* \*

(d) Any unaudited interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

(e) Disclosures regarding segments required by generally accepted accounting principles shall be provided for each year for which an audited statement of comprehensive income (or statement of net income if comprehensive income is presented in two separate but consecutive financial statements or if no other comprehensive income) is provided. To the extent that the segment information presented pursuant to this instruction complies with the provisions of Item 101 of Regulation S-K (17 CFR 229.101), the disclosures may be combined by cross referencing to or from the financial statements.

8. Revise § 210.3-04 to read as follows:

**§ 210.3-04 Changes in stockholders' equity and noncontrolling interests.**

An analysis of the changes in each caption of stockholders' equity and noncontrolling interests presented in the balance sheets shall be given in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which a statement of comprehensive income is required to be filed with all significant reconciling items described by appropriate captions with contributions from and distribution to owners shown separately. Also, state-separately the adjustments to the balance at the beginning of the earliest period presented for items which were retroactively applied to periods prior to that period. With respect to any dividends, state the amount per share and in the aggregate for each class of shares. Provide a separate schedule in the notes to the financial statements that shows the effects of any changes in the registrant's ownership interest in a subsidiary on the equity attributable to the registrant.

9. Amend § 210.3-05 by revising paragraph (b)(4)(iii) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(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 statements of comprehensive income 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 statements of comprehensive income after the purchase are filed to cover the equivalent of the period specified in § 210.3-02.

\* \* \* \* \*

10. Amend § 210.3-12 by revising paragraph (a) to read as follows:

**§ 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 before 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 comprehensive 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.

\* \* \* \* \*

11. Amend § 210.3-14 by:

a. Revising the introductory text of paragraph (a); and

b. Redesignating the Note following paragraph (a)(1)(iii) as Note to paragraph (a)(1).

The revision reads as follows:

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

(a) If, during the period for which statements of comprehensive income 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:

\* \* \* \* \*

**§ 210.3-15 [Amended]**

12. Amend § 210.3-15 by removing and reserving paragraphs (a) and (b).

13. Amend § 210.3-17 by revising paragraph (a) to read as follows:

**§ 210.3-17 Financial statements of natural persons.**

(a) In lieu of the financial statements otherwise required, a natural person may file an unaudited balance sheet as of a date within 90 days of date of filing and unaudited statements of comprehensive income for each of the three most recent fiscal years.

\* \* \* \* \*

14. Amend § 210.3-20 by:

- a. Redesignating paragraph (a) as paragraph (a)(1);
- b. Adding paragraph (a)(2);
- c. Redesignating paragraph (b) as paragraph (b)(1) and adding paragraph (b)(2); and
- d. Revising paragraph (d).

The additions and revisions read as follows:

**§ 210.3-20 Currency for financial statements.**

(a) \* \* \*

(2) An issuer that is not a foreign private issuer shall present its financial statements in U.S. dollars.

(b) \* \* \*

(2) If there are material exchange restrictions or controls relating to the currency of a subsidiary's domicile, the currency held by a subsidiary, or the currency in which a subsidiary will pay dividends or transfer funds to the issuer or other subsidiaries, prominent disclosure of this fact shall be made in the financial statements.

\* \* \* \* \*

(d) Notwithstanding the currency selected for reporting purposes, the issuer shall measure separately its own transactions, and those of each of its material operations (e.g., branches, divisions, subsidiaries, joint ventures, and similar entities) that is included in the



issuer's consolidated financial statements and not located in a hyperinflationary environment, using the particular currency of the primary economic environment in which the issuer or the operation conducts its business. Assets and liabilities so determined shall be translated into the reporting currency at the exchange rate at the balance sheet date; all revenues, expenses, gains, and losses shall be translated at the exchange rate existing at the time of the transaction or, if appropriate, a weighted average of the exchange rates during the period; and all translation effects of exchange rate changes shall be included as a separate component (“cumulative translation adjustment”) of shareholder’s equity.

\* \* \* \* \*

**§ 210.3A-01 [Removed and reserved]**

15. Remove and reserve § 210.3A-01.
16. Amend § 210.3A-02 by:
  - a. Revising the undesignated introductory text;
  - b. Revising paragraph (a);
  - c. Removing and reserving paragraph (b); and
  - d. Removing paragraphs (c) and (d).

The revisions read as follows:

**§ 210.3A-02 Consolidated financial statements of the registrant and its subsidiaries.**

In deciding upon consolidation policy, the registrant must consider what financial presentation is most meaningful in the circumstances and should follow in the consolidated financial statements principles of inclusion or exclusion which will clearly exhibit the financial position and results of operations of the registrant. There is a presumption that consolidated statements are more meaningful than separate statements and that they are usually necessary for

a fair presentation when one entity directly or indirectly has a controlling financial interest in another entity. Other particular facts and circumstances may require combined financial statements, an equity method of accounting, or valuation allowances in order to achieve a fair presentation.

(a) Majority ownership: Among the factors that the registrant should consider in determining the most meaningful presentation is majority ownership. Generally, registrants shall consolidate entities that are majority owned and shall not consolidate entities that are not majority owned. The determination of "majority ownership" requires a careful analysis of the facts and circumstances of a particular relationship among entities. In rare situations, consolidation of a majority owned subsidiary may not result in a fair presentation, because the registrant, in substance, does not have a controlling financial interest (for example, when the subsidiary is in legal reorganization or in bankruptcy). In other situations, consolidation of an entity, notwithstanding the lack of technical majority ownership, is necessary to present fairly the financial position and results of operations of the registrant, because of the existence of a parent-subsidiary relationship by means other than record ownership of voting stock.

\* \* \* \* \*

17. Amend § 210.3A-03 by removing and reserving paragraph (a) and revising paragraph (b) to read as follows:

**§ 210.3A-03 Statement as to principles of consolidation or combination followed.**

\* \* \* \* \*

(b) As to each consolidated financial statement and as to each combined financial statement, if there has been a change in the persons included or excluded in the corresponding statement for the preceding fiscal period filed with the Commission that has a

material effect on the financial statements, the persons included and the persons excluded shall be disclosed.

**§ 210.3A-04 [Removed]**

18. Remove § 210.3A-04.

**§ 210.4-01 [Amended]**

19. Amend § 210.4-01 by removing paragraph (a)(3).

20. Amend § 210.4-08 by:

- a. Revising the undesignated introductory text;
- b. Removing and reserving paragraph (a)
- c. Revising paragraph (d);
- d. Revising paragraph (e)(1) and the introductory text of paragraph (e)(3);
- e. Revising paragraphs (f) and (h)(1);
- f. Redesignating the Note following paragraph (h)(1) as Note to paragraph (h)(1);
- g. Revising paragraph (h)(2) and removing paragraph (h)(3);
- h. Removing and reserving paragraph (i);
- i. Revising paragraph (k);
- j. Revising paragraphs (m)(1)(i) and (ii) and (m)(2)(i); and
- k. Removing paragraph (n) and the instructions to paragraph (n).

The revisions read as follows:

**§ 210.4-08 General notes to financial statements.**

If applicable to the person for which the financial statements are filed, the following shall be set forth on the face of the appropriate statement or in appropriately captioned notes. The information shall be provided for each statement required to be filed, except that the information

required by paragraphs (b), (c), (d), (e) and (f) of this section shall be provided as of the most recent audited balance sheet being filed and for paragraph (j) of this section as specified therein.

When specific statements are presented separately, the pertinent notes shall accompany such statements unless cross-referencing is appropriate.

\* \* \* \* \*

(d) *Preferred shares.* Aggregate preferences on involuntary liquidation, if other than par or stated value, shall be shown parenthetically in the equity section of the balance sheet.

(e) \* \* \*

(1) Describe the most significant restrictions on the payment of dividends by the registrant, indicating their sources, their pertinent provisions, and the amount of retained earnings or net income restricted or free of restrictions.

\* \* \* \* \*

(3) The disclosures in paragraphs (e)(3)(i) and (ii) of this section shall be provided when material.

\* \* \* \* \*

(f) Significant changes in bonds, mortgages and similar debt. Any significant changes in the authorized amounts of bonds, mortgages and similar debt since the date of the latest balance sheet being filed for a particular person or group shall be stated.

\* \* \* \* \*

(h) \* \* \*

(1) Disclosure shall be made in the statement of comprehensive income or a note thereto, of the components of income (loss) before income tax expense (benefit) as either domestic or foreign.

\* \* \* \* \*

(2) In the reconciliation between the amount of reported total income tax expense (benefit) and the amount computed by multiplying the income (loss) before tax by the applicable statutory Federal income tax rate, if no individual reconciling item amounts to more than five percent of the amount computed by multiplying the income before tax by the applicable statutory Federal income tax rate, and the total difference to be reconciled is less than five percent of such computed amount, no reconciliation need be provided unless it would be significant in appraising the trend of earnings. Reconciling items that are individually less than five percent of the computed amount may be aggregated in the reconciliation. Where the reporting person is a foreign entity, the income tax rate in that person's country of domicile should normally be used in making the above computation, but different rates should not be used for subsidiaries or other segments of a reporting entity. When the rate used by a reporting person is other than the United States Federal corporate income tax rate, the rate used and the basis for using such rate shall be disclosed.

\* \* \* \* \*

(k) Related party transactions that affect the financial statements. (1) Amounts of related party transactions should be stated on the face of the balance sheet, statement of comprehensive income, or statement of cash flows.

(2) In cases where separate financial statements are presented for the registrant, certain investees, or subsidiaries, any intercompany profits or losses resulting from transactions with related parties and the effects thereof shall be disclosed.

\* \* \* \* \*

(m) \* \* \*

(1) \* \* \*

(i) Separate presentation in the balance sheet of the aggregate amount of liabilities incurred pursuant to repurchase agreements shall include accrued interest payable thereon.

(ii) The interest rate(s) on the repurchase liabilities shall be disclosed.

\* \* \* \* \*

(2) \* \* \*

(i) If, as of the most recent balance sheet date, the aggregate carrying amount of "reverse repurchase agreements" (securities or other assets purchased under agreements to resell) exceeds 10% of total assets:

(A) Disclose separately such amount in the balance sheet; and

(B) Disclose in an appropriately captioned footnote whether or not there are any provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of default by the counterparty and if so, the nature of those provisions.

\* \* \* \* \*

21. Amend § 210.4-10 by revising paragraph (c)(7)(i) to read as follows:

**§ 210.4-10 Financial accounting and reporting for oil and gas producing activities pursuant to the Federal securities laws and the Energy Policy and Conservation Act of 1975.**

\* \* \* \* \*

(c) \* \* \*

(7) \* \* \*

(i) For each cost center for each year that a statement of comprehensive income is required, disclose the total amount of amortization expense (per equivalent physical unit of

production if amortization is computed on the basis of physical units or per dollar of gross revenue from production if amortization is computed on the basis of gross revenue).

\* \* \* \* \*

22. Amend § 210.5-02 by:

- a. Removing the bracketed text immediately below the undesignated heading “Current Assets, when appropriate” and immediately above paragraph 1;
- b. Revising paragraphs 6.(a)(2) and (3);
- c. Revising the undesignated heading immediately above paragraph 19;
- d. Revising the introductory text of paragraph 22.(a) and paragraphs 27.(c)(3), 28 and 29; and
- e. Revising paragraph 30.(a) and adding a Note to paragraph 30.(a)

The revisions read as follows:

**§ 210.5-02 Balance sheets.**

\* \* \* \* \*

6. \* \* \*

(a) \* \* \*

(2) inventoried costs relating to long-term contracts or programs (see paragraph (d) of this section);

(3) work in process;

\* \* \* \* \*

*Current Liabilities, When Appropriate*

19. \* \* \*

\* \* \* \* \*

22. \* \* \*

(a) State separately, in the balance sheet or in a note thereto, each issue or type of obligation and such information as will indicate:

\* \* \* \* \*

27. \* \* \*

(c) \* \* \*

(3) the changes in each issue for each period for which a statement of comprehensive income is required to be filed. (See also § 210.4-08(d).)

\* \* \* \* \*

28. Preferred stocks which are not redeemable or are redeemable solely at the option of the issuer. State on the face of the balance sheet, or if more than one issue is outstanding state in a note, the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. State on the face of the balance sheet or in a note, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate (see § 210.4-07). Show in a note or separate statement the changes in each class of preferred shares reported under this caption for each period for which a statement of comprehensive income is required to be filed.  
(See also §210.4-08(d).)

\* \* \* \* \*

29. Common stocks. For each class of common shares state, on the face of the balance sheet, the number of shares issued or outstanding, as appropriate (see § 210.4-07), and the dollar amount thereof. If convertible, this fact should be indicated on the face of the



balance sheet. For each class of common shares state, on the face of the balance sheet or in a note, the title of the issue, the number of shares authorized, and, if convertible, the basis of conversion (see also §210.4-08(d)). Show also the dollar amount of any common shares subscribed but unissued, and show the deduction of subscriptions receivable therefrom. Show in a note or statement the changes in each class of common shares for each period for which a statement of comprehensive income is required to be filed.

\* \* \* \* \*

30. Other stockholders' equity. (a) Separate captions shall be shown for:

- (1) Additional paid-in capital;
- (2) Other additional capital;
- (3) Retained earnings;
  - (i) Appropriated; and
  - (ii) Unappropriated (See § 210.4-08(e)); and
- (4) Accumulated other comprehensive income.

NOTE TO PARAGRAPH 30.(a). Additional paid-in capital and other additional capital may be combined with the stock caption to which it applies, if appropriate.

\* \* \* \* \*

23. Amend § 210.5-03 by:

- a. Revising the section heading and paragraphs (a) and (b)7 and 9;
- b. Removing and reserving paragraphs (b)15, 16, and 17;
- c. Redesignating paragraph (b)21 as (b)25; and
- d. Adding new paragraph (b)21 and paragraphs (b)22, 23, and 24.

The revisions and additions read as follows:

**§ 210.5-03 Statements of comprehensive income.**

(a) The purpose of this section is to indicate the various line items which, if applicable, and except as otherwise permitted by the Commission, should appear on the face of the statements of comprehensive income filed for the persons to whom this article pertains (see § 210.4-01(a)).

(b) \* \* \*

7. Non-operating income. State separately in the statement of comprehensive income or in a note thereto amounts earned from dividends, interest on securities, profits on securities (net of losses), and miscellaneous other income. Amounts earned from transactions in securities of related parties shall be disclosed as required under § 210.4-08(k). Material amounts included under miscellaneous other income shall be separately stated in the statement of comprehensive income or in a note thereto, indicating clearly the nature of the transactions out of which the items arose.

\* \* \* \* \*

9. Non-operating expenses. State separately in the statement of comprehensive income or in a note thereto amounts of losses on securities (net of profits) and miscellaneous income deductions. Material amounts included under miscellaneous income deductions shall be separately stated in the statement of comprehensive income or in a note thereto, indicating clearly the nature of the transactions out of which the items arose.

\* \* \* \* \*

21. Other comprehensive income. State separately the components of and the total for other comprehensive income. Present the components either net of related tax effects or before related tax effects with one amount shown for the aggregate income tax expense or benefit. State

the amount of income tax expense or benefit allocated to each component, including reclassification adjustments, in the statement of comprehensive income or in a note.

22. Comprehensive income.

23. Comprehensive income attributable to the noncontrolling interest.

24. Comprehensive income attributable to the controlling interest.

\* \* \* \* \*

24. Amend § 210.5-04 by revising paragraph (a)(2); and Schedule I to read as follows:

**§ 210.5-04 What schedules are to be filed.**

(a) \* \* \*

(2) Schedule II of this section shall be filed for each period for which an audited statement of comprehensive income is required to be filed for each person or group.

\* \* \* \* \*

Schedule I—Condensed financial information of registrant. The schedule prescribed by § 210.12-04 shall be filed when the restricted net assets (§ 210.1.02(dd)) of consolidated subsidiaries exceed 25 percent of consolidated net assets as of the end of the most recently completed fiscal year.

\* \* \* \* \*

25. Amend § 210.6-03 by revising the introductory text of paragraph (c)(1) to read as follows:

**§ 210.6-03 Special rules of general application to registered investment companies.**

\* \* \* \* \*

(c) \* \* \*

(1) Consolidated and combined statements filed for registered investment companies shall be prepared in accordance with §§ 210.3A-02 and 210.3A-03 (Article 3A), except that

\* \* \* \* \*

26. Amend § 210.6-04 by revising paragraph 17 to read as follows:

**§ 210.6-04 Balance sheets.**

\* \* \* \* \*

17. Total distributable earnings (loss). Disclose total distributable earnings (loss), which generally comprise:

- (a) Accumulated undistributed investment income-net;
- (b) Accumulated undistributed net realized gains (losses) on investment transactions;

and

(c) Net unrealized appreciation (depreciation) in value of investments at the balance sheet date.

