

**SECURITIES AND EXCHANGE COMMISSION**

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

**[Release No. 33-10532; 34-83875; IC-33203; File No. S7-15-16]**

**RIN 3235-AL82**

**Disclosure Update and Simplification**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** We are adopting amendments to certain of our disclosure requirements that have become redundant, duplicative, overlapping, outdated, or superseded, in light of other Commission disclosure requirements, U.S. Generally Accepted Accounting Principles (“U.S. GAAP”), or changes in the information environment. We are also referring certain Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP to the Financial Accounting Standards Board (“FASB”) for potential incorporation into U.S. GAAP. The amendments are intended to facilitate the disclosure of information to investors and simplify compliance without significantly altering the total mix of information provided to investors. These amendments 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 adopting these amendments as part of our efforts to implement title LXXII, section 72002(2) of the Fixing America’s Surface Transportation Act.

**DATES:** Effective on [insert date 30 days after date of publication in the Federal Register].

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**SUPPLEMENTARY INFORMATION:** The Commission is adopting amendments to, or referring to the FASB:

<b>Commission Reference</b>		<b>CFR Citation (17 CFR)</b>
Regulation S-X <sup>1</sup>	Rule 1-02	§ 210.1-02
	Rule 2-01	§ 210.2-01
	Rule 2-02	§ 210.2-02
	Rule 3-01	§ 210.3-01
	Rule 3-02	§ 210.3-02
	Rule 3-03	§ 210.3-03
	Rule 3-04	§ 210.3-04
	Rule 3-05	§ 210.3-05
	Rule 3-12	§ 210.3-12
	Rule 3-14	§ 210.3-14
	Rule 3-15	§ 210.3-15
	Rule 3-17	§ 210.3-17
	Rule 3-20	§ 210.3-20
	Rule 3A-01	§ 210.3A-01
	Rule 3A-02	§ 210.3A-02
	Rule 3A-03	§ 210.3A-03
	Rule 3A-04	§ 210.3A-04
	Rule 4-01	§ 210.4-01
	Rule 4-07	§ 210.4-07
	Rule 4-08	§ 210.4-08
	Rule 4-10	§ 210.4-10
	Rule 5-02	§ 210.5-02
	Rule 5-03	§ 210.5-03
	Rule 5-04	§ 210.5-04
	Rule 6-03	§ 210.6-03
	Rule 6-04	§ 210.6-04
	Rule 6-07	§ 210.6-07

<sup>1</sup> 17 CFR 210.10 through 210.12-29.

<b>Commission Reference</b>		<b>CFR Citation (17 CFR)</b>
	Rule 6-09	§ 210.6-09
	Rule 6A-04	§ 210.6A-04
	Rule 6A-05	§ 210.6A-05
	Rule 7-03	§ 210.7-03
	Rule 7-04	§ 210.7-04
	Rule 7-05	§ 210.7-05
	Rule 8-01	§ 210.8-01
	Rule 8-02	§ 210.8-02
	Rule 8-03	§ 210.8-03
	Rule 8-04	§ 210.8-04
	Rule 8-05	§ 210.8-05
	Rule 8-06	§ 210.8-06
	Rule 9-03	§ 210.9-03
	Rule 9-04	§ 210.9-04
	Rule 9-05	§ 210.9-05
	Rule 9-06	§ 210.9-06
	Rule 10-01	§ 210.10-01
	Rule 11-02	§ 210.11-02
	Rule 11-03	§ 210.11-03
	Rule 12-16	§ 210.12-16
	Rule 12-17	§ 210.12-17
	Rule 12-18	§ 210.12-18
	Rule 12-21	§ 210.12-21
	Rule 12-22	§ 210.12-22
	Rule 12-23	§ 210.12-23
	Rule 12-24	§ 210.12-24
	Rule 12-27	§ 210.12-27
	Rule 12-28	§ 210.12-28
	Rule 12-29	§ 210.12-29
Regulation S-K <sup>2</sup>	Item 10	§ 229.10
	Item 101	§ 229.101
	Item 201	§ 229.201
	Item 302	§ 229.302
	Item 303	§ 229.303
	Item 406	§ 229.406
	Item 503	§ 229.503
	Item 504	§ 229.504
	Item 508	§ 229.508
	Item 512	§ 229.512

<sup>2</sup> 17 CFR 229.10 through 229.1208.

Commission Reference		CFR Citation (17 CFR)
	Item 601	§ 229.601
Regulation M-A <sup>3</sup>	Item 1010	§ 229.1010
Regulation AB <sup>4</sup>	Item 1118	§ 229.1118
Securities Act of 1933 (Securities Act) <sup>5</sup>	Rule 158	§ 230.158
	Rule 405	§ 230.405
	Rule 436	§ 230.436
	Form S-1	§ 239.11
	Form S-3	§ 239.13
	Form S-11	§ 239.18
	Form S-4	§ 239.25
	Form F-1	§ 239.31
	Form F-3	§ 239.33
	Form F-4	§ 239.34
	Form F-6	§ 239.36
	Form F-7	§ 239.37
	Form F-8	§ 239.38
	Form F-10	§ 239.40
	Form F-80	§ 239.41
	Form SF-1	§ 239.44
	Form SF-3	§ 239.45
	Form 1-A	§ 239.90
	Form 1-K	§ 239.91
	Form 1-SA	§ 239.92
Securities Exchange Act of 1934 (Exchange Act) <sup>6</sup>	Rule 3a51-1	§ 240.3a51-1
	Rule 10A-1	§ 240.10A-1
	Rule 12b-2	§ 240.12b-2
	Rule 12g-3	§ 240.12g-3
	Rule 13a-10	§ 240.13a-10
	Rule 13b2-2	§ 240.13b2-2

<sup>3</sup> 17 CFR 229.1000 through 229.1016.

<sup>4</sup> 17 CFR 229.1100 through 229.1125.