\* \* \* \* \*

27. Amend § 210.6-07 by revising the undesignated introductory text to read as follows:

**§ 210.6-07 Statements of operations.**

Statements of operations, or statements of comprehensive income, where applicable, filed by registered investment companies, other than issuers of face-amount certificates subject to the special provisions of § 210.6-08, shall comply with the following provisions:

\* \* \* \* \*

28. Amend § 210.6-09 by revising paragraph 7 to read as follows:

**§ 210.6-09 Statements of changes in net assets.**

\* \* \* \* \*

7. Net assets at the end of the period.

29. Amend § 210.6A-04 by revising the section heading and undesignated introductory text to read as follows:

**§ 210.6A-04 Statements of comprehensive income and changes in plan equity.**

Statements of comprehensive income and changes in plan equity filed under this section shall comply with the following provisions:

\* \* \* \* \*

30. Amend § 210.6A-05 by revising the introductory text of paragraph (a) and schedule III to read as follows:

**§ 210.6A-05 What schedules are to be filed.**

(a) Schedule I of this section shall be filed as of the most recent audited statement of financial condition and any subsequent unaudited statement of financial condition being filed. Schedule II of this section shall be filed as of the date of each statement of financial condition being filed. Schedule III of this section shall be filed for each period for which a statement of comprehensive income and changes in plan equity is filed. All schedules shall be audited if the related statements are audited.

\* \* \* \* \*

Schedule III—Allocation of plan income and changes in plan equity to investment programs. If the plan provides for separate investment programs with separate funds, and if the allocation of income and changes in plan equity to the several funds is not shown in the statement of comprehensive income and changes in plan equity in columnar form or by the submission of separate statements for each fund, a schedule shall be submitted showing the

allocation of each caption of each statement of comprehensive income and changes in plan equity filed to the applicable fund.

\* \* \* \* \*

**§ 210.7-02 [Amended]**

- 31. Amend § 210.7-02 by removing and reserving paragraph (b).
- 32. Amend § 210.7-03 by:
  - a. Revising paragraphs (a)6 and (a)11; and
  - b. Removing and reserving paragraph (a)13.(b);
  - c. Removing paragraph (a)13.(c); and
  - d. Revising paragraphs (a)23.(a)(3) and (a)23.(c)(2).

The revisions read as follows:

**§ 210.7-03 Balance sheets.**

(a) \* \* \*

6. Reinsurance recoverable.

\* \* \* \* \*

11. Separate account assets. Include under this caption the portion of separate account assets representing contract holder funds required to be reported in an insurance entity's financial statements as a summary total. An equivalent summary total for the related liability shall be included under caption 18.

\* \* \* \* \*

23. Other stockholders' equity.

(a) \* \* \*

(3) accumulated other comprehensive income,

\* \* \* \* \*

(c) \* \* \*

(2) property and liability insurance legal entities: the amount of statutory stockholders' equity as of the date of each balance sheet presented and the amount of statutory net income or loss for each period for which a statement of comprehensive income is presented.

\* \* \* \* \*

33. Amend § 210.7-04 by:

- a. Revising the section heading;
- b. Revising the undesignated introductory text;
- c. Revising paragraph 3.(b);
- d. Removing and reserving paragraph 3.(c);
- e. Revising paragraphs 3.(d), 7 and 9;
- f. Removing and reserving paragraphs 13, 14 and 15;
- g. Redesignating paragraph 19 as paragraph 23; and
- h. Adding new paragraph 19 and paragraphs 20, 21 and 22.

The revisions and additions read as follows:

**§ 210.7-04 Statements of comprehensive income.**

The purpose of this section is to indicate the various items which, if applicable, should appear on the face of the statements of comprehensive income and in the notes thereto filed for persons to whom this article pertains. (See § 210.4-01(a).)

\* \* \* \* \*

3. \* \* \*

(b) Indicate in a footnote the registrant's policy with respect to whether investment income and realized gains and losses allocable to policyholders and separate accounts are included in the investment income and realized gain and loss amounts reported in the statement of comprehensive income. If the statement of comprehensive income includes investment income and realized gains and losses allocable to policyholders and separate accounts, indicate the amounts of such allocable investment income and realized gains and losses and the manner in which the insurance enterprise's obligation with respect to allocation of such investment income and realized gains and losses is otherwise accounted for in the financial statements.

\* \* \* \* \*

(d) For each period for which a statement of comprehensive income is filed, include in a note an analysis of realized and unrealized investment gains and losses on fixed maturities and equity securities. For each period, state separately for fixed maturities [see § 210.7-03.1(a)] and for equity securities [see § 210.7-03.1(b)] the following amounts:

\* \* \* \* \*

7. Underwriting, acquisition and insurance expenses. State separately in the statement of comprehensive income or in a note thereto (a) the amount included in this caption representing deferred policy acquisition costs amortized to income during the period, and (b) the amount of other operating expenses. State separately in the statement of comprehensive income any material amount included in all other operating expenses.

\* \* \* \* \*

9. Income tax expense. Include under this caption only taxes based on income (See §210.4-08(h).)



\* \* \* \* \*

19. Other comprehensive income. State separately the components of and the total for other comprehensive income. Present the components either net of related tax effects or before related tax effects with one amount shown for the aggregate income tax expense or benefit. State the amount of income tax expense or benefit allocated to each component, including reclassification adjustments, in the statement of comprehensive income or in a note.

20. Comprehensive income.

21. Comprehensive income attributable to the noncontrolling interest.

22. Comprehensive income attributable to the controlling interest.

\* \* \* \* \*

34. Amend § 210.7-05 by revising paragraph (a)(2) and schedules II and III to read as follows:

**§ 210.7-05 What schedules are to be filed.**

(a) \* \* \*

(2) The schedules specified in this section as Schedule IV and V shall be filed for each period for which an audited statement of comprehensive income is required to be filed for each person or group.

\* \* \* \* \*

Schedule II—Condensed financial information of registrant. The schedule prescribed by § 210.12-04 shall be filed when the restricted net assets (§ 210.1.02(dd)) of consolidated subsidiaries exceed 25 percent of consolidated net assets as of the end of the most recently completed fiscal year.

Schedule III—Supplementary insurance information. The schedule prescribed by § 210.12-16 shall be filed giving segment detail in support of various balance sheet and statement of comprehensive income captions. The required balance sheet information shall be presented as of the date of each audited balance sheet filed, and the statement of comprehensive income information shall be presented for each period for which an audited statement of comprehensive income is required to be filed, for each person or group.

\* \* \* \* \*

35. Amend § 210.8-01 by:

- a. In Note 2 to § 210.8 revising paragraph a and removing and reserving paragraph b; and
- b. Removing Note 6 to § 210.8.

The revisions read as follows:

**§ 210.8-01 Preliminary Notes to Article 8.**

\* \* \* \* \*

NOTE 2 TO § 210.8. \* \* \*

- a. The report and qualifications of the independent accountant shall comply with the requirements of Article 2 of this part (§§ 210.2-01 through 210.2-07); and

\* \* \* \* \*

36. Revise § 210.8-02 to read as follows:

**§ 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 comprehensive 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).

37. Amend § 210.8-03 by:

- a. Revising the undesignated introductory text;
- b. Revising paragraph (a)(2);
- c. Adding paragraph (a)(5);
- d. Removing and reserving paragraphs (b)(2) and (b)(4);
- e. Revising paragraph (b)(5);
- f. Removing paragraph (b)(6); and
- g. Revising Instruction 1 to §210.8-03.

The revisions and addition read as follows:

**§ 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 applicable professional standards and procedures for conducting such reviews, 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 statements of comprehensive income 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) \* \* \*

(2) Statements of comprehensive income (or the statement of net income if comprehensive income is presented in two separate but consecutive financial 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, and discontinued operations. (Financial institutions should substitute net interest income for sales for purposes of determining items to be disclosed.)

\* \* \* \* \*

(5) Provide the information required by § 210.3-04.

(b) \* \* \*

(5) Material accounting changes. 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.

Instruction 1 to §210.8-03. Where Article 8 of this part (§§ 210.8-01 to 210.8-08) is applicable to a Form 10-Q (§ 249.308a of this chapter) and the interim period is more than one quarter, statements of comprehensive income must also be provided for the most recent interim quarter and the comparable quarter of the preceding fiscal year.

\* \* \* \* \*

38. Amend § 210.8-04 by revising paragraph (b)(3) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(3) Compare the smaller reporting company's equity in the income from continuing operations before income taxes of the acquiree exclusive of amounts attributable to any noncontrolling interests to such consolidated income of the smaller reporting company for the most recently completed fiscal year.

\* \* \* \* \*

39. Amend § 210.8-05 by revising paragraphs (b)(1) and (2) to read as follows:

**§ 210.8-05 Pro forma financial information.**

\* \* \* \* \*

(b) \* \* \*

(1) If the transaction was consummated during the most recent fiscal year or subsequent interim period, pro forma statements of comprehensive income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any; or

(2) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet required by § 210.8-02 or § 210.8-03, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet. For a purchase, pro forma statements of comprehensive income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, are required.

40. Amend § 210.8-06 by revising the undesignated introductory text to read as follows:

**§ 210.8-06 Real estate operations acquired or to be acquired.**

If, during the period for which statements of comprehensive income are required, the smaller reporting company has acquired one or more properties that in the aggregate are significant, or since the date of the latest balance sheet required by § 210.8-02 or § 210.8-03, has acquired or proposes to acquire one or more properties that in the aggregate are significant, the following shall be furnished with respect to such properties:

\* \* \* \* \*

41. Amend § 210.9-03 by:

- a. Revising paragraph 3;
- b. Removing paragraph 6.(a) and removing and reserving paragraph 7.(d); and
- c. Revising paragraphs 7.(e)(3) and 10.

The revisions read as follows:

**§ 210.9-03 Balance sheets.**

\* \* \* \* \*

3. Federal funds sold and securities purchased under resale agreements or similar arrangements.

\* \* \* \* \*

7. \* \* \*

(e) \* \* \*

(3) Notwithstanding the aggregate disclosure called for by paragraph (e)(1) of this section, if any loans were not made in the ordinary course of business during any period for which a statement of comprehensive income is required to be filed, provide an appropriate description of each such loan.

\* \* \* \* \*

10. Other assets. Disclose separately on the balance sheet or in a note thereto any of the following assets or any other asset the amount of which exceeds thirty percent of stockholders equity. The remaining assets may be shown as one amount.

(1) Goodwill.

(2) Other intangible assets (net of amortization).

(3) Investments in and indebtedness of affiliates and other persons.

(4) Other real estates.

(a) Disclose in a note the basis at which other real estate is carried. A reduction to fair market value from the carrying value of the related loan at the time of acquisition shall be accounted for as a loan loss. Any allowance for losses on other real estate which has been established subsequent to acquisition should be deducted from other real estate. For each period for which a statement of comprehensive income is required, disclosures should be made in a note as to the changes in the allowances, including balance at beginning and end of period, provision charged to income, and losses charged to the allowance.

\* \* \* \* \*

42. Amend § 210.9-04 by:

- a. Revising the heading and undesignated introductory text;
- b. Revising paragraph 13.(h);
- c. Removing and reserving paragraphs 14.(c), 17, 18 and 19;
- d. Redesignating paragraph 23 as paragraph 27; and
- e. Adding new paragraph 23 and paragraphs 24, 25 and 26.

The revisions and additions read as follows:

**§ 210.9-04 Statements of comprehensive income.**

The purpose of this section is to indicate the various items which, if applicable, should appear on the face of the statement of comprehensive income or in the notes thereto.

\* \* \* \* \*

13. \* \* \*

(h) Investment securities gains or losses. Related income taxes shall be disclosed.

\* \* \* \* \*

23. Other comprehensive income. State separately the components of and the total for other comprehensive income. Present the components either net of related tax effects or before related tax effects with one amount shown for the aggregate income tax expense or benefit. State the amount of income tax expense or benefit allocated to each component, including reclassification adjustments, in the statement of comprehensive income or in a note.

24. Comprehensive income.

25. Comprehensive income attributable to the noncontrolling interest.

26. Comprehensive income attributable to the controlling interest.

\* \* \* \* \*

43. Amend § 210.9-05 by revising paragraph (b)(2) to read as follows:

**§ 210.9-05 Foreign activities.**

\* \* \* \* \*

(b) \* \* \*

(2) For each period for which a statement of comprehensive income is filed, state the amount of revenue, income (loss) before taxes, and net income (loss) associated with foreign activities. Disclose significant estimates and assumptions (including those related to the cost of capital) used in allocating revenue and expenses to foreign activities; describe the nature



and effects of any changes in such estimates and assumptions which have a significant impact on interperiod comparability.

\* \* \* \* \*

44. Revise § 210.9-06 to read as follows:

**§ 210.9-06 Condensed financial information of registrant.**

The information prescribed by § 210.12-04 shall be presented in a note to the financial statements when the restricted net assets (§ 210.1-02(dd)) of consolidated subsidiaries exceed 25 percent of consolidated net assets as of the end of the most recently completed fiscal year. The investment in and indebtedness of and to bank subsidiaries shall be stated separately in the condensed balance sheet from amounts for other subsidiaries; the amount of cash dividends paid to the registrant for each of the last three years by bank subsidiaries shall be stated separately in the condensed statement of comprehensive income from amounts for other subsidiaries.

45. Amend § 210.10-01 by:

- a. Revising paragraphs (a)(3), (5), and (7);
- b. Revising paragraphs (b)(1) through (3);
- c. Removing and reserving paragraphs (b)(4) and (5);
- d. Revising paragraphs (b)(6) and (8); and
- e. Revising paragraphs (c)(2) and (4) and (d).

The revisions read as follows:

**§ 210.10-01 Interim financial statements.**

(a) \* \* \*

(3) Interim statements of comprehensive income shall also include major captions prescribed by the applicable sections of this Regulation S-X (part 210 of this chapter). When any major statement of comprehensive income (or statement of net income if comprehensive income is presented in two separate but consecutive financial statements) caption is less than 15% of average net income for the most recent three fiscal years and the amount in the caption has not increased or decreased by more than 20% as compared to the corresponding interim period of the preceding fiscal year, the caption may be combined with others. In calculating average net income, loss years should be excluded. If losses were incurred in each of the most recent three years, the average loss shall be used for purposes of this test. Notwithstanding these tests, § 210.4-02 applies and de minimis amounts therefore need not be shown separately, except that registrants reporting under § 210.9 shall show investment securities gains or losses separately regardless of size.

\* \* \* \* \*

(5) The interim financial information shall include disclosures either on the face of the financial statements or in accompanying footnotes sufficient so as to make the interim information presented not misleading. Registrants may presume that users of the interim financial information have read or have access to the audited financial statements for the preceding fiscal year and that the adequacy of additional disclosure needed for a fair presentation may be determined in that context. Accordingly, footnote disclosure which would substantially duplicate the disclosure contained in the most recent annual report to security holders or latest audited financial statements, such as a statement of significant accounting policies and practices, details of accounts which have not changed significantly in

amount or composition since the end of the most recently completed fiscal year, and detailed disclosures prescribed by § 210.4-08, may be omitted.

\* \* \* \* \*

(7) Provide the information required by § 210.3-04.

(b) \* \* \*

(1) Summarized statement of comprehensive income information shall be given separately as to each subsidiary not consolidated or 50 percent or less owned persons or as to each group of such subsidiaries or fifty percent or less owned persons for which separate individual or group statements would otherwise be required for annual periods. Such summarized information, however, need not be furnished for any such unconsolidated subsidiary or person which would not be required pursuant to § 240.13a-13 or § 240.15d-13 of this chapter to file quarterly financial information with the Commission if it were a registrant.

(2) The basis of the earnings per share computation shall be stated together with the number of shares used in the computation.

(3) If, during the most recent interim period presented, the registrant or any of its consolidated subsidiaries entered into a combination between entities under common control, supplemental disclosure of the separate results of the combined entities for periods prior to the combination shall be given, with appropriate explanations.