<sup>5</sup> 15 U.S.C. 77a *et seq.*

<sup>6</sup> 15 U.S.C. 78a *et seq.*

<b>Commission Reference</b>		<b>CFR Citation (17 CFR)</b>
	Rule 14a-101	§ 240.14a-101
	Rule 15c3-1g	§ 240.15c3-1g
	Rule 15d-2	§ 240.15d-2
	Rule 15d-10	§ 240.15d-10
	Rule 17a-5	§ 240.17a-5
	Rule 17a-12	§ 240.17a-12
	Rule 17g-3	§ 240.17g-3
	Rule 17h-1T	§ 240.17h-1T
	Form 10	§ 249.210
	Form 20-F	§ 249.220f
	Form 40-F	§ 249.240f
	Form 10-K	§ 249.310
	Form 11-K	§ 249.311
	Form 10-D	§ 249.312
	Form X-17A-5	§ 249.617
Investment Company Act of 1940 (Investment Company Act) <sup>7</sup>	Form N-8B-2	§ 274.12
Securities Act and Investment Company Act	Form N-5	§ 239.24 and 274.5
	Form N-1A	§ 239.15A and 274.11A
	Form N-2	§ 239.14 and 274.11a-1
	Form N-3	§ 239.17a and 274.11b
	Form N-4	§ 239.17b and 274.11c
	Form N-6	§ 239.17c and 274.11d

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<sup>7</sup> 15 U.S.C. 80a *et seq.*

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## I. Introduction and Background

On July 13, 2016, the Commission proposed amendments to certain disclosure requirements that have become redundant, duplicative, overlapping, outdated, or superseded, in light of other Commission disclosure requirements, U.S. GAAP, International Financial Reporting Standards (“IFRS”), or changes in the information environment.<sup>8</sup> The Commission also solicited comments on a number of disclosure requirements that overlap with, but require information incremental to, U.S. GAAP<sup>9</sup> to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP.<sup>10</sup> Today we are adopting most of the proposed amendments substantially as proposed. In some cases, based on input from commenters, we are making modifications to the proposed amendments, and in other cases, we are not adopting the proposed amendments. In a few instances, we are adopting additional changes to our rules to make technical corrections and similar amendments identified in connection with this rulemaking. We believe the amendments will facilitate the disclosure of information to investors and simplify compliance without significantly altering the total mix of information provided to investors.<sup>11</sup> We also believe that by eliminating redundant, duplicative, overlapping, outdated, or superseded disclosure requirements we may improve investors’ ability to make investment decisions more efficiently and reduce issuer compliance costs, which may encourage capital formation. These amendments are a result of the staff’s ongoing evaluation of

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<sup>8</sup> See *Disclosure Update and Simplification* Release No. 33-10110 (July 13, 2016) [81 FR 51607 (Aug. 4, 2016)] (“Proposing Release”).

<sup>9</sup> In this release, we refer to such requirements as “incremental” Commission disclosure requirements.

<sup>10</sup> We refer to the proposed amendments and this additional comment solicitation collectively as “proposals.”

<sup>11</sup> The Supreme Court has 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).

our disclosure requirements<sup>12</sup> and also are part of our efforts to implement title LXXII, section 72002(2) of the Fixing America’s Surface Transportation Act<sup>13</sup> (the “FAST Act”).

The staff will review these amendments, including any impact on disclosure and capital formation, not later than five years after the effective date of the amendments, and report to the Commission.

#### **A. Scope of Amendments**

The amendments affect a variety of entities we regulate. Throughout this release, we refer to the affected entities as issuers. The requirements discussed may apply to entities other than issuers of securities or to subsets of such issuers and, thus, each requirement should be referenced for its specific scope. Entities other than issuers may include, for example, significant acquirees for which financial statements are required under Rule 3-05 of Regulation S-X, significant equity method investments for which financial statements are required under 17 CFR 210.3-09 (“Rule 3-09” of Regulation S-X), broker-dealers, investment advisers, and nationally recognized statistical rating organizations (“NRSROs”).

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

The final rule amendments affect different categories of issuers differently. Our references to domestic issuers encompass large accelerated filers,<sup>14</sup> accelerated filers,<sup>15</sup> and non-

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<sup>12</sup> The staff, under its Disclosure Effectiveness Initiative, is reviewing the disclosure requirements in Regulation S-K and Regulation S-X and is considering ways to improve the disclosure regime for the benefit of both companies and investors. The goal is to comprehensively review the requirements and make recommendations on how to update them to facilitate timely, material disclosure by companies and investors’ access to that information.

<sup>13</sup> Pub. L. No. 114-94

<sup>14</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

accelerated filers,<sup>16</sup> as well as emerging growth companies<sup>17</sup> (“EGCs”) and smaller reporting companies<sup>18</sup> (“SRCs”). In this release, we have highlighted the Commission disclosure requirements that affect SRCs differently from non-SRCs. Our references to foreign private issuers<sup>19</sup> include issuers that may be large accelerated filers, accelerated filers, or non-accelerated filers, as well as EGCs.<sup>20</sup> Specifically:

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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>15</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>16</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>17</sup> An EGC is an issuer with less than \$1.07 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 \$1.07 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 \$1.07 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). *See* Rule 405 of Regulation C under the Securities Act and Rule 12b-2 of the Exchange Act.

<sup>18</sup> An SRC is 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, Rule 12b-2 of the Exchange Act, and Item 10(f) of Regulation S-K.

On June 28, 2018, the Commission adopted amendments to the SRC definition. Under the amended rules, a company with a public float of less than \$250 million will qualify as a SRC. A company with no public float or with a public float of less than \$700 million will qualify as a SRC if it had annual revenues of less than \$100 million during its most recently completed fiscal year. *See Amendments to Smaller Reporting Company Definition*, Release No. 33-10513 (Jun. 28, 2018) [83 FR 31992 (July 10, 2018)]. The rules will be effective September 10, 2018.

<sup>19</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>20</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. The amendments affect these SRCs in the same ways as domestic SRC issuers.

- Amendments involving Regulation S-K relate to domestic issuers<sup>21</sup> and foreign private issuers that elect to file on forms used by domestic issuers.
- Amendments involving Regulation S-X generally relate 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<sup>22</sup> with a reconciliation to U.S. GAAP.<sup>23</sup>
- Amendments involving Commission forms relate to either domestic issuers or foreign private issuers, depending on the form under discussion. For example, the amendments to the “F” series of forms<sup>24</sup> only affect foreign private issuers.

Some of the amendments also affect asset-backed issuers.<sup>25</sup>

## 2. Issuers Offering Securities under Regulation A

Some of the amendments affect Regulation A issuers, as follows:<sup>26</sup>

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<sup>21</sup> Domestic issuers include foreign issuers that do not meet the definition of foreign private issuer.

<sup>22</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>23</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 an amendment to Regulation S-X also affects foreign private issuers that report under IFRS, we discuss both U.S. GAAP and IFRS.

<sup>24</sup> For example, these forms include Forms F-1, F-3, F-4, and 20-F.

<sup>25</sup> “Asset-backed issuer” is defined in Item 1101(b) of Regulation AB [17 CFR 229.1101(b)]. See the amendments regarding: (1) invitations for competitive bids discussed in Section III.B.2, (2) available information discussed in Section IV.C.2, (3) matters submitted to a vote of security holders discussed in Section V.C.2, and (4) incorrect references in General Instruction J(1)(e) to Form 10-K discussed in Section V.D.

<sup>26</sup> See Rules 251 – 263 of Regulation A [17 CFR 230.251 – 230.263]. Regulation A is an exemption from Securities Act registration for offerings by issuers that comply with the requirements of the exemption. 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, while a Tier 2 offering limits that sum to \$50 million. Rule 251(a)(1) and (2) of Regulation A.

- Amendments involving Regulation S-K affect Regulation A issuers that provide narrative disclosure that follows Part I of Form S-1 or Part I of Form S-11 in Part II of Form 1-A.
- Amendments involving Rule 4-10, Rule 8-04, Rule 8-05, and Rule 8-06 of Regulation S-X affect all Regulation A issuers. Amendments involving Rule 8-03(a) of Regulation S-X affect Regulation A issuers that report under U.S. GAAP. Amendments involving the remaining rules in 17 CFR 210.8-01 through 210.8-08 (“Article 8” of Regulation S-X) affect only Regulation A issuers in a Tier 2 offering that report under U.S. GAAP. No other amendments involving Regulation S-X affect Regulation A issuers.
- Amendments involving Regulation A forms may affect issuers that report under U.S. GAAP or Canadian issuers that report under IFRS.<sup>27</sup>

In this release, we have highlighted the Commission disclosure requirements that affect Regulation A issuers.<sup>28</sup>

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

Certain amendments are applicable to issuers regulated under the Investment Company Act, as follows:

- Amendments involving Regulation S-K affect business development companies to which the regulation applies.

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<sup>27</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, Item 7(b) of Form 1-K, and Item 3 of Form 1-SA.

<sup>28</sup> Statements about the effect of an amendment 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.C.2.

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

#### **4. Other Entities**

Certain amendments also are applicable to registered broker-dealers, investment advisers, and NRSROs.

##### **B. Comments on Objective and Scope of the Proposing Release**

Many commenters were generally supportive of the objective of the release.<sup>29</sup> These commenters indicated that the proposed amendments would improve the effectiveness and usefulness of the information presented to investors while also decreasing the costs of preparing that information, which would also benefit investors. Some of these commenters also identified additional redundancies and overlapping disclosures that the Commission should address.<sup>30</sup> In addition, some commenters recommended that the Commission establish a process to address future redundant, overlapping, outdated, or superseded disclosures.<sup>31</sup>

Some commenters objected to the overall objective and scope of the release to the extent it could result in the elimination of any currently required disclosures.<sup>32</sup> These commenters stated that investors want more (not less) disclosures and provided examples, such as

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<sup>29</sup> See, e.g. letters from Center for Audit Quality (Oct. 3, 2016) (“CAQ”); CFA Institute (Dec. 7, 2016) (“CFA”); Financial Executives International (Oct. 27, 2016) (“FEI”); Shearman & Sterling LLP (Dec. 1, 2016) (“Shearman”); and U.S. Chamber of Commerce (Oct. 27, 2016) (“USCC”).

<sup>30</sup> See, e.g. letters from CAQ and Ernst & Young LLP (Oct. 31, 2016) (“E&Y”).

<sup>31</sup> See, e.g. letters from CAQ; CFA; Corporate Governance Coalition for Investor Value (Oct. 27, 2016) (“CGCIV”); FEI; and USCC.

<sup>32</sup> See, e.g. letters from American Federation of Labor and Congress of Industrial Organizations (Oct. 31, 2016) and Americans for Financial Reform (“AFL-CIO and AFR”); Financial Accountability and Corporate Transparency Coalition (Oct. 3, 2016) (“FACT Coalition”); Public Citizen (Oct. 18, 2016) (“Public Citizen”); and Robert E. Rutkowski (Nov. 7, 2016) (“Rutkowski”).

environmental, social, and governance disclosures.<sup>33</sup> Some commenters also expressed concern that, due to the proposed amendments’ reliance on U.S. GAAP, and considering the FASB’s standard-setting projects related to disclosure framework and materiality, information that is material under the current disclosure framework would no longer be provided to investors.<sup>34</sup>

Several commenters also expressed concern about the timing of the proposal.<sup>35</sup> For example, some commenters were concerned that there was not sufficient time for the staff to consider the comments received on the Commission’s earlier concept release on disclosures required by Regulation S-K<sup>36</sup> in determining its proposals because those comments were due the same month the proposal was issued.<sup>37</sup> Other commenters were concerned that the 60-day comment period specified in the Proposing Release did not provide an adequate amount of time to fully consider and provide thoughtful, comprehensive comments.<sup>38</sup> In response to these comments, the Commission extended the comment period by 30 days.<sup>39</sup> We also note that the topics discussed in the Regulation S-K Concept Release were generally broader in scope than the relatively more discrete changes set forth in the Proposing Release.

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

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

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<sup>33</sup> *Id.*

<sup>34</sup> *See, e.g.* letters from AFL-CIO and AFR; California Public Employees’ Retirement System (Nov.2, 2016) (“CalPERS”); and Public Citizen. *See also* discussion in Section I.D. below.

<sup>35</sup> *See, e.g.* letters from AFL-CIO and AFR; Domini Social Investments LLC (Nov. 1, 2016) (“Domini”); and Public Citizen.

<sup>36</sup> *See* Business and Financial Disclosure Required by Regulation S-K, Release No. 33-10064 (Apr. 13, 2016) (“Regulation S-K Concept Release”) [81 FR 23915 (Apr. 22, 2016)]

<sup>37</sup> *See, e.g.* letters from AFL-CIO and AFR and FACT Coalition.

<sup>38</sup> *See, e.g.* letters from American Gas Association (Aug. 24, 2016) and Center for Audit Quality (Aug. 4, 2016).

<sup>39</sup> *See Extension of Comment Period for Disclosure Update and Simplification*, Release No. 33-10220 (September 23, 2016) [81 FR 66898 (Sept. 29, 2016)]

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 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 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” for purposes of the federal securities laws.<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 the designated private-sector accounting

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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 78l(b)] and 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 May 1, 2003], (“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

standard setter in the United States, the FASB seeks to undertake a transparent, public standard-setting process.<sup>47</sup> As required under the securities laws, including the Sarbanes-Oxley Act, the Commission monitors the FASB's ongoing compliance with the expectations and views expressed in the 2003 FASB Policy Statement.<sup>48</sup>

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

### **a) Overview**

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 that the FASB later added to U.S. GAAP.<sup>49</sup> Other Commission disclosure requirements have been superseded by U.S. GAAP.<sup>50</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

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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.

<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%2FDocument\\_Page&cid=1176162391050](http://www.fasb.org/cs/ContentServer?c=Document_C&pagename=FASB%2FDocument_C%2FDocument_Page&cid=1176162391050).