\* \* \* \* \*

(6) For filings on Form 10-Q (§ 249.308(a) of this chapter), a letter from the registrant's independent accountant shall be filed as an exhibit (in accordance with the provisions of Item 601 of Regulation S-K (17 CFR 229.601)) in the first Form 10-Q after the

date of an accounting change indicating whether or not the change is to an alternative principle which, in the accountant's judgment, is preferable under the circumstances; except that no letter from the accountant need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board that requires such change.

\* \* \* \* \*

(8) Any unaudited interim financial statements furnished shall reflect all adjustments which are, in the opinion of management, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

(c) \* \* \*

(2) Interim statements of comprehensive income shall be provided for the most recent fiscal quarter, for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding periods of the preceding fiscal year. Such statements may also be presented for the cumulative twelve month period ended during the most recent fiscal quarter and for the corresponding preceding period.

\* \* \* \* \*

(4) Registrants engaged in seasonal production and sale of a single-crop agricultural commodity may provide interim statements of comprehensive income and cash flows for the twelve month period ended during the most recent fiscal quarter and for the corresponding

preceding period in lieu of the year-to-date statements specified in paragraphs (c)(2) and (3) of this section.

(d) Interim review by independent public accountant. Prior to filing, interim financial statements included in quarterly reports on Form 10-Q (17 CFR 249.308(a)) must be reviewed by an independent public accountant using applicable professional standards and procedures for conducting such reviews, as may be modified or supplemented by the Commission. If, in any filing, the company 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.

\* \* \* \* \*

46. Amend § 210.11-02 by:

- a. Revising paragraphs (b)(1), (3), (5), (6), and (7);
- b. Redesignating the Instructions following paragraph (b)(8) consecutively as Instruction 1 to paragraph (b), Instruction 2 to paragraph (b), Instruction 3 to paragraph (b), Instruction 4 to paragraph (b), Instruction 5 to paragraph (b), Instruction 6 to paragraph (b), and Instruction 7 to paragraph (b);
- c. Revising newly redesignated Instruction 1 to paragraph (b), Instruction 2 to paragraph (b), Instruction 5 to paragraph (b) and Instruction 7 to paragraph (b); and
- d. Revising paragraphs (c)(2)(i) and (ii), (c)(3) and (c)(4).

The revisions read as follows:

**§ 210.11-02 Preparation requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) Pro forma financial information shall consist of a pro forma condensed balance sheet, pro forma condensed statements of comprehensive income, and accompanying explanatory notes. In certain circumstances (i.e., where a limited number of pro forma adjustments are required and those adjustments are easily understood), a narrative description of the pro forma effects of the transaction may be furnished in lieu of the statements described herein.

\* \* \* \* \*

(3) The pro forma condensed financial information need only include major captions (i.e., the numbered captions) prescribed by the applicable sections of this Regulation S-X (part 210). Where any major balance sheet caption is less than 10 percent of total assets, the caption may be combined with others. When any major statement of comprehensive income caption is less than 15 percent of average net income attributable to the registrant for the most recent three fiscal years, the caption may be combined with others. In calculating average net income attributable to the registrant, loss years should be excluded unless losses were incurred in each of the most recent three years, in which case the average loss shall be used for purposes of this test. Notwithstanding these tests, de minimis amounts need not be shown separately.

\* \* \* \* \*

(5) The pro forma condensed statement of comprehensive income shall disclose income (loss) from continuing operations before nonrecurring charges or credits directly attributable to the transaction. Material nonrecurring charges or credits and related tax effects which result directly from the transaction and which will be included in the income of the registrant within the 12 months succeeding the transaction shall be disclosed separately. It

should be clearly indicated that such charges or credits were not considered in the pro forma condensed statement of comprehensive income. If the transaction for which pro forma financial information is presented relates to the disposition of a business, the pro forma results should give effect to the disposition and be presented under an appropriate caption.

(6) Pro forma adjustments related to the pro forma condensed statement of comprehensive income shall be computed assuming the transaction was consummated at the beginning of the fiscal year presented and shall include adjustments which give effect to events that are directly attributable to the transaction, expected to have a continuing impact on the registrant, and factually supportable. Pro forma adjustments related to the pro forma condensed balance sheet shall be computed assuming the transaction was consummated at the end of the most recent period for which a balance sheet is required by § 210.3-01 and shall include adjustments which give effect to events that are directly attributable to the transaction and factually supportable regardless of whether they have a continuing impact or are nonrecurring. All adjustments should be referenced to notes which clearly explain the assumptions involved.

(7) Historical primary and fully diluted per share data based on continuing operations (or net income if the registrant does not report discontinued operations) for the registrant, and primary and fully diluted pro forma per share data based on continuing operations before nonrecurring charges or credits directly attributable to the transaction shall be presented on the face of the pro forma condensed statement of comprehensive income together with the number of shares used to compute such per share data. For transactions involving the issuance of securities, the number of shares used in the calculation of the pro forma per share data should be based on the weighted average number of shares outstanding during the period

adjusted to give effect to shares subsequently issued or assumed to be issued had the particular transaction or event taken place at the beginning of the period presented. If a convertible security is being issued in the transaction, consideration should be given to the possible dilution of the pro forma per share data.

(8) \* \* \*

Instruction 1 to paragraph (b). The historical statement of comprehensive income used in the pro forma financial information shall not report discontinued operations. If the historical statement of comprehensive income includes such items, only the portion of the statement of comprehensive income through “income from continuing operations” (or the appropriate modification thereof) should be used in preparing pro forma results.

Instruction 2 to paragraph (b). For a business combination, pro forma adjustments for the statement of comprehensive income shall include amortization, depreciation and other adjustments based on the allocated purchase price of net assets acquired. In some transactions, such as in financial institution acquisitions, the purchase adjustments may include significant discounts of the historical cost of the acquired assets to their fair value at the acquisition date. When such adjustments will result in a significant effect on earnings (losses) in periods immediately subsequent to the acquisition which will be progressively eliminated over a relatively short period, the effect of the purchase adjustments on reported results of operations for each of the next five years should be disclosed in a note.

\* \* \* \* \*

Instruction 5 to paragraph (b). Adjustments to reflect the acquisition of real estate operations or properties for the pro forma statement of comprehensive income shall include a depreciation charge based on the new accounting basis for the assets, interest financing on any



additional or refinanced debt, and other appropriate adjustments that can be factually supported.

See also Instruction 4 to paragraph (b) of this section.

\* \* \* \* \*

Instruction 7 to paragraph (b). Tax effects, if any, of pro forma adjustments normally should be calculated at the statutory rate in effect during the periods for which pro forma condensed statements of comprehensive income are presented and should be reflected as a separate pro forma adjustment.

(c) \* \* \*

(2) \* \* \*

(i) Pro forma condensed statements of comprehensive income shall be filed for only the most recent fiscal year and for the period from the most recent fiscal year end to the most recent interim date for which a balance sheet is required. A pro forma condensed statement of comprehensive income may be filed for the corresponding interim period of the preceding fiscal year. A pro forma condensed statement of comprehensive income shall not be filed when the historical statement of comprehensive income reflects the transaction for the entire period.

(ii) For combinations between entities under common control, the pro forma statements of comprehensive income (which are in effect a restatement of the historical statements of comprehensive income as if the combination had been consummated) shall be filed for all periods for which historical statements of comprehensive income of the registrant are required.

(3) Pro forma condensed statements of comprehensive income shall be presented using the registrant's fiscal year end. If the most recent fiscal year end of any other entity involved in

the transaction differs from the registrant's most recent fiscal year end by more than 93 days, the other entity's statement of comprehensive income shall be brought up to within 93 days of the registrant's most recent fiscal year end, if practicable. This updating could be accomplished by adding subsequent interim period results to the most recent fiscal year-end information and deducting the comparable preceding year interim period results. Disclosure shall be made of the periods combined and of the sales or revenues and income for any periods which were excluded from or included more than once in the condensed pro forma statements of comprehensive income (e.g., an interim period that is included both as part of the fiscal year and the subsequent interim period). For investment companies subject to §§ 210.6-01 through 210.6-10, the periods covered by the pro forma statements must be the same.

(4) Whenever unusual events enter into the determination of the results shown for the most recently completed fiscal year, the effect of such unusual events should be disclosed and consideration should be given to presenting a pro forma condensed statement of comprehensive income for the most recent twelve-month period in addition to those required in paragraph (c)(2)(i) of this section if the most recent twelve-month period is more representative of normal operations.

47. Amend § 210.11-03 by revising the introductory text of paragraph (a) and paragraph (a)(2) to read as follows:

**§ 210.11-03 Presentation of financial forecast.**

(a) A financial forecast may be filed in lieu of the pro forma condensed statements of comprehensive income required by § 210.11-02(b)(1).

\* \* \* \* \*

(2) The forecasted statement of comprehensive income shall be presented in the same degree of detail as the pro forma condensed statement of comprehensive income required by § 210.11-02(b)(3).

\* \* \* \* \*

48. Amend § 210.12-16 by revising footnotes 4 and 5 to read as follows:

**§ 210.12-16 Supplementary insurance information.**

\* \* \* \* \*

<sup>4</sup>The total of columns I and J should agree with the amount shown for statement of comprehensive income caption 7.

<sup>5</sup>Totals should agree with the indicated balance sheet and statement of comprehensive income caption amounts, where a caption number is shown.

49. Amend § 210.12-17 by revising footnote 2 to read as follows:

**§ 210.12-17 Reinsurance.**

\* \* \* \* \*

<sup>2</sup>This Column represents the total of column B less column C plus column D. The total premiums in this column should represent the amount of premium revenue on the statement of comprehensive income (or statement of net income if comprehensive income is presented in two separate but consecutive financial statements).

\* \* \* \* \*

50. Amend § 210.12-18 by revising footnote 1 to read as follows:

**§ 210.12-18 Supplemental information (for property-casualty insurance underwriters).**

\* \* \* \* \*

<sup>1</sup>Information included in audited financial statements, including other schedules, need not be repeated in this schedule. Columns B, C, D, and E are as of the balance sheet dates, columns F, G, H, I, J, and K are for the same periods for which statements of comprehensive income are presented in the registrant's audited consolidated financial statements.

\* \* \* \* \*

51. Amend § 210.12-28 by removing from the heading in Column I of the first table the text “Life on which depreciation in latest income statements is computed” and adding in its place “Life on which depreciation in latest statements of comprehensive income is computed” and by revising footnote 4 to read as follows:

**§ 210.12-28 Real estate and accumulated depreciation.<sup>1</sup>**

\* \* \* \* \*

<sup>1</sup>All money columns shall be totaled.

\* \* \* \* \*

<sup>4</sup>In a note to this schedule, furnish a reconciliation, in the following form, of the total amount at which real estate was carried at the beginning of each period for which statements of comprehensive income are required, with the total amount shown in column E:

Balance at beginning of period		\$											
Additions during period:													
Acquisitions through foreclosure	\$												
Other acquisitions													
Improvements, etc													
Other (describe)		\$											
Deductions during period:													
Cost of real estate sold	\$												
Other (describe)													

Balance at close of period		\$							
----------------------------	--	----	--	--	--	--	--	--	--

If additions, except acquisitions through foreclosure, represent other than cash expenditures, explain. If any of the changes during the period result from transactions, directly or indirectly with affiliates, explain the bases of such transactions and state the amounts involved.

A similar reconciliation shall be furnished for the accumulated depreciation.

\* \* \* \* \*

52. Amend § 210.12-29 by revising the text of footnote 6 between the tables to read as follows:

**§ 210.12-29 Mortgage loans on real estate.<sup>1</sup>**

\* \* \* \* \*

<sup>1</sup>All money columns shall be totaled.

\* \* \* \* \*

<sup>6</sup>In a note to this schedule, furnish a reconciliation, in the following form, of the carrying amount of mortgage loans at the beginning of each period for which statements of comprehensive income are required, with the total amount shown in column G:

Balance at beginning of period		\$	
Additions during period:			
New mortgage loans	\$		
Other (describe)		\$	
Deductions during period:			
Collections of principal	\$		
Foreclosures			
Cost of mortgages sold			
Amortization of premium			

Other (describe)			
Balance at close of period		\$	

If additions represent other than cash expenditures, explain. If any of the changes during the period result from transactions, directly or indirectly with affiliates, explain the bases of such transactions, and state the amounts involved. State the aggregate mortgages (a) renewed and (b) extended. If the carrying amount of new mortgages is in excess of the unpaid amount of the extended mortgages, explain.

\* \* \* \* \*

**PART 229 – STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K**

53. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j-3, 78l, 78m, 78n, 78n-1, 78o, 78u-5, 78w, 78ll, 78 mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11 and 7201 et seq.; 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112-106, 126 Stat. 309; and Sec. 72002, Sec. 84001, Pub. L. 114-94, 129 Stat.1312.

54. Amend § 229.10 by revising paragraphs (b)(2) and (e)(2)(i) to read as follows:

**§ 229.10 (Item 10) General.**

\* \* \* \* \*

(b) \* \* \*

(2) Format for projections. In determining the appropriate format for projections included in Commission filings, consideration must be given to, among other things, the financial items to

be projected, the period to be covered, and the manner of presentation to be used. Although traditionally projections have been given for three financial items generally considered to be of primary importance to investors (revenues, net income (loss) and earnings (loss) per share), projection information need not necessarily be limited to these three items. However, management should take care to assure that the choice of items projected is not susceptible of misleading inferences through selective projection of only favorable items. Revenues, net income (loss) and earnings (loss) per share usually are presented together in order to avoid any misleading inferences that may arise when the individual items reflect contradictory trends. There may be instances, however, when it is appropriate to present earnings (loss) from continuing operations in addition to or in lieu of net income (loss). It generally would be misleading to present sales or revenue projections without one of the foregoing measures of income. The period that appropriately may be covered by a projection depends to a large extent on the particular circumstances of the company involved. For certain companies in certain industries, a projection covering a two or three year period may be entirely reasonable. Other companies may not have a reasonable basis for projections beyond the current year. Accordingly, management should select the period most appropriate in the circumstances. In addition, management, in making a projection, should disclose what, in its opinion, is the most probable specific amount or the most reasonable range for each financial item projected based on the selected assumptions. Ranges, however, should not be so wide as to make the disclosures meaningless. Moreover, several projections based on varying assumptions may be judged by management to be more meaningful than a single number or range and would be permitted.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of comprehensive income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

\* \* \* \* \*

55. Amend § 229.101 by:

- a. Removing and reserving paragraphs (b), (c)(1)(v) and (xi), and (d);
- b. Revising the introductory text of paragraph (e);
- c. Revising paragraphs (e)(2) and (3);
- d. Removing and reserving paragraph (h)(4)(x); and
- e. Revising paragraph (h)(5)(iii).

The revisions read as follows:

**§ 229.101 (Item 101) Description of business.**

\* \* \* \* \*

(e) Available information. Disclose the information in paragraphs (e)(1) through (3) of this section in any registration statement you file under the Securities Act (15 U.S.C. 77a et seq.), and disclose the information in paragraph (e)(3) of this section in your annual report on Form 10-K (§ 249.310 of this chapter). Further disclose the information in paragraph (e)(4) of this section if you are an accelerated filer or a large accelerated filer (as defined in § 240.12b-2 of this chapter) filing an annual report on Form 10-K (§ 249.310 of this chapter):

\* \* \* \* \*



(2) State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>).

(3) Disclose your Internet address, if you have one.

\* \* \* \* \*

(h) \* \* \*

(5) \* \* \*

(iii) State that the Commission maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (<http://www.sec.gov>). Disclose your Internet address, if available.

\* \* \* \* \*

56. Amend § 229.201 by:

- a. Revising paragraph (a)(1);
- b. Removing and reserving paragraphs (a)(2)(i), (c)(1), and (d);
- c. Removing Instructions to paragraph (d);
- d. Redesignating Instructions 1 through 5 to Item 201 consecutively as Instruction 1 to Item 201, Instruction 2 to Item 201, Instruction 3 to Item 201, Instruction 4 to Item 201 and Instruction 5 to Item 201;
- e. Removing and reserving newly redesignated Instruction 1 to Item 201; and
- f. Revising newly redesignated Instruction 2 to Item 201.

The revisions read as follows:

**§ 229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.**

(a) \* \* \*

(1) \* \* \*

(i) Identify the principal United States market or markets and the trading symbol(s) for each class of the registrant's common equity. In the case of foreign registrants, also identify the principal established foreign public trading market, if any, and the trading symbol(s), for each class of the registrant's common equity.

(ii) If the principal United States market for such common equity is not an exchange, indicate, as applicable, that any over-the-counter market quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions.