<sup>48</sup> The 2003 FASB Policy Statement describes the Commission's three key expectations for the FASB. First, the FASB shall consider, in adopting accounting principles, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors, including consideration of moving towards greater reliance on principles-based accounting standards whenever it is reasonable to do so. Second, the FASB shall take reasonable steps to continue to improve the timeliness with which it completes its projects, while satisfying appropriate public notice and comment requirements. Last, the FASB shall continue to be objective in its decision-making and to weigh carefully the views of its constituents and the expected benefits and perceived costs of each standard.

*See* <https://www.sec.gov/rules/policy/33-8221.htm>.

<sup>49</sup> *See, e.g.*, Rule 4-08(h) of Regulation S-X, parts of which were subsequently incorporated into U.S. GAAP.

<sup>50</sup> *See, e.g.*, Rule 10-01(a)(7) of Regulation S-X, which refers to the disclosures required by ASC 915 on development stage entities, which the FASB has since eliminated.

updated U.S. GAAP.<sup>51</sup> In keeping with this historical practice, many of the amendments we are adopting revise or eliminate Commission disclosure requirements related to information that is addressed by more recently updated U.S. GAAP requirements.

A number of Commission disclosure requirements require information that is incremental to U.S. GAAP rather than being duplicative or overlapping. In the Proposing Release, the Commission solicited comment on certain of these incremental Commission disclosure requirements to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP.

**b) Comments on Interaction of Commission Disclosure Requirements and U.S. GAAP**

Several commenters generally supported the referral of certain Commission disclosure requirements to the FASB for potential incorporation into U.S. GAAP.<sup>52</sup> These commenters were supportive of a disclosure regime that can be consistently applied to all issuers and indicated that it is beneficial to limit the sources of financial disclosure requirements. In expressing support for a consistently applied disclosure regime, some of these commenters also indicated that having different financial reporting requirements<sup>53</sup> based on the size of the issuer

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<sup>51</sup> See, e.g., *General Revision of Regulation S-X*, Release No. 33-6233 (Sept. 2, 1980) [45 FR 63660 (Sept. 25, 1980)], *Phase One Recommendations of Task Force on Disclosure Simplification* Release No. 33-7300 (May 31, 1996) [61 FR 30397 (June 14, 1996)], and *Technical Amendments to Rules, Forms, Schedules, and Codification of Financial Reporting Policies*, Release No. 33-9026, (Apr. 15, 2009) [74 FR 18612 (Apr. 23, 2009)].

<sup>52</sup> See, e.g. letters from CAQ; CFA; Crowe Horwath LLP (Oct. 28, 2016); Grant Thornton LLP (Nov. 1, 2016) (“Grant”); and KPMG LLP (Oct. 19, 2016) (“KPMG”).

<sup>53</sup> For example, Rules 8-03(b)(5) and 10-01(b)(7) of Regulation S-X both require disclosure of the effect of changes in reporting entities on net income and per share amounts in interim periods. However, Rule 10-01(b)(7) incrementally requires, for non-SRCs, disclosure of the effect on retained earnings.

may eliminate information that is material to investors and may make preparation of financial statements as well as analysis of various issuers' financial statements more difficult.<sup>54</sup>

Some commenters expressed concern about placing more reliance on U.S. GAAP disclosure requirements without more formal Commission input or approval in the FASB standard-setting process.<sup>55</sup> One commenter expressed concern about relying on the FASB to develop or require financial disclosures that might be considered appropriate for issuers but not other entities that apply U.S. GAAP.<sup>56</sup> This commenter stated that such an approach could result in “unnecessarily costly” disclosure by entities that are not issuers.

### **c) Final Amendments**

We have determined to retain these incremental requirements and refer some of them to the FASB for its consideration of whether to incorporate such disclosure requirements into U.S. GAAP<sup>57</sup> as part of its standard-setting process.<sup>58</sup> The discussions in this Section, as well as Sections II.B, III.B, and III.D, constitute our referral to the FASB.<sup>59</sup>

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<sup>54</sup> See letters from CAQ; CFA; Grant; and KPMG.

<sup>55</sup> See letters from American Bankers Association (Sept. 15, 2016) (“ABA”); California State Teachers’ Retirement System (Nov. 18, 2016) (“CalSTRS;”); R.G. Associates, Inc. (Nov. 2, 2016) (“R.G. Associates”); and Stephen P. Percoco. (Nov. 7, 2016).

<sup>56</sup> See letter from ABA. The FASB scopes financial accounting and reporting for companies by (1) public business entities (PBEs); (2) not-for-profit entities; and (3) all other entities. The definition of PBEs encompasses an entity that “(a) is required by the U.S. Securities and Exchange Commission (SEC) to file or furnish financial statements, or does file or furnish financial statements (including voluntary filers), with the SEC (including other entities whose financial statements or financial information are required to be or are included in a filing).” This definition is broader than entities with a class of securities registered under the Exchange Act. For example, a privately-owned entity meets the definition of a PBE if it is acquired by a registrant and its financial statements are required under Rule 3-05 of Regulation S-X. See FASB’s Accounting Standards Update 2013-12, *Definition of a Public Business Entity*.

<sup>57</sup> See further discussion in Sections II and III below.

<sup>58</sup> The FASB’s Rules of Procedure sets forth procedures followed by the FASB in establishing and improving standards of financial accounting and reporting for nongovernmental entities, including procedures related to the issuance of such standards and other communications. See [http://fasb.org/cs/ContentServer?c=Document\\_C&cid=1176162391050&d=&pagename=FASB%2FDocument\\_C%2FDocumentPage](http://fasb.org/cs/ContentServer?c=Document_C&cid=1176162391050&d=&pagename=FASB%2FDocument_C%2FDocumentPage).

Any incorporation of these incremental Commission disclosure requirements into U.S. GAAP could potentially affect all entities that prepare financial statements under U.S. GAAP, including those outside the scope of our regulatory authority. Because U.S. GAAP historically has scaled disclosure requirements only by public business entities versus other entities, and not by issuer status, incorporation into U.S. GAAP could result in the application of some of these requirements to SRCs and issuers relying on Regulation A or Regulation Crowdfunding.

By [insert date that is 18 months after publication in the Federal Register], we request that the FASB complete its process to determine whether the referred disclosure items will be added to its agenda of projects for potential standard-setting.<sup>60</sup> The FASB will determine whether and, if so, how to respond to our referrals.<sup>61</sup> In the meantime, we are retaining these disclosure requirements as suggested by commenters. Any future consideration of amendments to these disclosure requirements will take into account the outcome of the standard-setting activities undertaken by the FASB, if any, in response to the referrals we are making.