(iii) Where there is no established public trading market for a class of common equity, furnish a statement to that effect and, if applicable, state the range of high and low bid information for each full quarterly period within the two most recent fiscal years and any subsequent interim period for which financial statements are included, or are required to be included by Article 3 of Regulation S-X (part 210 of this chapter), indicating the source of such quotations. Reference to quotations shall be qualified by appropriate explanation. For purposes of this Item the existence of limited or sporadic quotations should not of itself be deemed to constitute an "established public trading market."

\* \* \* \* \*

Instruction 2 to Item 201. Bid information reported pursuant to this Item shall be adjusted to give retroactive effect to material changes resulting from stock dividends, stock splits and reverse stock splits.

\* \* \* \* \*

57. Amend § 229.302 by:

- a. Revising paragraphs (a)(1) and (3);
- b. Redesignating the Instructions to paragraph (b) consecutively as Instruction 1 to paragraph (b), Instruction 2 to paragraph (b), and Instruction 3 to paragraph (b); and
- c. Revising paragraphs (a) and (c) of newly redesignated Instruction 1 to paragraph (b).

The revisions read as follows:

**§ 229.302 (Item 302) Supplementary financial information.**

(a) \* \* \*

(1) Disclosure shall be made of net sales, gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered), income (loss), per share data based upon such income (loss), net income (loss) and net income (loss) attributable to the registrant, for each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included or are required to be included by Article 3 of Regulation S-X (part 210 of this chapter).

\* \* \* \* \*

(3) Describe the effect of any discontinued operations and unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included or are required to be included by Article 3 of Regulation S-X, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter.

\* \* \* \* \*

(b) \* \* \*

Instruction 1 to paragraph (b). (a) FASB ASC Subtopic 932-235 disclosures that relate to annual periods shall be presented for each annual period for which a statement of comprehensive income (as defined in §210.1-02 of Regulation S-X) is required, \* \* \*

(c) FASB ASC Subtopic 932-235 disclosures required as of the beginning of an annual period shall be presented as of the beginning of each annual period for which a statement of comprehensive income (as defined in § 210.1-02 of Regulation S-X of this chapter) is required.

\* \* \* \* \*

58. Amend § 229.303 by:

- a. Revising the introductory text of paragraph (a);
- b. Revising paragraph (b)(2);
- c. Redesignating paragraphs 1, 2, 3, 4, 5, 6, and 7 of the Instructions to paragraph (b) of Item 303 as Instruction 1 to paragraph (b), Instruction 2 to paragraph (b), Instruction 3 to paragraph (b), Instruction 4 to paragraph (b), Instruction 5 to paragraph (b), Instruction 6 to paragraph (b) and Instruction 7 to paragraph (b), respectively.
- d. Removing and reserving newly redesignated Instruction 5 to paragraph (b);  
and
- e. Adding an Instruction 8 to paragraph (b).

The revisions and addition read as follows:

**§ 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.**

(a) Full fiscal years. Discuss registrant's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in paragraphs (a)(1) through (5) of this section and also shall provide such other information

that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the registrant's judgment a discussion of segment or geographic information or of other subdivisions of the registrant's business would be appropriate to an understanding of such business, the discussion shall focus on each relevant, reportable segment, geographic area, or other subdivision of the business and on the registrant as a whole.

\* \* \* \* \*

(b) \* \* \*

(2) Material changes in results of operations. Discuss any material changes in the registrant's results of operations with respect to the most recent fiscal year-to-date period for which a statement of comprehensive income (or statement of operations if comprehensive income is presented in two separate but consecutive financial statements or if no other comprehensive income) is provided and the corresponding year-to-date period of the preceding fiscal year. If the registrant is required to or has elected to provide a statement of comprehensive income (or statement of operations if comprehensive income is presented in two separate but consecutive financial statements or if no other comprehensive income) for the most recent fiscal quarter, such discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the registrant has elected to provide a statement of comprehensive income (or statement of operations if comprehensive income is presented in two separate but consecutive financial statements or if no other comprehensive income) for the twelve-month period ended as of the date of the most recent interim balance sheet provided, the discussion also shall

cover material changes with respect to that twelve-month period and the twelve-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

Notwithstanding the above, if for purposes of a registration statement a registrant subject to § 210.3-03(b) of Regulation S-X of this chapter provides a statement of comprehensive income (or statement of operations if comprehensive income is presented in two separate but consecutive financial statements or if no other comprehensive income) for the twelve-month period ended as of the date of the most recent interim balance sheet provided in lieu of the interim statements of comprehensive income (or statement of operations if comprehensive income is presented in two separate but consecutive financial statements or if no other comprehensive income) otherwise required, the discussion of material changes in that twelve-month period will be in respect to the preceding fiscal year rather than the corresponding preceding period.

Instructions to paragraph (b) of Item 303.

\* \* \* \* \*

Instruction 8 to paragraph (b). The term statement of comprehensive income shall mean a statement of comprehensive income as defined in § 210.1-02 of Regulation S-X of this chapter.

\* \* \* \* \*

59. Amend § 229.503 by:

- a. Revising the section heading;
- b. Removing paragraph (d) and the Instructions to paragraph 503(d); and
- c. Removing paragraph (e).

The revision reads as follows:

**§ 229.503 (Item 503) Prospectus summary and risk factors.**

\* \* \* \* \*

60. Amend § 229.512 by revising paragraph (a)(4) to read as follows:

**§ 229.512 (Item 512) Undertakings.**

\* \* \* \* \*

(a) \* \* \*

(4) If the registrant is a foreign private issuer, to file a post-effective amendment to the registration statement to include any financial statements required by Item 8.A of Form 20-F (§ 249.220f of this chapter) at the start of any delayed offering or throughout a continuous offering. Financial statements and information otherwise required by section 10(a)(3) of the Act (15 U.S.C. 77j(a)(3)) need not be furnished, provided that the registrant includes in the prospectus, by means of a post-effective amendment, financial statements required pursuant to this paragraph (a)(4) and other information necessary to ensure that all other information in the prospectus is at least as current as the date of those financial statements. Notwithstanding the foregoing, with respect to registration statements on Form F-3 (§ 239.33 of this chapter), a post-effective amendment need not be filed to include financial statements and information required by section 10(a)(3) of the Act or Item 8.A of Form 20-F if such financial statements and information are contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Form F-3.

\* \* \* \* \*

**§ 229.601 [Amended]**

61. Amend § 229.601 by:

- a. Removing and reserving entries (11) and (12) from the exhibit table in paragraph (a);
  - b. In entry (13) in the exhibit table in paragraph (a), adding an X in the column labelled “10-Q”;
  - c. Removing and reserving entries (19), (22) and (26) from the exhibit table in paragraph (a);
  - d. Removing and reserving paragraphs (b)(11), (12), (19), and (22);
  - e. Removing and reserving paragraph (b)(26); and
  - f. Removing paragraph (c).
62. Amend § 229.1010 by:
- a. Revising paragraph (a)(2);
  - b. Removing and reserving paragraph (a)(3);
  - c. Revising paragraph (b)(2); and
  - d. Removing and reserving paragraph (c)(4).

The revisions read as follows:

**§ 229.1010 (Item 1010) Financial statements.**

(a) \* \* \*

(2) Unaudited balance sheets, comparative year-to-date statements of comprehensive income (as defined in § 210.1-02 of Regulation S-X of this chapter) and related earnings per share data and statements of cash flows required to be included in the company's most recent quarterly report filed under the Exchange Act; and

(b) \* \* \*



(2) The company's statement of comprehensive income and earnings per share for the most recent fiscal year and the latest interim period provided under paragraph (a)(2) of this section; and

\* \* \* \* \*

63. Amend § 229.1118 by revising paragraph (b)(2) to read as follows:

**§ 229.1118 (Item 1118) Reports and additional information.**

\* \* \* \* \*

(b) \* \* \*

(2) State that the Commission maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (<http://www.sec.gov>).

\* \* \* \* \*

**PART 230 - GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933**

64. The authority citation for part 230 continues to read in part as follows:

**Authority:** 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub. L. 112-106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

\* \* \* \* \*

65. Amend § 230.158 by:

- a. Revising the section heading and paragraph (a)(1) introductory text;
- b. Designating as Note to paragraph (a) the undesignated text between paragraphs (a)(2)(ii) and (b) and revising it; and

c. Designating as Note to paragraph (b) the undesignated text between paragraphs (b)(2) and (c).

The revisions read as follows:

**§ 230.158 Definitions of certain terms in the last paragraph of section 11(a) of the Act.**

(a) \* \* \*

(1) There is included the information required for statements of comprehensive income (as defined in § 210.1-02 of Regulation S-X of this chapter) contained either:

\* \* \* \* \*

NOTE TO PARAGRAPH (a). A subsidiary issuing debt securities guaranteed by its parent will be deemed to have met the requirements of paragraph (a) of this section if the parent's statements of comprehensive income (as defined in § 210.1-02 of Regulation S-X of this chapter) satisfy the criteria of this paragraph and information respecting the subsidiary is included to the same extent as was presented in the registration statement. An "earning statement" not meeting the requirements of paragraph (a) of this section may otherwise be sufficient for purposes of the last paragraph of section 11(a) of the Act.

\* \* \* \* \*

66. Amend § 230.405 by revising paragraphs (1) and (3) of the definition of Significant subsidiary to read as follows:

**§ 230.405 Definitions of terms.**

\* \* \* \* \*

Significant subsidiary. \* \* \*

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries

consolidated as of the end of the most recently completed fiscal year (for a proposed combination between entities under common control, this condition is also met when the number of common shares exchanged or to be exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

\* \* \* \* \*

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

\* \* \* \* \*

67. Amend § 230.436 by revising paragraph (d)(4) to read as follows:

**§ 230.436 Consents required in special cases.**

\* \* \* \* \*

(d) \* \* \*

(4) A statement that a review of interim financial information is substantially less in scope than an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”), the objective of which is an expression of an opinion regarding the financial statements taken as a whole, and, accordingly, no such opinion is expressed; and

\* \* \* \* \*

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

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

**Authority:** 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78o-7 note, 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13,

80a-24, 80a-26, 80a-29, 80a-30, 80a-37, and Sec. 71003 and Sec. 84001, Pub. L. 114-94, 129 Stat. 1312, unless otherwise noted.

\* \* \* \* \*

**§ 239.11 [Amended]**

69. Amend Form S-1 (referenced in § 239.11) by:

- a. Revising the heading of Item 3; and
- b. Revising Item 12.(b)(2)(ii).

The revisions read as follows:

**Note: The text of Form S-1 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM S-1**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

**PART I – INFORMATION REQUIRED IN PROSPECTUS**

\* \* \* \* \*

**Item 3. Summary Information and Risk Factors.**

\* \* \* \* \*

**Item 12. Incorporation of Certain Information by Reference.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>).

\* \* \* \* \*

**§ 239.13 [Amended]**

70. Amend Form S-3 (referenced in § 239.13) by:
- a. Revising General Instruction I.B.2;
  - b. Revising the heading of Item 3; and
  - c. Revising Item 12.(c)(2)(ii).

The revisions read as follows:

**Note: The text of Form S-3 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM S-3**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

**GENERAL INSTRUCTIONS**

**I. Eligibility Requirements for Use of Form S-3**

\* \* \* \* \*

**B. Transaction Requirements. \* \* \***

2. Primary Offerings of Non-Convertible Securities Other than Common Equity. Non-convertible securities, other than common equity, to be offered for cash by or on behalf of a registrant, provided the registrant (i) has issued (as of a date within 60 days prior to the filing of the registration statement) at least \$1 billion in non-convertible securities, other than common equity, in primary offerings for cash, not exchange, registered under the Securities Act, over the prior three years; or (ii) has outstanding (as of a date within 60 days prior to the filing of the registration statement) at least \$750 million of non-convertible securities, other than common equity, issued in primary offerings for cash, not exchange, registered under the Securities Act; or

(iii) is a wholly-owned subsidiary of a well-known seasoned issuer (as defined in 17 CFR 230.405); or (iv) is a majority-owned operating partnership of a real estate investment trust that qualifies as a well-known seasoned issuer (as defined in 17 CFR 230.405).

\* \* \* \* \*

## PART I

### INFORMATION REQUIRED IN PROSPECTUS

\* \* \* \* \*

#### **Item 3. Summary Information and Risk Factors.**

\* \* \* \* \*

#### **Item 12. Incorporation of Certain Information by Reference.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). Disclose your Internet address, if available.

\* \* \* \* \*

#### **§ 239.18 [Amended]**

71. Amend Form S-11 (referenced in § 239.18) by:

- a. Revising the heading of Item 3; and
- b. Revising Item 29.(b)(2)(ii).

The revisions read as follows:

**Note: The text of Form S-11 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM S-11**

**FOR REGISTRATION UNDER THE SECURITIES ACT OF 1933 OF SECURITIES OF  
CERTAIN REAL ESTATE COMPANIES**

\* \* \* \* \*

**PART I. INFORMATION REQUIRED IN PROSPECTUS**

\* \* \* \* \*

**Item 3. Summary Information and Risk Factors.**

\* \* \* \* \*

**Item 29. Incorporation of Certain Information by Reference.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>).

\* \* \* \* \*

**§ 239.25 [Amended]**

72. Amend Form S-4 (referenced in § 239.25) by:

- a. Revising the heading of Item 3; and
- b. Revising Items 11.(c)(2) and 13.(d)(2).

The revisions read as follows:

**Note: The text of Form S-4 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM S-4**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

**PART I**

**INFORMATION REQUIRED IN THE PROSPECTUS**

\* \* \* \* \*

**Item 3. Risk Factors and Other Information.**

\* \* \* \* \*

**Item 11. Incorporation of Certain Information by Reference.**

\* \* \* \* \*

(c) \* \* \*

(2) State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). Disclose your Internet address, if available.

\* \* \* \* \*

**Item 13. Incorporation of Certain Information by Reference.**

\* \* \* \* \*

(d) \* \* \*

(2) State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the



SEC and state the address of that site (<http://www.sec.gov>). Disclose your Internet address, if available.

\* \* \* \* \*

**§ 239.31 [Amended]**

73. Amend Form F-1 (referenced in § 239.31) by:
- a. Revising General Instruction II.C;
  - b. Revising the heading of Item 3;
  - c. Revising Item 4.b;
  - d. Removing and reserving Item 4.c;
  - e. Revising Item 4.d;
  - f. Adding Item 4.e.;
  - g. Removing Instruction 2 to Item 4;
  - h. Revising Item 4A.(b)1.iii.;
  - i. Revising the Instruction to Item 4A; and
  - j. Revising Item 5.(b)2.ii.

The revisions read as follows:

**Note: The text of Form F-1 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM F-1**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

**GENERAL INSTRUCTIONS**

\* \* \* \* \*

**II. Application of General Rules and Regulations**

\* \* \* \* \*

C. A registrant must file the Form F-1 registration statement in electronic format via the Commission’s Electronic Data Gathering and Retrieval System (EDGAR) in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR part 232), except that a registrant that has obtained a hardship exception under Regulation S-T Rule 201 or 202 (17 CFR 232.201 or 232.202) may file the registration statement in paper. For assistance with EDGAR questions, call the Filer Support Office at (202) 551-8900.

\* \* \* \* \*

**PART I – INFORMATION REQUIRED IN PROSPECTUS**

\* \* \* \* \*

**Item 3. Summary Information and Risk Factors.**

\* \* \* \* \*

**Item 4. Information with Respect to the Registrant and the Offering.**

\* \* \* \* \*

b. Information required by Item 18 of Form 20-F (Schedules required under Regulation S-X shall be filed as “Financial Statement Schedules Pursuant to Item 8, Exhibit and Financial Statement Schedules, of this Form), as well as any information required by Rule 3-05 and Article 11 of Regulation S-X (§ 210 of this chapter).

c. [Reserved]

d. Information required by Item 16F of Form 20-F.

e. State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the

SEC and state the address of that site (<http://www.sec.gov>). Disclose your Internet address, if available.

**Item 4A. Material Changes.**

\* \* \* \* \*

(b)

1. \* \* \*

iii. Restated financial statements where a combination of entities under common control has been consummated subsequent to the most recent fiscal year and the transferred businesses, considered in the aggregate, are significant under Rule 11-01(b) (§ 210.11-01(b) of this chapter); or

\* \* \* \* \*

Instruction. Financial statements or information required to be furnished by this Item shall be reconciled pursuant to Item 18 of Form 20-F.