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

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The International Accounting Standards Board (“IASB”), which is subject to oversight by the IFRS Foundation, is responsible for IFRS and establishes its own standard-setting agenda. The staff monitors and participates in the IASB’s standard setting activities. In connection with such participation, staff will seek to discuss this rulemaking with the IASB’s staff. For further information, see <http://www.ifrs.org/About-us/Pages/IFRS-Foundation-and-IASB.aspx>.

<sup>59</sup> See Section II.B of the 2003 FASB Policy Statement.

<sup>60</sup> We recognize that the FASB will need to expend time and resources to consider the referrals we are making in this release, in addition to carrying out its other standard-setting activities. We believe that 18 months should provide sufficient time for the FASB to appropriately consider these referrals without imposing undue constraints on the FASB’s current standard-setting agenda. Any impact to the FASB’s current operations, as a result of the referrals described in this release, including any potential change to its annual budget and related accounting support fee paid for by issuers, could depend on how much overlap there is with existing FASB projects and how the FASB allocates its resources. See Section 109(e) of the Sarbanes-Oxley Act.

<sup>61</sup> See *supra* note 59.

The FASB updates U.S. GAAP from time to time through its standard-setting projects. In the Proposing Release, the Commission invited commenters to consider two projects on the FASB's agenda when evaluating the proposals and providing feedback. In one project, the FASB proposed changes to U.S. GAAP<sup>62</sup> to describe how entities would assess whether disclosures are material<sup>63</sup> and included a proposal to revise U.S. GAAP to include a reference to materiality as a legal concept.<sup>64</sup> In another project, the FASB undertook to evaluate disclosure requirements for interim reporting.<sup>65</sup> In that project, 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>66</sup>

These FASB projects were, and the interim reporting project remains, subject to public comment and FASB deliberation and could impact those disclosure requirements we have decided to eliminate or revise on the basis that U.S. GAAP requires the same or similar

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<sup>62</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>63</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)*.

<sup>64</sup> Commenters on the FASB's standard-setting project 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>65</sup> See Project Update for Disclosure Framework: Disclosures-Interim Reporting, available at: [http://fasb.org/jsp/FASB/FASBContent\\_C/ProjectUpdatePage?cid=1176164227056](http://fasb.org/jsp/FASB/FASBContent_C/ProjectUpdatePage?cid=1176164227056).

See also 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).

<sup>66</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).

disclosure. In particular, for Commission rules that contain a specified disclosure threshold, investors may receive less information if the disclosure requirement is incorporated into U.S. GAAP and the issuer determines that the information is not material. Throughout the Proposing Release, the Commission identified 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.

Several commenters expressed concern about the interaction between the current FASB projects and the proposed amendments.<sup>67</sup> Prior to the FASB’s decision on materiality discussed below, some commenters submitted comment letters opposing reliance on U.S. GAAP as a basis to eliminate redundant or overlapping disclosure requirements, citing the FASB’s potential change in its definition of materiality as the main reason for this opposition. One of these commenters also expressed concern that the FASB’s materiality project could remove the phrase “an entity shall at a minimum provide” from several of the U.S. GAAP disclosure requirements referenced in the Proposing Release.<sup>68</sup> Other commenters stated that the FASB’s disclosure framework projects<sup>69</sup> would not have a significant effect on the proposed amendments, provided that definitions of materiality applied by the Commission and the FASB remain consistent.<sup>70</sup> Several commenters were supportive of interim disclosure requirements and supported the FASB’s tentative decision.<sup>71</sup>

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<sup>67</sup> See, e.g. letters from AFL-CIO and AFR; CalPERS; Domini; and Public Citizen.

<sup>68</sup> See letter from CalPERS.

<sup>69</sup> The current topic-specific FASB disclosure framework projects include the interim reporting project and four disclosure areas that are relevant to the amendments. These disclosure areas are: fair value measurement, defined benefit plans, income taxes, and inventory.

<sup>70</sup> See, e.g. letters from CAQ; E&Y; and KPMG.

<sup>71</sup> See letters from CAQ; CFA; KPMG; and PricewaterhouseCoopers LLP (Nov. 1, 2016) (“PwC”).

After the end of the comment period for the Proposing Release, the FASB concluded deliberations on a number of matters. For instance, in March 2018, the FASB decided not to amend U.S. GAAP to include a definition of materiality and also not to amend the disclosure sections currently in U.S. GAAP.<sup>72</sup> The FASB also made decisions related to FASB Concepts Statement No. 8. The FASB Concepts Statements are not U.S. GAAP; rather, the FASB Concepts Statements collectively compose the FASB's Conceptual Framework, which sets forth general principles to aid the FASB in identifying factors to be considered when setting disclosure requirements for individual accounting standards and evaluating existing disclosure requirements.<sup>73</sup> Among the decisions from March, the FASB will revise the concept of materiality included in the Conceptual Framework to clarify that the definition that was previously contained in FASB Concepts Statement No. 2,<sup>74</sup> which is also the definition quoted in SEC Staff Accounting Bulletin No. 99,<sup>75</sup> is the definition to be used by the FASB when it considers and formulates its standard setting projects. We believe these decisions by the FASB have clarified that the concept of materiality has not changed from the historical view of how an issuer applies materiality to the financial statements.

We believe the FASB's decision not to amend U.S. GAAP to include a definition of materiality, as well as the decisions related to FASB Concepts Statement No. 8, substantially address the concerns expressed by commenters about the impact of the current FASB standard-

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<sup>72</sup> See summary of decisions reached at the FASB Board Meeting (Mar. 21, 2018), available at: [https://www.fasb.org/jsp/FASB/FASBContent\\_C/ProjectUpdateExpandPage&cid=1176170687841](https://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdateExpandPage&cid=1176170687841).

<sup>73</sup> See Project Update for Disclosure Framework: Board's Decision Process, available at: [http://fasb.org/jsp/FASB/FASBContent\\_C/ProjectUpdatePage&cid=1176163077030](http://fasb.org/jsp/FASB/FASBContent_C/ProjectUpdatePage&cid=1176163077030).

<sup>74</sup> Statement of Financial Accounting Concepts No.2, *Qualitative Characteristics of Accounting Information*.

<sup>75</sup> See SEC Staff Accounting Bulletin: No. 99 – Materiality, which is available at: <https://www.sec.gov/interps/account/sab99.htm>.

setting projects. As a result of these decisions, we believe there will not be changes to how an issuer applies the concept of materiality to its financial statements, including the related notes. We are therefore eliminating certain of our disclosure requirements, as proposed, on the basis that U.S. GAAP requires the same or similar disclosures.<sup>76</sup> In addition, issuers remain liable for their disclosures, including the omission of any information required to make the disclosures not misleading.<sup>77</sup> Issuers should continue to consider both quantitative and qualitative factors in assessing materiality for the accounting and disclosure of an item, and also should continue to consider whether they have made critical accounting estimates and assumptions for which disclosure should be provided in MD&A.<sup>78</sup> Further, U.S. GAAP requires a description of an issuer's significant accounting policies.<sup>79</sup>

## **D. Disclosure Location Considerations**

### **a) Overview**

In some cases, our amendments result in the relocation of disclosures within a filing,<sup>80</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

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<sup>76</sup> See Sections II.B., III.B., and V.B. below.

<sup>77</sup> Exchange Act Rule 12b-20 [17 CFR 240.12b-20].

<sup>78</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 (Dec. 29, 2003)] (“2003 MD&A Release”).

<sup>79</sup> ASC 235-10-50 requires identification and description of the accounting principles followed by an issuer and the methods of applying those principles that materially affect the determination of financial position, cash flows, or results of operations.

<sup>80</sup> For example, as discussed in Section III.B.2, our amendments eliminate the disclosures about an issuer's status as a real estate investment trust (“REIT”) in the audited notes to the financial statements, in reliance on required disclosures within the same filing, but outside the audited financial statements. See also Section III.C.1 of the Proposing Release, *supra* note 1, at 51616.

relocation of these disclosures may change the prominence and/or context of both the relocated disclosures and the remaining disclosures. We refer to these consequences collectively as “Disclosure Location – Prominence Considerations.”

- Financial Statement Considerations – the amendments related to some topics 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 reporting (“ICFR”), 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>81</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, ICFR, 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. We refer to these consequences collectively as “Disclosure Location – Financial Statement Considerations.”
- 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>82</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

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<sup>81</sup> Pub. L. 104-67, 109 Stat. 737 (1995).

<sup>82</sup> For example, Regulation S-K requires, as discussed in Section III.D.5, disclosure of the amount of revenue from products and services that account for 10 percent or more of consolidated revenue. *See also* Section III.E.13 of the Proposing Release, *supra* note 1, at 51632. The corresponding U.S. GAAP requirements do not contain such bright line disclosure thresholds.

requirements about major customers, the Commission disclosure requirements we discuss contain bright line disclosure thresholds, while the corresponding U.S. GAAP requirements do not. For these topics, the elimination of the bright line threshold would potentially change the disclosure provided to investors. We refer to these considerations collectively as “Bright Line Disclosure Threshold Considerations.”

**b) Comments on Disclosure Location Considerations**

Some commenters indicated that, due to the emergence of electronic data analysis and search tools, investors and other users are generally placing less emphasis on disclosure location.<sup>83</sup> Views were mixed on relocating disclosures into the financial statements. Some commenters stated that they prefer most financial disclosures to be within the financial statements given the audit requirement and ICFR,<sup>84</sup> while others opposed relocation for these same reasons.<sup>85</sup> Numerous commenters also expressed concern about moving disclosures that contain forward-looking information into the financial statements. These commenters noted that such relocation would introduce liability concerns for registrants because the safe harbor under PSLRA would no longer apply and could create potential verification and auditability issues for auditors.<sup>86</sup> Other commenters also expressed concern that it could result in loss of information that may currently be provided by registrants voluntarily.<sup>87</sup>

Some commenters opposed eliminating any bright line thresholds in Commission disclosure requirements because the thresholds establish a baseline of disclosure for all

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<sup>83</sup> See, e.g. letters from CAQ and Davis Polk & Wardwell LLP (Nov. 2, 2016) (“Davis”).

<sup>84</sup> See, e.g. letters from Council of Institutional Investors (Sept. 22, 2016) (“CII”) and The Ohio Society of CPAs (Nov. 2, 2016).

<sup>85</sup> See, e.g. letters from CGCIV and Edison Electric Institute and American Gas Association (November 2, 2016) (“EEI and AGA”); and USCC.

<sup>86</sup> See, e.g. letters from CAQ; Davis; EEI and AGA; and FEI.

<sup>87</sup> See, e.g. letters from CalPERS; FEI; and R.G. Associates.

registrants in certain areas.<sup>88</sup> These commenters expressed concern about using a materiality standard for disclosure because it may reduce the information made available to investors or diminish comparability of registrants. Other commenters were supportive of eliminating the bright line thresholds, especially the thresholds discussed in the Proposing Release, and generally supported a more principles-based disclosure framework.<sup>89</sup> These commenters also indicated that materiality is a better disclosure standard because certain of the existing bright line thresholds result in disclosure that, in their view, is immaterial to investors and costly to provide.

### c) Final Amendments

We are adopting the majority of the proposed amendments that were identified with Disclosure Location – Prominence Considerations or Financial Statement Considerations because (a) commenters were supportive of the amendment and did not express concern with the relocation of the disclosure; or (b) the overlapping U.S. GAAP disclosure requirements, identified in the Proposing Release, are already subject to audit and ICFR requirements.<sup>90</sup> We also are amending one disclosure requirement identified with Bright Line Disclosure Thresholds Considerations relating to restrictions on dividends as proposed.<sup>91</sup> We are not adopting other

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<sup>88</sup> See, e.g. letters from AFL-CIO and AFR; CalPERS; CFA; Public Citizen; and R.G. Associates.

<sup>89</sup> See, e.g. letters from CAQ; CGCIV; The Clearing House Association L.L.C. (Oct. 28, 2016) (“Clearing House”); Davis; FEI; and USCC.

<sup>90</sup> The proposed amendments that give rise to Disclosure Location Prominence or Financial Statement Considerations include those discussed in the following sections of the Proposing Release: Section III.B.2. *REIT Disclosures – Status as a REIT*; Section III.B.3.f. *Insurance Companies – Reinsurance Transactions, Interim Financial Statements – Material Events Subsequent to the End of the Most Recent Fiscal Year*; Section III.B.3.c. *Segments*; Section III.B.3.d. *Geographic Areas*; Section III.B.3.e. *Seasonality*; Section III.B.1.c. *Research and Development Activities*; Section III.B.1.d. *Warrants, Rights, and Convertible Instruments*; Section III.C.2. *Restrictions on Dividends and Related Items*; Section III.C.3. *Geographic Areas*; Section III.D.3. *Major Customers*; Section III.D.5. *Products and Services*; and Section V.B.2. *Dividends Per Share in Interim Financial Statements*. We are not adopting any requirements to disclose forward-looking information in a registrant’s financial statements.

<sup>91</sup> See discussion in Section III.C.2 below.

proposed amendments due to concern about the relocation of the disclosure and possible loss of forward-looking and voluntary information. In addition, we are referring some of the disclosure requirements with Disclosure Location or Bright Line Disclosure Threshold Considerations to the FASB for potential incorporation into U.S. GAAP.