\* \* \* \* \*

**Item 5. Incorporation of Certain Information by Reference.**

\* \* \* \* \*

(b) \* \* \*

2. \* \* \*

ii. State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>).

\* \* \* \* \*

**§ 239.33 [Amended]**

74. Amend Form F-3 (referenced in § 239.33) by:
- a. Revising General Instructions I.B.2, I.B.3, I.B.4 and II.D;
  - b. Revising the heading of Item 3;
  - c. Revising Item 5 Instructions 1 and 2; and
  - d. Revising Item 6.(e)(2).

The revisions read as follows:

**Note: The text of Form F-3 does not, and this amendment will not, appear in the Code of Federal Regulations.**

### FORM F-3

#### REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

\* \* \* \* \*

#### GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F-3

\* \* \* \* \*

B. Transaction Requirements

\* \* \* \* \*

2. Primary Offerings of Non-Convertible Securities Other than Common Equity. Non-convertible securities, other than common equity, to be offered for cash by or on behalf of a registrant, provided the registrant (i) has issued (as of a date within 60 days prior to the filing of the registration statement) at least \$1 billion in non-convertible securities, other than common equity, in primary offerings for cash, not exchange, registered under the Securities Act, over the prior three years; or (ii) has outstanding (as of a date within 60 days prior to the filing of the registration statement) at least \$750 million of non-convertible securities, other than common equity, issued in primary offerings for cash, not exchange, registered under the Securities Act; or

(iii) is a wholly-owned subsidiary of a well-known seasoned issuer (as defined in 17 CFR 230.405); or (iv) is a majority-owned operating partnership of a real estate investment trust that qualifies as a well-known seasoned issuer (as defined in 17 CFR 230.405).

3. Transactions Involving Secondary Offerings. Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. The financial statements included in this registration statement must comply with Item 18 of Form 20-F. In addition, Form F-3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S-8 (§ 239.16b of this chapter). In the case of such securities, the financial statements included in this registration statement must comply with Item 18 of Form 20-F (§ 249.220f of this chapter).

4. Rights Offerings, Dividend or Interest Reinvestment Plans, and Conversions or Warrants. Securities to be offered: (a) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing security holders of the class of securities to which the rights attach; or (b) pursuant to a dividend or interest reinvestment plan; or (c) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer. The financial statements included in this registration statement must comply with Item 18 of Form 20-F. The registration of securities to be offered or sold in a standby underwriting in the United States or similar arrangement is not permitted pursuant to this paragraph. See paragraphs B.1., B.2., and B.3. of this Instruction.

\* \* \* \* \*

## II. Application of General Rules and Regulations

\* \* \* \* \*

D. A registrant must file the Form F-3 registration statement in electronic format via the Commission's Electronic Data Gathering and Retrieval System (EDGAR) in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR part 232), except that a registrant that has obtained a hardship exception under Regulation S-T Rule 201 or 202 (17 CFR 232.201 or 232.202) may file the registration statement in paper. For assistance with EDGAR questions, call the Filer Support Office at (202) 551-8900.

\* \* \* \* \*

## PART I – INFORMATION REQUIRED IN PROSPECTUS

\* \* \* \* \*

Item 3. Summary Information and Risk Factors.

\* \* \* \* \*

Item 5. Material Changes.

\* \* \* \* \*

Instructions

1. Financial statements or information required to be furnished by this Item shall be reconciled pursuant to Item 18 of Form 20-F.

2. Material changes to be disclosed pursuant to Item 5(a) include changes in and disagreements with registrant's certifying accountant. Disclosure pursuant to Item 16F of Form 20-F should be provided as of the date of the registration statement or prospectus.

\* \* \* \* \*

Item 6. Incorporation of Certain Information by Reference.

\* \* \* \* \*

(e) \* \* \*

(2) state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). Disclose your Internet address, if available.

\* \* \* \* \*

**§ 239.34 [Amended]**

75. Amend Form F-4 (referenced in § 239.34) by:

- a. Revising General Instruction D.4;
- b. Revising the heading of Item 3;
- c. Revising Instruction 1 of the instructions to paragraphs (e) and (f) of Item 3;
- d. Revising Item 10.(c)(3);
- e. Revising paragraph 1 of the Instructions between Items 11(a) and (b);
- f. Revising Item 11.(c)(2);
- g. Revising the introductory text of Items 12 and 12.(b)(2)
- h. Revising Items 12.(b)(2)(iv) and 12.(b)(3)(vii) and (ix);
- i. Revising paragraph 1 of the Instructions between Items 13.(b) and (c);
- j. Revising Item 13.(c)(2); and
- k. Revising Items 14.(h) and 14.(j).

The revisions read as follows:

**Note: The text of Form F-4 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM F-4**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

## GENERAL INSTRUCTIONS

\* \* \* \* \*

### **D. Application of General Rules and Regulations.**

\* \* \* \* \*

4. A registrant must file the Form F-4 registration statement in electronic format via the Commission's Electronic Data Gathering and Retrieval System (EDGAR) in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR part 232), except that a registrant that has obtained a hardship exception under Regulation S-T Rule 201 or 202 (17 CFR 232.201 or 232.202) may file the registration statement in paper. For assistance with EDGAR questions, call the Filer Support Office at (202) 551-8900.

\* \* \* \* \*

## PART I

### INFORMATION REQUIRED IN THE PROSPECTUS

\* \* \* \* \*

### **Item 3. Risk Factors and Other Information.**

\* \* \* \* \*

#### Instructions to paragraphs (e) and (f).

1. For a business combination accounted for as a purchase, the financial information required by paragraphs (e) and (f) shall be presented only for the most recent fiscal year and interim period. For a combination of entities under common control, the financial information required by paragraphs (e) and (f) (except for information with regard to book value) shall be presented for the most recent three fiscal years and interim period. For a combination of entities



under common control, information with regard to book value shall be presented as of the end of the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the registrant by the exchange ratio so that the per share amounts are equated to the respective values for one share of the company being acquired.

\* \* \* \* \*

**Item 10. Information With Respect to F-3 Companies.**

\* \* \* \* \*

(c) \* \* \*

(3) Restated financial statements prepared in accordance with or, if prepared using a basis of accounting other than IFRS as issued by the IASB, reconciled to U.S. GAAP and Regulation S-X where one or more business combinations accounted for as combinations of entities under common control have been consummated subsequent to the most recent fiscal year and the transferred businesses, considered in the aggregate, are significant pursuant to Rule 11-01(b) of Regulation S-X (§ 210.11-01(b) of this chapter); or

\* \* \* \* \*

**Item 11. Incorporation of Certain Information by Reference.**

\* \* \* \* \*

(a) \* \* \*

Instructions

1. All annual reports or registration statements incorporated by reference pursuant to Item 11 of this Form shall contain financial statements that comply with Item 18 of Form 20-F.

(b) \* \* \*

(c) \* \* \*

(2) state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). Disclose your Internet address, if available.

\* \* \* \* \*

**Item 12. Information with Respect to F-3 Registrants.**

If the registrant meets the requirements for use of Form F-3 or Form S-3 and elects to comply with this Item, furnish the information required by either paragraph (a) or (b) of this Item. However, the registrant shall not provide prospectus information in the manner allowed by paragraph (a) of this Item if the financial statements incorporated by reference pursuant to Item 13 reflect: (1) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X if there has been a change in accounting principles or a correction of an error where such a change or correction requires a material retroactive statement of financial statements; (2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X where a combination of entities under common control has been consummated subsequent to the most recent fiscal year and the transferred businesses, considered in the aggregate, are significant pursuant to Rule 11-01(b) of Regulation S-X; or (3) any financial information required because of a material disposition of assets outside of the normal course of business.

\* \* \* \* \*

(b) \* \* \*

(2) Include financial statements and information as required by Item 18 of Form 20-F. In addition, provide: \* \* \*

(iv) Restated financial statements prepared in accordance with or, if prepared using a basis of accounting other than IFRS as issued by the IASB, reconciled to U.S. GAAP and Regulation S-X where a combination of entities under common control has been consummated subsequent to the most recent fiscal year and the transferred businesses, considered in the aggregate, are significant pursuant to Rule 11-01(b) of Regulation S-X; and

\* \* \* \* \*

(3) \* \* \*

(vii) Financial statements required by Item 18 of Form 20-F, and financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued;

\* \* \* \* \*

(ix) Item 16F of Form 20-F, change in registrant's certifying accountant.

**Item 13. Incorporation of Certain Information by Reference.**

\* \* \* \* \*

(b) \* \* \*

Instructions

1. All annual reports incorporated by reference pursuant to Item 13 of this Form shall contain financial statements that comply with Item 18 of Form 20-F.

\* \* \* \* \*

(c) \* \* \*

(2) state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). Disclose your Internet address, if available.

**Item 14. Information With Respect to Registrants Other Than F-3 Registrants.**

\* \* \* \* \*

(h) Financial statements required by Item 18 of Form 20-F. In addition, financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued. (Schedules required by Regulation S-X shall be filed as “Financial Statement Schedules” pursuant to Item 21 of this Form.);

\* \* \* \* \*

(j) Item 16F of Form 20-F, change in registrant’s certifying accountant.

\* \* \* \* \*

**§ 239.36 [Amended]**

76. Amend Form F-6 (referenced in § 239.36) by revising the first paragraph of General Instruction III.C to read as follows:

**Note: The text of Form F-6 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM F-6**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933 FOR  
DEPOSITARY SHARES EVIDENCED BY AMERICAN DEPOSITARY RECEIPTS**

\* \* \* \* \*

**GENERAL INSTRUCTIONS**

\* \* \* \* \*

### **III. Application of General Rules and Regulations**

\* \* \* \* \*

C. You must file the Form F-6 registration statement in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR Part 232). For assistance with EDGAR questions, call the Filer Support Office at (202) 551-8900.

\* \* \* \* \*

#### **§ 239.37 [Amended]**

77. Amend Form F-7 (referenced in § 239.37) by revising the first paragraph of General Instruction II.C to read as follows:

**Note: The text of Form F-7 does not, and this amendment will not, appear in the Code of Federal Regulations.**

#### **FORM F-7**

#### **REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

#### **GENERAL INSTRUCTIONS**

\* \* \* \* \*

### **II. Application of General Rules and Regulations**

\* \* \* \* \*

C. A registrant must file the registration statement in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR Part 232). For assistance with EDGAR questions, call the Filer Support Office at (202) 551-8900.

\* \* \* \* \*

**§ 239.38 [Amended]**

78. Amend Form F-8 (referenced in § 239.38) by revising the first paragraph of General Instruction IV.C to read as follows:

**Note: The text of Form F-8 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM F-8**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

**GENERAL INSTRUCTIONS**

\* \* \* \* \*

**IV. Application of General Rules and Regulations**

\* \* \* \* \*

C. A registrant must file the registration statement in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR Part 232). For assistance with EDGAR questions, call the Filer Support Office at (202) 551-8900.

\* \* \* \* \*

**§ 239.40 [Amended]**

79. Amend Form F-10 (referenced in § 239.40) by revising the first paragraph of General Instruction II.D to read as follows:

**Note: The text of Form F-10 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM F-10**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

**GENERAL INSTRUCTIONS**

\* \* \* \* \*

**II. Application of General Rules and Regulations**

\* \* \* \* \*

D. A registrant must file the registration statement in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR Part 232). For assistance with EDGAR questions, call the Filer Support Office at (202) 551-8900.

\* \* \* \* \*

**§ 239.41 [Amended]**

80. Amend Form F-80 (referenced in § 239.41) by revising the first paragraph of General Instruction IV.C to read as follows:

**Note: The text of Form F-80 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM F-80**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

**GENERAL INSTRUCTIONS**

\* \* \* \* \*

**IV. Application of General Rules and Regulations**

\* \* \* \* \*

C. A registrant must file the registration statement in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR Part 232). For assistance with EDGAR questions, call the Filer Support Office at (202) 551-8900.

\* \* \* \* \*

**§ 239.44 [Amended]**

81. Amend Form SF-1 (referenced in § 239.44) by revising Item 10.(b)(2)(ii) to read as follows:

**Note: The text of Form SF-1 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM SF-1**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

**PART I**

**INFORMATION REQUIRED IN PROSPECTUS**

\* \* \* \* \*

**Item 10. Incorporation of Certain Information by Reference.**

\* \* \* \* \*

(b)(2) \* \* \*

(ii) State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). Disclose your Internet address (or address of the specified transaction party where such information is posted), if available.

\* \* \* \* \*



**§ 239.45 [Amended]**

82. Amend Form SF-3 (referenced in § 239.45) by revising Item 10.(e)(2)(ii) to read as follows:

**Note: The text of Form SF-3 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM SF-3**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

**PART I**

**INFORMATION REQUIRED IN PROSPECTUS**

\* \* \* \* \*

**Item 10. Incorporation of Certain Information by Reference.**

\* \* \* \* \*

(e)(1) \* \* \*

(2) \* \* \*

(ii) State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). Disclose your Internet address (or address of the specified transaction party where such information is posted), if available.

\* \* \* \* \*

**§ 239.90 [Amended]**

83. Amend Form 1-A (referenced in § 239.90) by:

- a. Revising the section entitled “Financial Statements” in Item 1 of Part I;
- b. Removing and reserving Items 7.(a)(1)(iii) and 7.(b) of Part II;

- c. Revising paragraph (3) of the Instruction to Item 9.(a) of Part II; and
- d. Revising paragraphs (b)(4) and (5) and paragraph (c)(1)(i) of Part F/S of Part II.

The revisions read as follows:

**Note: The text of Form 1-A does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM 1-A**

**REGULATION A OFFERING STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

**PART I—NOTIFICATION**

\* \* \* \* \*

**ITEM 1. Issuer Information**

\* \* \* \* \*

**Financial Statements**

\* \* \* \* \*

**[If “Other” is selected, display the following options in the Financial Statements table:]**

Balance Sheet Information

Cash and Cash Equivalents:	_____
Investment Securities:	_____
Accounts and Notes Receivable:	_____
Property, Plant and Equipment (PP&E):	_____
Total Assets:	_____
Accounts Payable and Accrued Liabilities:	_____
Long Term Debt:	_____
Total Liabilities:	_____
Total Stockholders’ Equity:	_____
Total Liabilities and Equity:	_____

Statement of Comprehensive Income Information

Total Revenues: \_\_\_\_\_  
 Costs and Expenses Applicable to Revenues: \_\_\_\_\_  
 Depreciation and Amortization: \_\_\_\_\_  
 Net Income: \_\_\_\_\_  
 Earnings Per Share – Basic: \_\_\_\_\_  
 Earnings Per Share – Diluted: \_\_\_\_\_

**[If “Banking” is selected, display the following options in the Financial Statements table:]**

Balance Sheet Information

Cash and Cash Equivalents: \_\_\_\_\_  
 Investment Securities: \_\_\_\_\_  
 Loans: \_\_\_\_\_  
 Property and Equipment: \_\_\_\_\_  
 Total Assets: \_\_\_\_\_  
 Accounts Payable and Accrued Liabilities: \_\_\_\_\_  
 Deposits: \_\_\_\_\_  
 Long Term Debt: \_\_\_\_\_  
 Total Liabilities: \_\_\_\_\_  
 Total Stockholders’ Equity: \_\_\_\_\_  
 Total Liabilities and Equity: \_\_\_\_\_

Statement of Comprehensive Income Information

Total Interest Income: \_\_\_\_\_  
 Total Interest Expense: \_\_\_\_\_  
 Depreciation and Amortization: \_\_\_\_\_  
 Net Income: \_\_\_\_\_  
 Earnings Per Share – Basic: \_\_\_\_\_  
 Earnings Per Share – Diluted: \_\_\_\_\_

**[If “Insurance” is selected, display the following options in the Financial Statements table:]**

Balance Sheet Information

Cash and Cash Equivalents: \_\_\_\_\_  
 Total Investments: \_\_\_\_\_  
 Accounts and Notes Receivable: \_\_\_\_\_  
 Property and Equipment: \_\_\_\_\_  
 Total Assets: \_\_\_\_\_

Accounts Payable and Accrued Liabilities: \_\_\_\_\_  
 Policy Liabilities and Accruals: \_\_\_\_\_  
 Long Term Debt: \_\_\_\_\_  
 Total Liabilities: \_\_\_\_\_  
 Total Stockholders' Equity: \_\_\_\_\_  
 Total Liabilities and Equity: \_\_\_\_\_

**Statement of Comprehensive Income  
 Information**

Total Revenues: \_\_\_\_\_  
 Costs and Expenses Applicable to Revenues: \_\_\_\_\_  
 Depreciation and Amortization: \_\_\_\_\_  
 Net Income: \_\_\_\_\_  
 Earnings Per Share – Basic: \_\_\_\_\_  
 Earnings Per Share – Diluted: \_\_\_\_\_

**[End of section that varies based on the selection of Industry Group]**

Name of Auditor (if any): \_\_\_\_\_

\* \* \* \* \*

**PART II — INFORMATION REQUIRED IN OFFERING CIRCULAR**

\* \* \* \* \*

**Item 7. Description of Business**

(a) \* \* \*

(1) \* \* \*

(iii) [Reserved]

\* \* \* \* \*

(b) [Reserved]

\* \* \* \* \*

**Item 9. Management's Discussion and Analysis of Financial Condition and  
 Results of Operations**

\* \* \* \* \*

(a) \* \* \*

Instruction to Item 9(a)

\* \* \*

(3) When interim period financial statements are included, discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. Discuss any material changes in the issuer's results of operations with respect to the most recent fiscal year-to-date period for which a statement of comprehensive income (or statement of net income if comprehensive income is presented in two separate but consecutive financial statements or if no other comprehensive income) is provided and the corresponding year-to-date period of the preceding fiscal year.

\* \* \* \* \*

**Part F/S**

\* \* \* \* \*

**(b) Financial Statements for Tier 1 Offerings**

\* \* \* \* \*

(4) Statements of comprehensive income, cash flows, and changes in stockholders' equity. File consolidated statements of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income), cash flows, and changes in stockholders' equity for each of the two fiscal years preceding the date of the most recent balance sheet being filed or such shorter period as the issuer has been in existence.

(5) Interim financial statements.

(i) If a consolidated interim balance sheet is required by (b)(3) of Part F/S, consolidated interim statements of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income) and cash flows shall be provided and must cover at least the first six months of the issuer's fiscal year and the corresponding period of the preceding fiscal year. An analysis of the changes in each caption of stockholders' equity presented in the balance sheets must be provided in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which a statement of comprehensive income is required to be filed with all significant reconciling items described by appropriate captions with contributions from and distributions to owners shown separately. Dividends per share for each class of shares shall also be provided.

(ii) Interim financial statements of issuers that report under U.S. GAAP may be condensed as described in Rule 8-03(a) of Regulation S-X.

(iii) The interim statements of comprehensive income for all issuers must be accompanied by a statement that in the opinion of management all adjustments necessary in order to make the interim financial statements not misleading have been included.

\* \* \* \* \*

**(c) Financial Statement Requirements for Tier 2 Offerings**

(1) \* \* \*

(i) Issuers that report under U.S. GAAP and, when applicable, other entities for which financial statements are required, must comply with Article 8 of Regulation S-X, as if they were conducting a registered offering on Form S-1, except the age of financial statements may follow paragraphs (b)(3)-(4) of this Part F/S.

\* \* \* \* \*

**§ 239.91 [Amended]**

84. Amend Form 1-K (referenced in § 239.91) by revising Item 7.(e) of Part II to read as follows:

**Note: The text of Form 1-K does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM 1-K**

\* \* \* \* \*

**PART II**

**INFORMATION TO BE INCLUDED IN REPORT**

\* \* \* \* \*

**Item 7. Financial Statements**

\* \* \* \* \*

(e) Statements of comprehensive income, cash flows, and changes in stockholders' equity. File audited consolidated statements of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income), cash flows, and changes in stockholders' equity for each of the two fiscal years preceding the date of the most recent balance sheet being filed or such shorter period as the issuer has been in existence.

\* \* \* \* \*

**§ 239.92 [Amended]**

85. Amend Form 1-SA (referenced in § 239.92) by:

- a. Revising the third paragraph of the undesignated introductory text of Item 3;
- b. Revising Item 3.(b);

- c. Redesignating current Items 3.(d) and (e) as 3.(e) and (f), respectively;
- d. Adding new Item 3.(d); and
- e. Revising newly redesignated Item 3.(e).

The revisions and addition read as follows:

**Note: The text of Form 1-SA does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM 1-SA**

**[ ] SEMIANNUAL REPORT PURSUANT TO REGULATION A**

**or**

**[ ] SPECIAL FINANCIAL REPORT PURSUANT TO REGULATION A**

\* \* \* \* \*

**INFORMATION TO BE INCLUDED IN REPORT**

\* \* \* \* \*

**Item 3. Financial Statements**

\* \* \*

The financial statements included pursuant to this item may be condensed, unaudited, and are not required to be reviewed. For additional guidance on presentation of the financial statements, issuers that report under U.S. GAAP should refer to Rule 8-03(a) of Regulation S-X. The financial statements for all issuers must include the following:

\* \* \* \* \*

(b) Interim consolidated statements of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income) must be provided for the six month interim period covered by this report and for the corresponding period of the



preceding fiscal year. Statements of comprehensive income must be accompanied by a statement that in the opinion of management all adjustments necessary in order to make the interim financial statements not misleading have been included.

(c) \* \* \*

(d) An analysis of the changes in each caption of stockholders' equity presented in the balance sheets must be provided in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which a statement of comprehensive income is required to be filed with all significant reconciling items described by appropriate captions with contributions from and distributions to owners shown separately. Dividends per share for each class of shares shall also be presented.

(e) Footnote and other disclosures should be provided as needed for fair presentation and to ensure that the financial statements are not misleading. Issuers that report under U.S. GAAP should refer to Rule 8-03(b) of Regulation S-X for examples of disclosures that may be needed.

(f) Financial Statements of Guarantors and Issuers of Guaranteed Securities. \* \* \*

\* \* \* \* \*

## **PART 240 - GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

86. The authority citation for part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 et seq., and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1376 (2010), unless otherwise noted.

\* \* \* \* \*

87. Amend § 240.3a51-1 by revising paragraph (a)(2)(i)(A)(3) to read as follows:

**§ 240.3a51-1 Definition of “penny stock”.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) \* \* \*

(3) Net income of \$750,000 (excluding non-recurring items) in the most recently completed fiscal year or in two of the last three most recently completed fiscal years;

\* \* \* \* \*

88. Amend § 240.10A-1 by revising paragraph (b)(3) to read as follows:

**§ 240.10A-1 Notice to the Commission Pursuant to Section 10A of the Act.**

\* \* \* \* \*

(b) \* \* \*

(3) Submission of the report (or documentation) by the independent accountant as described in paragraphs (b)(1) and (2) of this section shall not replace, or otherwise satisfy the need for, the newly engaged and former accountants' letters under Items 304(a)(2)(D) and 304(a)(3) of Regulation S-K, §§ 229.304(a)(2)(D) and 229.304(a)(3) of this chapter, respectively, and shall not limit, reduce, or affect in any way the independent accountant's obligations to comply fully with all other legal and professional responsibilities, including, without limitation, those under the standards of the Public Company Accounting Oversight Board and the rules or interpretations of the Commission that modify or supplement those auditing standards.

\* \* \* \* \*

89. Amend § 240.12b-2 by:

a. Revising the introductory text of paragraph (3) of the definition of Significant subsidiary; and

b. Redesignating the Computational note following paragraph (3) as Computational note to paragraph (3).

The revision reads as follows:

**§ 240.12b-2 Definitions.**

\* \* \* \* \*

Significant subsidiary. \* \* \*

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes exclusive of amounts attributable to any non-controlling interests exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

\* \* \* \* \*

90. Amend § 240.13a-10 by revising paragraphs (b) and (g)(3) to read as follows:

**§ 240.13a-10 Transition reports.**

\* \* \* \* \*

(b) The report pursuant to this section shall be filed for the transition period not more than the number of days specified in paragraph (j) of this section after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on the form appropriate for annual reports of the issuer, shall cover the period from the close of the last fiscal year end and shall indicate clearly the period

covered. The financial statements for the transition period filed therewith shall be audited. Financial statements, which may be unaudited, shall be filed for the comparable period of the prior year, or a footnote, which may be unaudited, shall state for the comparable period of the prior year, revenues, gross profits, income taxes, income or loss from continuing operations and net income or loss. The effects of any discontinued operations as classified under the provisions of generally accepted accounting principles also shall be shown, if applicable. Per share data based upon such income or loss and net income or loss shall be presented in conformity with applicable accounting standards. Where called for by the time span to be covered, the comparable period financial statements or footnote shall be included in subsequent filings.

\* \* \* \* \*

(g) \* \* \*

(3) The report for the transition period shall be filed on Form 20-F (§ 249.220f of this chapter) responding to all items to which such issuer is required to respond when Form 20-F is used as an annual report. The financial statements for the transition period filed therewith shall be audited. The report shall be filed within four months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later.

\* \* \* \* \*

91. Amend § 240.13b2-2 by revising paragraphs (b)(2)(i) and (ii) to read as follows:

**§240.13b2-2 Representations and conduct in connection with the preparation of required reports and documents.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) To issue or reissue a report on an issuer's financial statements that is not warranted in the circumstances (due to material violations of generally accepted accounting principles, the standards of the Public Company Accounting Oversight Board, or other professional or regulatory standards);

(ii) Not to perform audit, review or other procedures required by the standards of the Public Company Accounting Oversight Board or other professional standards;

\* \* \* \* \*

**§ 240.14a-101 [Amended]**

92. Amend § 240.14a-101 by:

a. Removing paragraph (c) from Item 10. Compensation Plans and the Instructions to paragraph (c) of Item 10. Compensation Plans; and

b. Removing the undesignated center heading “Instructions” following paragraph (b)(2)(ii)(G) and adding in its place “Instructions to Item 10”.

93. Amend § 240.15c3-1g by revising paragraphs (b)(1)(i)(A), (b)(1)(ii)(A), (b)(1)(ii)(E) and (b)(2)(i)(A) and (D) to read as follows:

**§ 240.15c3-1g Conditions for ultimate holding companies of certain brokers or dealers (Appendix G to 17 CFR 240.15c3-1).**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) A consolidated balance sheet and income statement (including notes to the financial statements) for the ultimate holding company and statements of allowable capital and allowances for market, credit, and operational risk computed pursuant to paragraph (a) of this section, except

that the consolidated balance sheet and income statement for the first month of the fiscal year may be filed at a later time to which the Commission agrees (when reviewing the affiliated broker's or dealer's application under § 240.15c3-1e(a)). A statement of comprehensive income (as defined in § 210.1-02 of Regulation S-X of this chapter) shall be included in place of an income statement, if required by the applicable generally accepted accounting principles.

\* \* \* \* \*

(ii) \* \* \*

(A) Consolidating balance sheets and income statements for the ultimate holding company. The consolidating balance sheet must provide information regarding each material affiliate of the ultimate holding company in a separate column, but may aggregate information regarding members of the affiliate group that are not material affiliates into one column. Statements of comprehensive income (as defined in § 210.1-02 of Regulation S-X of this chapter) shall be included in place of an income statement, if required by the applicable generally accepted accounting principles;

\* \* \* \* \*

(E) For a quarter-end that coincides with the ultimate holding company's fiscal year-end, the ultimate holding company need not include consolidated and consolidating balance sheets and income statements (or statements of comprehensive income, as applicable) in its quarterly reports. The consolidating balance sheet and income statement (or statement of comprehensive income, as applicable) for the quarter-end that coincides with the fiscal year-end may be filed at a later time to which the Commission agrees (when reviewing the affiliated broker's or dealer's application under § 240.15c3-1e(a));

\* \* \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) Consolidated (including notes to the financial statements) and consolidating balance sheets and income statements for the ultimate holding company. Statements of comprehensive income (as defined in § 210.1-02 of Regulation S-X of this chapter) shall be included in place of income statements, if required by the applicable generally accepted accounting principles;

\* \* \* \* \*

(D) For a quarter-end that coincides with the ultimate holding company's fiscal year-end, the ultimate holding company need not include consolidated and consolidating balance sheets and income statements (or statements of comprehensive income, as applicable) in its quarterly reports. The consolidating balance sheet and income statement (or statement of comprehensive income, as applicable) for the quarter-end that coincides with the fiscal year-end may be filed at a later time to which the Commission agrees (when reviewing the affiliated broker's or dealer's application under § 240.15c3-1e(a)).

\* \* \* \* \*

94. Amend § 240.15d-2 by revising paragraph (a) to read as follows:

**§ 240.15d-2 Special financial report.**

(a) If the registration statement under the Securities Act of 1933 did not contain certified financial statements for the registrant's last full fiscal year (or for the life of the registrant if less than a full fiscal year) preceding the fiscal year in which the registration statement became effective, the registrant shall, within 90 days after the effective date of the registration statement, file a special report furnishing certified financial statements for such last full fiscal year or other

period, as the case may be, meeting the requirements of the form appropriate for annual reports of the registrant. If the registrant is a foreign private issuer as defined in § 230.405 of this chapter, then the special financial report shall be filed on the appropriate form for annual reports of the registrant and shall be filed by the later of 90 days after the date on which the registration statement became effective, or four months following the end of the registrant's latest full fiscal year.

\* \* \* \* \*

95. Amend § 240.15d-10 by revising paragraphs (b) and (g)(3) to read as follows:

**§ 240.15d-10 Transition reports.**

\* \* \* \* \*

(b) The report pursuant to this section shall be filed for the transition period not more than the number of days specified in paragraph (j) of this section after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on the form appropriate for annual reports of the issuer, shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements for the transition period filed therewith shall be audited. Financial statements, which may be unaudited, shall be filed for the comparable period of the prior year, or a footnote, which may be unaudited, shall state for the comparable period of the prior year, revenues, gross profits, income taxes, income or loss from continuing operations and net income or loss. The effects of any discontinued operations as classified under the provisions of generally accepted accounting principles also shall be shown, if applicable. Per share data based upon such income or loss and net income or loss shall be presented in conformity with



applicable accounting standards. Where called for by the time span to be covered, the comparable period financial statements or footnote shall be included in subsequent filings.

\* \* \* \* \*

(g) \* \* \*

(3) The report for the transition period shall be filed on Form 20-F (§ 249.220f of this chapter) responding to all items to which such issuer is required to respond when Form 20-F is used as an annual report. The financial statements for the transition period filed therewith shall be audited. The report shall be filed within four months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later.

\* \* \* \* \*

96. Amend § 240.17a-5 by adding a Note to paragraph (d)(2)(i) to read as follows:

**§ 240.17a-5 Reports to be made by certain brokers and dealers.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(i) \* \* \*

NOTE TO PARAGRAPH (d)(2)(i). If there is other comprehensive income in the period(s) presented, the financial report must contain a Statement of Comprehensive Income (as defined in § 210.1-02 of Regulation S-X of this chapter) in place of a Statement of Income.

\* \* \* \* \*

97. Amend § 240.17a-12 by adding a Note to paragraph (b)(2) to read as follows:

**§ 240.17a-12 Reports to be made by certain OTC derivatives dealers.**

\* \* \* \* \*

(b) Annual filing of audited financial statements. \* \* \*

(2) \* \* \*

NOTE TO PARAGRAPH (b)(2). If there is other comprehensive income in the period(s) presented, the financial report must contain a Statement of Comprehensive Income (as defined in § 210.1-02 of Regulation S-X of this chapter) in place of a Statement of Income.

\* \* \* \* \*

98. Amend § 240.17g-3 by revising paragraph (a)(1)(i) to read as follows:

**§ 240.17g-3 Annual financial and other reports to be filed or furnished by nationally recognized statistical rating organizations.**

(a) \* \* \*

(1) \* \* \*

(i) Include a balance sheet, an income statement (or a statement of comprehensive income, as defined in § 210.1-02 of Regulation S-X of this chapter, if required by the applicable generally accepted accounting principles noted in paragraph (a)(1)(ii) of this section) and statement of cash flows, and a statement of changes in ownership equity;

\* \* \* \* \*

99. Amend § 240.17h-1T by adding a Note to Paragraph (a)(1)(v) to read as follows:

**§ 240.17h-1T Risk assessment recordkeeping requirements for associated persons of brokers and dealers.**

(a) \* \* \*

(1) \* \* \*

(v) \* \* \*

NOTE TO PARAGRAPH (a)(1)(v). Statements of comprehensive income (as defined in § 210.1-02 of Regulation S-X of this chapter) must be included in place of income statements, if required by the applicable generally accepted accounting principles.

\* \* \* \* \*

## **PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934**

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

**Authority:** 15 U.S.C. 78a et seq. and 7201 et seq.; 12 U.S.C. 5461 et seq.; 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111-203, 124 Stat. 1904; and Sec. 102(a)(3), Pub. L. 112-106, 126 Stat. 309, unless otherwise noted.