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

### **A. Background**

In the Proposing Release, the Commission identified a number of disclosure requirements that require substantially similar disclosures as U.S. GAAP, IFRS, or other Commission disclosure requirements. The Commission proposed to eliminate these redundant or duplicative Commission disclosure requirements to simplify issuer compliance efforts in light of the obligation to provide substantially the same information to investors under other requirements.

### **B. Redundant or Duplicative Disclosure Requirements with U.S. GAAP**

#### **1. Foreign Currencies**

Rule 3-20 of Regulation S-X describes the currency requirements for financial statements of foreign private issuers. The third sentence of Rule 3-20(d) of Regulation S-X provides the definition of “the currency of an operation’s primary economic environment” and “a hyperinflationary environment.” The Commission proposed to eliminate these definitions because U.S. GAAP provides substantially the same definitions.<sup>92</sup>

While most commenters<sup>93</sup> supported the elimination, two commenters<sup>94</sup> recommended that the Commission retain these provisions. These commenters indicated that while the

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<sup>92</sup> ASC 830-10-45-2, ASC 830-10-45-12, and ASC 830-10-55-10.

<sup>93</sup> See letters from Davis; Deloitte; & Touche LLP (Oct. 5, 2016) (“Deloitte”); E&Y; EEI and AGA; Grant; KPMG; and R.G. Associates.

<sup>94</sup> See letters from CAQ and PwC.

definitions are the same in the Commission disclosure requirement and U.S. GAAP, the definition in U.S. GAAP<sup>95</sup> can be interpreted to apply only to a subsidiary, division, branch or joint venture of the issuer rather than the issuer itself, whereas Rule 3-20(d) applies to both the issuer and each of its material operations.<sup>96</sup>

After further consideration and in light of concerns raised about whether Rule 3-20(d) and U.S. GAAP are duplicative, we are retaining the definitions in the current rule and referring the issue to the FASB for potential clarification in U.S. GAAP.

## 2. Other

The Commission proposed to eliminate a number of other requirements that are substantially redundant or duplicative of U.S. GAAP disclosures. The table below describes each of these requirements and identifies the corresponding U.S. GAAP requirement.<sup>97</sup> For the Commission disclosure requirements proposed for elimination that apply to foreign private issuers that report using IFRS, we identify the corresponding IFRS requirement.<sup>98</sup>

<b>Commission Disclosure Requirement Proposed for Elimination</b>	<b>Description of Commission Disclosure Requirement Proposed for Elimination</b>	<b>Corresponding U.S. GAAP Requirement</b>
<b>Consolidation</b>		

<sup>95</sup> ASC 830-10-45-2, ASC 830-10-45-12, and ASC 830-10-55-10.

<sup>96</sup> First sentence of Rule 3-20(d) of Regulation S-X.

<sup>97</sup> These proposed amendments are discussed in further detail in Section II.B. of the Proposing Release.

<sup>98</sup> *See supra* note 23.

<b>Commission Disclosure Requirement Proposed for Elimination</b>	<b>Description of Commission Disclosure Requirement Proposed for Elimination</b>	<b>Corresponding U.S. GAAP Requirement</b>
All except fourth sentence of Rule 3A-02(b)(1) of Regulation S-X	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 and requires recognition by disclosure or otherwise of material intervening events.	ASC 810-10-45-12 <sup>99</sup>
First sentence of Rule 3A-02(d) of Regulation S-X	Requires consideration of the propriety of consolidation under certain restrictions. <sup>100</sup>	ASC 810-10-15-10
Last two sentences of first paragraph of Rule 3A-02 of Regulation S-X and 3A-03(a) of Regulation S-X	Requires disclosure of the accounting policies followed in consolidation or combination. <sup>101</sup>	ASC 235-10-50-1 and ASC 810-10-50-1
First sentence of Rule 3A-04 of Regulation S-X	Requires elimination of intercompany transactions.	ASC 323-10-35-5a and ASC 810-10-45-1 through 45-9
<b>Obligations</b>		

<sup>99</sup> ASC 810-10-45-12 uses the phrase “about three months” instead of 93 days.

<sup>100</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>101</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.

<b>Commission Disclosure Requirement Proposed for Elimination</b>	<b>Description of Commission Disclosure Requirement Proposed for Elimination</b>	<b>Corresponding U.S. GAAP Requirement</b>
Reference to issuances in Rule 4-08(f) of Regulation S-X	Requires disclosure of significant changes <sup>102</sup> in amounts of debt issued subsequent to the latest balance sheet date.	ASC 855-10-50-2 and 855-10-55-2a
<b>Income Tax Disclosures</b>		
First sentence of Rule 4-08(h)(2) of Regulation S-X	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>Warrants, Rights, and Convertible Instruments</b>		
Rule 4-08(i) of Regulation S-X	Requires disclosure of the title and amount of securities subject to warrants or rights, the exercise price, and the exercise period. <sup>103</sup>	Non-compensatory <sup>104</sup> 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
<b>Related Parties</b>		
Reference to identification of related party transactions in Rule 4-08(k)(1) of Regulation S-X	Requires identification of related party transactions.	ASC 850-10-50-1

<sup>102</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 855-10-55-2a provides that the sale of a bond subsequent to the balance sheet date is an example of such a subsequent event.

<sup>103</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.

<sup>104</sup> Compensatory warrants and rights are those issued to an employee, non-employee or other entity for supply of goods or services for the issuer's benefit, whereas non-compensatory warrants and rights are those issued for all other reasons.

<b>Commission Disclosure Requirement Proposed for Elimination</b>	<b>Description of Commission Disclosure Requirement Proposed for Elimination</b>	<b>Corresponding U.S. GAAP Requirement</b>
<b>Contingencies</b>		
References to “material contingencies” in Rule 8-03(b)(2), <sup>105</sup> 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>106</sup>	Require disclosure of material contingencies in interim financial statements, notwithstanding disclosure in the annual financial statements.	ASC 270-10-50-6
<b>Earnings per Share</b>		
Reference to “earnings per share” in first sentence of Rule 10-01(b)(2) of Regulation S-X	Requires presentation of earnings per share on the face of an interim income statement.	ASC 270-10-50-1b
Item 601(b)(11) of Regulation S-K <sup>107</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>108</sup>
<b>Insurance Companies</b>		
Last sentence of Rule 7-03(a)(11) of Regulation S-X	Requires a description of the activities being reported in the separate accounts. <sup>109</sup>	ASC 944-80-50-1a
Rule 7-04.3(c) of Regulation S-X	Requires disclosure of the method followed in determining the cost of investments sold. <sup>110</sup>	ASC 235-10-50-1 and ASC 320-10-50-9b

<sup>105</sup> This rule specifically applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP.