\* \* \* \* \*

### **§ 249.220f [Amended]**

101. Amend Form 20-F (referenced in § 249.220f) by:

- a. Revising General Instructions A.(b), D.(a), E.(c), G.(c) and G.(f)(1);
- b. Removing Item 3.A.3;
- c. Revising Instruction 2. of the Instructions to Item 3.A;
- d. Adding Item 4.A.8;
- e. Revising Item 5.C;
- f. Revising Item 8.A.1.(b) and Item 8.A.5;
- g. Revising Instruction 2 of the Instructions to Items 8.A.2 and 8.A.4;
- h. Revising Item 9.A.4;
- i. Revising Item 10.F;
- j. Removing and reserving Instruction 1 to General Instructions to Items 11(a), 11(b), 11(c), 11(d), and 11(e);

- k. Revising Instruction 1 of the Instructions to Item 12;
- l. Removing Instruction to Item 14.B;
- m. Removing Item 15T;
- n. Removing and reserving Instruction 1 to Instructions to Item 16F;
- o. Revising Instruction to Item 16G;
- p. Removing and reserving Instruction 3 to Item 17;
- q. Removing Special Instruction for Certain European Issuers to Item 17;
- r. Revising Instruction 1 to Instruction to Item 18;
- s. Removing Special Instruction for Certain European Issuers to Item 18; and
- t. Removing and reserving Instructions 6 and 7 of the Instructions as to Exhibits.

The revisions read as follows:

**Note: The text of Form 20-F does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM 20-F**

**☐ REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

**OR**

**☐ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

\* \* \* \* \*

**GENERAL INSTRUCTIONS**

**A. Who May Use Form 20-F and When It Must be Filed.**

\* \* \* \* \*

(b) A foreign private issuer must file its annual report on this Form within four months after the end of the fiscal year covered by the report.

\* \* \* \* \*

**D. How to File Registration Statements and Reports on this Form.**

(a) You must file the Form 20-F registration statement or annual report in electronic format via our Electronic Data Gathering and Retrieval System (EDGAR) in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR part 232). The Form 20-F registration statement or annual report must be in the English language as required by Regulation S-T Rule 306 (17 CFR 232.306). You must provide the signatures required for the Form 20-F registration statement or annual report in accordance with Regulation S-T Rule 302 (17 CFR 232.302). If you have EDGAR questions, call the Filer Support Office at (202) 551-8900.

\* \* \* \* \*

**E. Which Items to Respond to in Registration Statements and Annual Reports.**

\* \* \* \* \*

(c) Financial Statements. (1) An Exchange Act registration statement or annual report filed on this Form must contain the financial statements and related information specified in Item 18 of this Form. Note that Items 17 and 18 may require you to file the financial statements of other entities in certain circumstances. These circumstances are described in Regulation S-X.

(2) The issuer's financial statements must be audited in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), and the auditor must be qualified and independent in accordance with Article 2 of Regulation S-X. The financial statements of entities other than the issuer must be audited in accordance with applicable

professional standards. If you have any questions about these requirements, contact the Office of Chief Accountant in the Division of Corporation Finance at (202) 551-3400.

\* \* \* \* \*

**G. First-Time Application of International Financial Reporting Standards.**

\* \* \* \* \*

(c) Selected Financial Data. The selected historical financial data required pursuant to Item 3.A shall be based on financial statements prepared in accordance with IFRS and shall be presented for the two most recent financial years.

\* \* \* \* \*

(f) Financial Information.

(1) General. With respect to the financial information of the issuer required by Item 8.A, all instructions contained in Item 8, including the instruction requiring audits in accordance with the standards of the PCAOB, shall apply.

\* \* \* \* \*

**PART I**

\* \* \* \* \*

**Item 3. Key Information**

\* \* \* \* \*

**Instructions to Item 3.A:**

\* \* \* \* \*

2. You may present the selected financial data on the basis of the accounting principles used in your primary financial statements. If you use a basis of accounting other than IFRS as issued by the IASB, however, you also must include in this summary any reconciliations of the

data to U.S. generally accepted accounting principles and Regulation S-X, pursuant to Item 17 or 18 of this Form. For financial statements prepared using a basis of accounting other than IFRS as issued by the IASB, you only have to provide selected financial data on a basis reconciled to U.S. generally accepted accounting principles for (i) those periods for which you were required to reconcile the primary annual financial statements in a filing under the Securities Act or the Exchange Act, and (ii) any interim periods. An issuer that adopted IFRS as issued by the IASB during the past three years is only required to provide selected financial data for the periods that it prepared financial statements in accordance with IFRS as issued by the IASB.

\* \* \* \* \*

**Item 4. Information on the Company**

\* \* \* \* \*

A. \* \* \*

8. State that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). Disclose your Internet address, if available.

\* \* \* \* \*

**Item 5. Operating and Financial Review and Prospects**

\* \* \* \* \*

**C. Research and development, patents and licenses, etc.** Provide a description of the company's research and development policies for the last three years.

\* \* \* \* \*

**Item 8. Financial Information**

\* \* \* \* \*

A. \* \* \*

1. \* \* \*

(b) statement of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income);

\* \* \* \* \*

5. If the document is dated more than nine months after the end of the last audited financial year, it should contain consolidated interim financial statements, which may be unaudited (in which case that fact should be stated), covering at least the first six months of the financial year. The interim financial statements should include a balance sheet, statement of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income), cash flow statement, and a statement showing either (i) changes in equity other than those arising from capital transactions with owners and distributions to owners, or (ii) all changes in equity (including a subtotal of all non-owner items recognized directly in equity). Each of these statements may be in condensed form as long as it contains the major line items from the latest audited financial statements and includes the major components of assets, liabilities and equity (in the case of the balance sheet); income and expenses (in the case of the statement of comprehensive income) and the major subtotals of cash flows (in the case of the cash flow statement). The interim financial statements should include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the year end balance sheet. If not



included in the primary financial statements, a note should be provided analyzing the changes in each caption of shareholders' equity presented in the balance sheet. The interim financial statements should include selected note disclosures that will provide an explanation of events and changes that are significant to an understanding of the changes in financial position and performance of the enterprise since the last annual reporting date. If, at the date of the document, the company has published interim financial information that covers a more current period than those otherwise required by this standard, the more current interim financial information must be included in the document. Companies are encouraged, but not required, to have any interim financial statements in the document reviewed by an independent auditor. If such a review has been performed and is referred to in the document, a copy of the auditor's interim review report must be provided in the document.

\* \* \* \* \*

**Instructions to Item 8.A.2:**

\* \* \* \* \*

2. The financial statements of the issuer must be audited in accordance with the standards of the PCAOB and the auditor must comply with the U.S. and Commission standards for auditor independence. Refer to Article 2 of Regulation S-X, which contains requirements for qualifications and reports of accountants.

\* \* \* \* \*

**Instructions to Item 8.A.4:**

\* \* \* \* \*

2. The additional requirement that financial statements be no older than 12 months at the date of filing applies only in those limited cases where a nonpublic company is registering its

initial public offering of securities. A company may comply with only the 15-month requirement in this item if the company is able to represent that it is not required to comply with the 12-month requirement in any other jurisdiction outside the United States and that complying with the 12-month requirement is impracticable or involves undue hardship. File this representation as an exhibit to the registration statement.

\* \* \* \* \*

**Item 9. The Offer and Listing.**

\* \* \* \* \*

A. \* \* \*

4. Identify the host and principal market(s) and trading symbol(s) for those markets for each class of the registrant's common equity. If significant trading suspensions occurred in the prior three years, they shall be disclosed. If the securities are not regularly traded in an organized market, information shall be given about any lack of liquidity.

\* \* \* \* \*

**Item 10. Additional Information.**

\* \* \* \* \*

**F. Dividends and paying agents.** Disclose the date on which the entitlement to dividends arises, if known, and any procedures for nonresident holders to claim dividends. Identify the financial organizations which, at the time of admission of shares to official listing, are the paying agents of the company in the countries where admission has taken place or is expected to take place.

\* \* \* \* \*

**Item 11. Quantitative and Qualitative Disclosure About Market Risk.**

\* \* \* \* \*

**General Instructions to Items 11(a), 11(b), 11(c), 11(d), and 11(e).**

1. [Reserved]

\* \* \* \* \*

**Item 12. Description of Securities Other than Equity Securities.**

\* \* \* \* \*

**Instructions to Item 12:**

1. Except for Item 12.D.3. and Item 12.D.4, you do not need to provide the information called for by this Item if you are using this form as an annual report.

\* \* \* \* \*

**Item 16F. Change in Registrant's Certifying Accountant.**

\* \* \* \* \*

**Instructions to Item 16F:**

1. [Reserved]

\* \* \* \* \*

**Item 16G. Corporate Governance.**

\* \* \* \* \*

**Instructions to Item 16G:**

Item 16G only applies to annual reports, and not to registration statements on Form 20-F. Registrants should provide a brief and general discussion, rather than a detailed, item-by-item analysis.

\* \* \* \* \*

**Item 17. Financial Statements.**

\* \* \* \* \*

**Instructions:**

\* \* \* \* \*

3. [Reserved]

\* \* \* \* \*

**Item 18. Financial Statements.**

\* \* \* \* \*

**Instructions to Item 18:**

1. All of the instructions to Item 17 also apply to this Item.

\* \* \* \* \*

**INSTRUCTIONS AS TO EXHIBITS**

\* \* \* \* \*

6. [Reserved]

7. [Reserved]

\* \* \* \* \*

**§ 249.240f [Amended]**

102. Amend Form 40-F (referenced in § 249.240f) by revising the first paragraph of General Instruction D.(7) to read as follows:

**Note: The text of Form 40-F does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM 40-F**

**☐ REGISTRATION STATEMENT PURSUANT TO SECTION 12 OF THE SECURITIES**

**EXCHANGE ACT OF 1934**

**OR**

**□ ANNUAL REPORT PURSUANT TO SECTION 13(a) OR 15(d) OF THE SECURITIES**

**EXCHANGE ACT OF 1934**

\* \* \* \* \*

**GENERAL INSTRUCTIONS**

\* \* \* \* \*

**D. Application of General Rules and Regulations**

\* \* \* \* \*

(7) A filer must file the Form 40-F registration statement or annual report in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR Part 232). For assistance with EDGAR questions, call the Filer Support Office at (202) 551-8900.

\* \* \* \* \*

**§ 249.310 [Amended]**

103. Amend Form 10-K (referenced in § 249.310) by:

- a. Reserving paragraph J.(1)(e) of the General Instructions; and
- b. Revising paragraph J.(1)(f) of the General Instructions and Item 12.

The revisions read as follows:

**Note: The text of Form 10-K does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM 10-K**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES**

**EXCHANGE ACT OF 1934**

**GENERAL INSTRUCTIONS**

\* \* \* \* \*

J. \* \* \*

(1) \* \* \*

(e) [Reserved]

(f) Item 5, Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities;

\* \* \* \* \*

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.**

Furnish the information required by Item 403 of Regulation S-K (§ 229.403 of this chapter).

\* \* \* \* \*

**§ 249.311 [Amended]**

104. Amend Form 11-K (referenced in § 249.311) by revising paragraph 2 of Required Information to read as follows:

**Note: The text of Form 11-K does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM 11-K**

**FOR ANNUAL REPORTS OF EMPLOYEE STOCK PURCHASE, SAVINGS AND SIMILAR PLANS PURSUANT TO SECTION 15(d) OF THE SECURITIES EXCHANGE**

**ACT OF 1934**

\* \* \* \* \*

**REQUIRED INFORMATION**

\* \* \* \* \*

2. An audited statement of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income) and changes in plan equity for each of the latest three fiscal years of the plan (or such lesser period as the plan has been in existence).

\* \* \* \* \*

**§ 249.312 [Amended]**

105. Amend Form 10-D (referenced in § 249.312) by removing and reserving Item 5.

**Note: The text of Form 10-D does not, and this amendment will not, appear in the Code of Federal Regulations.**

**§ 249.617 [Amended]**

106. Amend the Form X-17A-5 Part II (FOCUS Report) (referenced in § 249.617) by:

a. Revising under the heading “Statement of Financial Condition” paragraph 29 by redesignating current paragraphs 29.E and F as paragraphs 29.F and G, respectively and adding a new paragraph 29.E; and

b. Revising the heading “Statement of Income (Loss)” and under that heading, revising the subheading “Net Income”, removing and reserving paragraphs 32, 32.a and 33, revising paragraph 34, redesignating current paragraph 35 as paragraph 37, adding new paragraph 35 and paragraphs 35.a and 36, and revising newly redesignated paragraph 37.

The revisions and additions read as follows:

**Note: The text of Form X-17A-5 Part II does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM X-17A-5  
FOCUS REPORT  
(Financial and Operational Combined Uniform Single Report)  
PART II 11**

\* \* \* \* \*





107. Amend the Form X-17A-5 Part II (FOCUS Report) (referenced in § 249.617) General Instructions by:

a. Revising the heading “Statement of Income (Loss)” and removing from under that heading the subheadings “Extraordinary Items” and “Effect of Changes in Accounting Principles” and their related text; and

b. Revising under the heading “Statement of Changes in Ownership Equity (Sole Proprietorship, Partnership or Corporation)” the text related to the subheading “Net Income (Loss) For Period”.

The revisions read as follows:

**Note: The text of Form X-17A-5 Part II does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM X-17A-5 PART II  
(FOCUS Report)**

**GENERAL INSTRUCTIONS**

\* \* \* \* \*

**STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE INCOME**

**(as defined in §210.1-02 of Regulation S-X), as applicable**

If there are no items of other comprehensive income in the period presented, the broker or dealer is not required to report comprehensive income.

\* \* \* \* \*

**STATEMENT OF CHANGES IN OWNERSHIP EQUITY**

**(SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION)**

\* \* \* \* \*

**Net Income (Loss) For Period**

Report the amount of net income (loss) for the period reported on the Statement of Income (Loss) or Statement of Comprehensive Income, as applicable.

\* \* \* \* \*

**§ 249.617 [Amended]**

108. Amend the Form X-17A-5 Part IIA (FOCUS Report) (referenced in § 249.617) by:

a. Revising under the heading “Statement of Financial Condition for Nonclearing, Nonclearing and Certain other Brokers or Dealers” paragraph 23 by redesignating current paragraphs 23.E and F as paragraphs 23.F and G, respectively and adding a new paragraph 23.E; and

b. Revising the heading “Statement of Income (Loss)” and under that heading, revising the subheading “Net Income”, removing and reserving paragraphs 20, 20.a and 21, revising paragraph 22, redesignating current paragraph 23 as paragraph 25, adding new paragraph 23 and paragraphs 23.a and 24, and revising newly redesignated paragraph 25.

The revisions and additions read as follows:

**Note: The text of Form X-17A-5 Part IIA does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM X-17A-5  
FOCUS REPORT  
(Financial and Operational Combined Uniform Single Report)  
PART IIA <sup>12</sup>**

\* \* \* \* \*

**STATEMENT OF FINANCIAL CONDITION FOR NONCARRYING,  
NONCLEARING AND CERTAIN OTHER BROKERS OR DEALERS**

\* \* \* \* \*

23. \* \* \*

E. Accumulated other comprehensive income \_\_\_\_\_ 99999

F. Total \_\_\_\_\_ 1795

G. Less capital stock in treasury ▼16 (\_\_\_\_\_) 1796

\* \* \* \* \*

**STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE**

**INCOME (as defined in § 210.1-02 of Regulation S-X), as applicable**

\* \* \* \* \*

**NET INCOME/COMPREHENSIVE INCOME**

\* \* \* \* \*

20. [RESERVED]

a. [RESERVED]

21. [RESERVED]

22. Net income (loss) after Federal income taxes \$\_\_\_\_\_ 4230

23. Other comprehensive income (loss) \_\_\_\_\_ 99999

a. After Federal income taxes of \_\_\_\_\_ 99999

24. Comprehensive income (loss) \$\_\_\_\_\_ 99999

**MONTHLY INCOME**

25. Income (current month only) before provision for Federal income taxes \$\_\_\_\_\_ 4211

**§ 249.617 [Amended]**

109. Amend the Form X-17A-5 Part IIA (FOCUS Report) (referenced in § 249.617) General

Instructions by:

a. Revising the heading “Statement of Income (Loss)” and removing from under that heading paragraphs 20 and 21; and

b. Revising under the heading “Statement of Changes in Ownership Equity (Sole Proprietorship, Partnership or Corporation)” the text related to the subheading “Net Income (Loss) For Period”.

The revisions read as follows:

**Note: The text of Form X-17A-5 Part IIA does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM X-17A-5 PART IIA  
(FOCUS Report)**

**GENERAL INSTRUCTIONS**

\* \* \* \* \*

**STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE INCOME**

**(as defined in § 210.1-02 of Regulation S-X), as applicable**

If there are no items of other comprehensive income in the period presented, the broker or dealer is not required to report comprehensive income.

\* \* \* \* \*

**STATEMENT OF CHANGES IN OWNERSHIP EQUITY**

**(SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION)**

\* \* \* \* \*

**Net Income (Loss) For Period**

Report the amount of net income (loss) for the period reported on the Statement of Income (Loss) or Statement of Comprehensive Income, as applicable.

\* \* \* \* \*

**§ 249.617 [Amended]**

110. Amend the Form X-17A-5 Part IIB (FOCUS Report) (referenced in § 249.617) by:

a. Revising under the heading “Statement of Financial Condition for OTC Derivatives Dealers” paragraph 28 by redesignating current paragraphs 28.E and F as paragraphs 28.F and G, respectively and adding a new paragraph 28.E; and

b. Revising the heading “Statement of Income (Loss)” and under that heading, revising the subheading “Net Income”, removing and reserving paragraphs 29, 29.a and 30, revising paragraph 31, redesignating current paragraph 32 as paragraph 34. adding new paragraph 32 and paragraphs 32.a and 33, and revising newly redesignated paragraph 34.

The revisions and additions read as follows:

**Note: The text of Form X-17A-5 Part IIB does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM X-17A-5  
FOCUS REPORT  
(Financial and Operational Combined Uniform Single Report)  
PART IIB 1**

\* \* \* \* \*

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

\* \* \* \* \*

28. \* \* \*

E. Accumulated other comprehensive income	_____ <span style="border: 1px solid black; padding: 0 2px;">99999</span>
F. Total	_____ <span style="border: 1px solid black; padding: 0 2px;">1795</span>
G. Less capital stock in treasury	( _____ ) <span style="border: 1px solid black; padding: 0 2px;">1796</span>

\* \* \* \* \*

STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE  
INCOME (as defined in § 210.1-02 of Regulation S-X), as applicable

\* \* \* \* \*

NET INCOME/COMPREHENSIVE INCOME

\* \* \* \* \*

29. [RESERVED]

A. [RESERVED]

30. [RESERVED]

31. Net income (loss) after Federal income taxes \$ \_\_\_\_\_ 4230

32. Other comprehensive income (loss) \_\_\_\_\_ 99999

A. After Federal income taxes of \_\_\_\_\_ 99999

33. Comprehensive income (loss) \$ \_\_\_\_\_ 99999

MONTHLY INCOME

34. Income (current month only) before provision for Federal income taxes \$ \_\_\_\_\_ 4211

§ 249.617 [Amended]

111. Amend the Form X-17A-5 Part III (FOCUS Report) (referenced in § 249.617) by revising under the heading “Oath or Affirmation” checkbox (c) to read as follows:

**Note: The text of Form X-17A-5 Part III does not, and this amendment will not, appear in the Code of Federal Regulations.**

ANNUAL AUDITED REPORT  
FORM X-17A-5  
PART III

\* \* \* \* \*

OATH OR AFFIRMATION

\* \* \* \* \*

(c) Statement of Income (Loss) or, if there is other comprehensive income in the period(s) presented, a Statement of Comprehensive Income (as defined in § 210.1-02 of Regulation S-X).

\* \* \* \* \*

**PART 274 – FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940**

112. The authority citation for part 274 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, 80a-29, and Pub. L. 111-203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

\* \* \* \* \*

**§§ 239.24 and 274.5 [Amended]**

113. Amend Form N-5 (referenced in §§ 239.24 and 274.5) by revising Item 3.(i) to read as follows:

**Note: The text of Form N-5 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM N-5**

**REGISTRATION STATEMENT OF SMALL BUSINESS INVESTMENT COMPANY  
UNDER THE SECURITIES ACT OF 1933 AND THE INVESTMENT COMPANY ACT  
OF 1940\***

\* \* \* \* \*

**PART I. INFORMATION REQUIRED IN REGISTRATION STATEMENT UNDER THE  
INVESTMENT COMPANY ACT OF 1940**

\* \* \* \* \*

Item 3. Policies with Respect to Security Investments.

\* \* \* \* \*

(i) Whether the registrant and its investment adviser and principal underwriter have adopted codes of ethics under Rule 17j-1 of the Investment Company Act of 1940 [17 CFR

270.17j-1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the registrant. Also explain that these codes of ethics are available on the EDGAR Database on the Commission's Internet site at <http://www.sec.gov>, and that copies of these codes of ethics may be obtained, after paying a duplicating fee, by electronic request at the following E-mail address: publicinfo@sec.gov.

\* \* \* \* \*

**§§ 239.15A and 274.11A [Amended]**

114. Amend Form N-1A (referenced in §§ 239.15A and 274.11A) by:

- a. Revising Item 1.(b)(3);
- b. Revising Instruction 3.(c)(ii) to Item 3 and Instruction 2.(a)(ii) to Item 27.(d)(1);

and

- c. Removing Item 27.(d)(3)(iii) and redesignating current Item 27.(d)(3)(iv) as Item 27.(d)(3)(iii).

The revisions read as follows:

**Note: The text of Form N-1A does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM N-1A**

\* \* \* \* \*

- REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

\* \* \* \* \*

- REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940

\* \* \* \* \*



## PART A INFORMATION REQUIRED IN PROSPECTUS

\* \* \* \* \*

### Item 1. Front and Back Cover Pages

\* \* \* \* \*

(b) \* \* \*

(3) State that reports and other information about the Fund are available on the EDGAR Database on the Commission’s Internet site at <http://www.sec.gov>, and that copies of this information may be obtained, after paying a duplicating fee, by electronic request at the following E-mail address: [publicinfo@sec.gov](mailto:publicinfo@sec.gov).

\* \* \* \* \*

### Item 3. Risk/Return Summary: Fee Table

\* \* \* \* \*

#### Instructions

\* \* \* \* \*

3. \* \* \*

(c) \* \* \*

(ii) “Other Expenses” do not include extraordinary expenses. “Extraordinary expenses” refers to expenses that are distinguished by their unusual nature and by the infrequency of occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the fund, taking into account the environment in which the fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the foreseeable future, taking into consideration the environment in which the fund operates. The environment of a fund includes such factors as

the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of governmental regulation. If extraordinary expenses were incurred that materially affected the Fund's "Other Expenses," disclose in a footnote to the table what "Other Expenses" would have been had the extraordinary expenses been included.

\* \* \* \* \*

**Item 27. Financial Statements**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

**Instructions**

\* \* \* \* \*

2. \* \* \*

(a) \* \* \*

(ii) For purposes of this Item 27(d)(1), "Other Expenses" include extraordinary expenses. "Extraordinary expenses" refers to expenses that are distinguished by their unusual nature and by the infrequency of occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the fund, taking into account the environment in which the fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the foreseeable future, taking into consideration the environment in which the fund operates. The environment of a fund includes such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of governmental regulation. If extraordinary expenses were incurred that materially affected the

Fund’s “Other Expenses,” the Fund may disclose in a footnote to the Example what “actual expenses” would have been had the extraordinary expenses not been included.

\* \* \* \* \*

(3). Statement Regarding Availability of Quarterly Portfolio Schedule. A statement that: (i) the Fund files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N-Q; (ii) the Fund’s Forms N-Q are available on the Commission’s website at <http://www.sec.gov>; and (iii) if the Fund makes the information on Form N-Q available to shareholders on its website or upon request, a description of how the information may be obtained from the Fund.

\* \* \* \* \*

**§§ 239.14 and 274.11a-1 [Amended]**

115. Amend Form N-2 (referenced in §§ 239.14 and 274.11a-1) by:

- a. Revising Item 18.15; and
- b. Revising Instruction 6.b to Item 24.

The revisions read as follows:

**Note: The text of Form N-2 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM N-2**

\* \* \* \* \*

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

\* \* \* \* \*

REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT  
OF 1940

\* \* \* \* \*

**PART B - INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL  
INFORMATION**

\* \* \* \* \*

**Item 18. Management.**

\* \* \* \* \*

15. Codes of Ethics: Provide a brief statement disclosing whether the Registrant and its investment adviser and principal underwriter have adopted codes of ethics under Rule 17j-1 of the 1940 Act [17 CFR 270.17j-1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Registrant. Also explain in the statement that these codes of ethics are available on the EDGAR Database on the Commission's Internet site at <http://www.sec.gov>, and that copies of these codes of ethics may be obtained, after paying a duplicating fee, by electronic request at the following email address: [publicinfo@sec.gov](mailto:publicinfo@sec.gov).

\* \* \* \* \*

**Item 24. Financial Statements**

\* \* \*

**Instructions**

\* \* \*

6. \* \* \*

b. a statement that: (i) the Registrant files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N-Q; (ii) the Registrant's Forms N-Q are available on the Commission's website at <http://www.sec.gov>; and

(iii) if the Registrant makes the information on Form N-Q available to shareholders on its website or upon request, a description of how the information may be obtained from the Registrant.

\* \* \* \* \*

**§§ 239.17a and 274.11b [Amended]**

116. Amend Form N-3 (referenced in §§ 239.17a and 274.11b) by:

- a. Revising Instruction 4.(c)(i) to Item 3.(a);
- b. Revising Item 20.(m); and
- c. Removing Instruction 6.(ii)(C) to Item 28.(a) and redesignating current

Instruction 6.(ii)(D) to Item 28.(a) as Instruction 6.(ii)(C) to Item 28.(a).

The revisions read as follows:

**Note: The text of Form N-3 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM N-3**

\* \* \* \* \*

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

\* \* \* \* \*

REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT

OF 1940

\* \* \* \* \*

**PART A - INFORMATION REQUIRED IN A PROSPECTUS**

\* \* \* \* \*

**Item 3. Synopsis or Highlights**

\* \* \* \* \*

**Instructions**

\* \* \* \* \*

4. \* \* \*

(c) \* \* \*

(i) “Other Expenses” do not include extraordinary expenses. “Extraordinary expenses” refers to expenses that are distinguished by their unusual nature and by the infrequency of occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the fund, taking into account the environment in which the fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the foreseeable future, taking into consideration the environment in which the fund operates. The environment of a fund includes such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of governmental regulation. If extraordinary expenses were incurred that materially affected the Registrant’s “Other Expenses,” the Registrant should disclose in the narrative following the table what the “Other Expenses” would have been had extraordinary expenses been included.

\* \* \* \* \*

**Item 20. Management**

\* \* \* \* \*

(m) Provide a brief statement disclosing whether the Registrant and its investment adviser and principal underwriter have adopted codes of ethics under Rule 17j-1 of the 1940 Act [17 CFR 270.17j-1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Registrant. Also

explain in the statement that these codes of ethics are available on the EDGAR Database on the Commission's Internet site at <http://www.sec.gov>, and that copies of these codes of ethics may be obtained, after paying a duplicating fee, by electronic request at the following E-mail address: [publicinfo@sec.gov](mailto:publicinfo@sec.gov).

\* \* \* \* \*

### **Item 28. Financial Statements**

(a) \* \* \*

#### **Instructions**

(6) \* \* \*

(ii) a statement that: (A) the Registrant files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N-Q; (B) the Registrant's Forms N-Q are available on the Commission's website at <http://www.sec.gov>; and (C) if the Registrant makes the information on Form N-Q available to contractowners on its website or upon request, a description of how the information may be obtained from the Registrant;

\* \* \* \* \*

### **§§ 239.17b and 274.11c [Amended]**

117. Amend Form N-4 (referenced in §§ 239.17b and 274.11c) by:

- a. Revising Item 1.(a)(v); and
- b. Revising Instruction 17.(b) to Item 3(a).

The revisions read as follows:

**Note: The text of Form N-4 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM N-4**

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

\* \* \* \* \*

REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF  
1940

\* \* \* \* \*

**INFORMATION REQUIRED IN A PROSPECTUS**

\* \* \* \* \*

**Item 1. Cover Page**

(a) \* \* \*

(v) a statement or statements that: (A) the prospectus sets forth the information about the Registrant that a prospective investor ought to know before investing; (B) the prospectus should be kept for future reference; (C) additional information about the Registrant has been filed with the Commission and is available upon written or oral request without charge (This statement should explain how to obtain the Statement of Additional Information, whether any of it has been incorporated by reference into the prospectus, and where the table of contents of the Statement of Additional Information appears in the prospectus. If the Registrant intends to disseminate its prospectus electronically, also include the information that the Commission maintains a web site (<http://www.sec.gov>) that contains the Statement of Additional Information, material incorporated by reference, and other information regarding registrants that file electronically with the Commission.);

\* \* \* \* \*

**Item 3. Synopsis**

\* \* \* \* \*



Instructions

\* \* \* \* \*

17. \* \* \*

(b) “Total Annual [Portfolio Company] Operating Expenses” do not include extraordinary expenses. “Extraordinary expenses” refers to expenses that are distinguished by their unusual nature and by the infrequency of occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the fund, taking into account the environment in which the fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the foreseeable future, taking into consideration the environment in which the fund operates. The environment of a fund includes such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of governmental regulation. If extraordinary expenses were incurred by any portfolio company that would, if included, materially affect the minimum or maximum amounts shown in the table, disclose in a footnote to the table what the minimum and maximum “Total Annual [Portfolio Company] Operating Expenses” would have been had the extraordinary expenses been included.

\* \* \* \* \*

**§§ 239.17c and 274.11d [Amended]**

118. Amend Form N-6 (referenced in §§ 239.17c and 274.11d) by revising Item 1.(b)(3) and Instruction 4.(c) to Item 3 to read as follows:

**Note: The text of Form N-6 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM N-6**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933** □

\* \* \* \* \*

**REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF**

**1940** □

\* \* \* \* \*

**PART A: INFORMATION REQUIRED IN A PROSPECTUS**

\* \* \* \* \*

**Item 1. Front and Back Cover Pages**

\* \* \* \* \*

(b) \* \* \*

(3) State that reports and other information about the Registrant are available on the Commission’s Internet site at <http://www.sec.gov>.

\* \* \* \* \*

**Item 3. Risk/Benefit Summary: Fee Table**

\* \* \* \* \*

Instructions.

\* \* \* \* \*

4. \* \* \*

(c) “Total Annual [Portfolio Company] Operating Expenses” do not include extraordinary expenses. “Extraordinary expenses” refers to expenses that are distinguished by their unusual nature and by the infrequency of occurrence. Unusual nature means the expense has a high degree of abnormality and is clearly unrelated to, or only incidentally related to, the ordinary and typical activities of the fund, taking into account the environment in which the fund operates. Infrequency of occurrence means the expense is not reasonably expected to recur in the

foreseeable future, taking into consideration the environment in which the fund operates. The environment of a fund includes such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of governmental regulation. If extraordinary expenses were incurred by any Portfolio Company that would, if included, materially affect the minimum or maximum amounts shown in the table, disclose in a footnote to the table what the minimum and maximum “Total Annual [Portfolio Company] Operating Expenses” would have been had the extraordinary expenses been included.

\* \* \* \* \*

**§ 274.12 [Amended]**

119. Amend Form N-8B-2 (referenced in § 274.12) by revising Item 52.(e) to read as follows:

**Note: The text of Form N-8B-2 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**FORM N-8B-2**

**REGISTRATION STATEMENT OF UNIT INVESTMENT TRUSTS WHICH ARE  
CURRENTLY ISSUING SECURITIES**

\* \* \* \* \*

**VII**

**POLICY OF REGISTRANT**

52. \* \* \*

(e) Provide a brief statement disclosing whether the trust and its principal underwriter have adopted codes of ethics under rule 17j-1 of the Act [17 CFR 270.17j- 1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the trust. Also explain that these codes of ethics are available on the EDGAR Database on the Commission's Internet site at <http://www.sec.gov>, and that

copies of these codes of ethics may be obtained, after paying a duplicating fee, by electronic request at the following E-mail address: [publicinfo@sec.gov](mailto:publicinfo@sec.gov).

\* \* \* \* \*

By the Commission.

Dated: July 13, 2016

Robert W. Errett  
Deputy Secretary