<sup>106</sup> This rule specifically applies to companies other than SRCs (“non-SRCs”).

<sup>107</sup> We also proposed 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.

<sup>108</sup> IAS 33, paragraph 70, is the IFRS requirement that corresponds to the Commission disclosure requirement in Instruction 6 to “Instructions as to Exhibits” of Form 20-F.

<sup>109</sup> ASC 944-80-50-1a requires disclosure of the nature of the contracts reported in separate accounts.

<sup>110</sup> ASC 320-10-50-9b refers to the “cost of a security sold.”

<b>Commission Disclosure Requirement Proposed for Elimination</b>	<b>Description of Commission Disclosure Requirement Proposed for Elimination</b>	<b>Corresponding U.S. GAAP Requirement</b>
<b>Bank Holding Companies</b>		
Rule 9-03.6(a) of Regulation S-X	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	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	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
<b>Changes in Accounting Principles</b>		
Requirement to disclose reason for change in accounting principle in Rule 8-03(b)(5) <sup>111</sup> and Rule 10-01(b)(6) <sup>112</sup> of Regulation S-X	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>Interim Adjustments</b>		
Third sentence of Rule 3-03(d) and third sentence of Rule 10-01(b)(8) of Regulation S-X	Provide examples of adjustments in order for interim financial statements to be fairly stated.	ASC 270-10-45-10
<b>Interim Financial Statements – Common Control Transactions</b>		

<sup>111</sup> This rule specifically applies to SRCs and Regulation A issuers in a Tier 2 offering that report under U.S. GAAP.

<sup>112</sup> This rule specifically applies to non-SRCs.

Commission Disclosure Requirement Proposed for Elimination	Description of Commission Disclosure Requirement Proposed for Elimination	Corresponding U.S. GAAP Requirement
Part of first sentence of Rule 10-01(b)(3) of Regulation S-X	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>Interim Financial Statements – Dispositions</b>		
Rule 10-01(b)(5) of Regulation S-X	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

Commenters generally supported these proposed amendments due to the redundant or duplicative nature of the Commission disclosure requirements with U.S. GAAP and IFRS,<sup>113</sup> and no commenter specifically opposed the amendments. We are adopting all of the amendments described in the table above as proposed.

**C. Redundant or Duplicative Disclosure Requirements with Other Commission Requirements**

**1. Proposed Amendments**

In the Proposing Release, the Commission identified disclosure requirements that are redundant or duplicative of other Commission requirements. In most of these cases, the rule or item proposed to be eliminated is a reference to another Commission requirement and elimination would not affect compliance with the underlying requirement. The table below describes each proposed amendment.

<sup>113</sup> See, e.g. letters from CAQ; Davis; EEI & AGA; and R.G. Associates.

<b>Commission Disclosure Requirement Proposed for Elimination</b>	<b>Description of Commission Disclosure Requirement Proposed for Elimination</b>	<b>Corresponding other Commission Disclosure Requirement</b>
<b>Foreign Currency</b>		
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, which requires disclosure and quantification of departures from the methodology of Rule 3-20 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>Consolidation</b>		
Rule 4-08(a) of Regulation S-X	Requires compliance with Article 3A. <sup>114</sup>	Article 3A itself requires compliance. The requirement is repeated in Rule 4-08(a).
Rule 3A-01 of Regulation S-X	States subject matter of Article 3A.	The same information is set forth in the title of Article 3A.
<b>Report Furnished to Security Holders</b>		
Item 601(b)(19) of Regulation S-K <sup>115</sup>	Provides specific instructions to address the incorporation by reference into Form 10-Q <sup>116</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>117</sup>

## 2. Comments on Proposed Amendments

Commenters generally supported these proposed amendments.<sup>118</sup> One commenter recommended retaining the last sentence of Rule 3-20(d) of Regulation S-X without providing further explanation.<sup>119</sup>

<sup>114</sup> 17 CFR 210.3A-01 through 210.3A-04.

<sup>115</sup> We also proposed conforming revisions to delete the reference to Item 601(b)(19) of Regulation S-K in the Exhibit Table.

<sup>116</sup> 17 CFR 249.308a.

<sup>117</sup> We also proposed to amend the Exhibit Table within Item 601 of Regulation S-K to clarify that Item 601(b)(13) applies to Form 10-Q.

<sup>118</sup> See letters from Davis; Deloitte; E&Y; EEI and AGA; Grant; KPMG; and R.G. Associates.

### 3. Final Amendments

We are adopting the other amendments as proposed, with one exception. After additional analysis, we are not adopting the proposed elimination of the last sentence in Rule 3-20(d) because it relates to a small population of issuers (i.e. foreign private issuers that do not apply either U.S. GAAP or IFRS) and to avoid any unintended consequences in light of a commenter's recommendation. Additionally, the amendments eliminate a redundant requirement in Instruction 3 to Item 504 of Regulation S-K that was identified subsequent to the proposal.<sup>120</sup>

### III. Overlapping Requirements

#### A. Background

In the Proposing Release, the Commission identified 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. The Commission proposed the following related to these requirements:

- Delete 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 the overlapping U.S. GAAP, IFRS, or Commission disclosure requirements and may no longer be useful to investors.
- Integrate Commission disclosure requirements that overlap with, but require information incremental to, other Commission disclosure requirements.

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<sup>119</sup> See letter from PwC. The last sentence of Rule 3-20(d) states that "Departures from the methodology presented in this paragraph shall be quantified pursuant to Item 17(c)(2) of Form 20-F."

<sup>120</sup> The requirement to disclose the sources of any material amounts of other funds needed to accomplish the specific purpose is stated twice within the instruction.

The Commission also solicited 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.

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

### **1. Overlapping Disclosure Requirements with U.S. GAAP**

The Proposing Release identified several disclosure requirements that the Commission believed to be overlapping with U.S. GAAP.

#### **a) Repurchase and Reverse Repurchase Agreements<sup>121</sup>**

##### **(1) Proposed Amendments**

Since the requirements in Regulation S-X governing repurchase and reverse repurchase agreements were adopted in 1986, the FASB has amended the U.S. GAAP requirements for the accounting and disclosures for repurchase agreements and similar transactions,<sup>122</sup> which has resulted in overlapping disclosure requirements. We discuss these overlapping requirements and the proposed amendments below.

#### **(a) Balance Sheet Presentation**

Regulation S-X<sup>123</sup> and U.S. GAAP<sup>124</sup> both require separate presentation of repurchase liabilities associated with repurchase agreements on the face of the balance sheet.<sup>125</sup> Regulation

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<sup>121</sup> See the related discussion in Section III.D.5.

<sup>122</sup> See Accounting Standards Update (“ASU”) No. 2014-11, *Transfers and Servicing (Topic 860): Repurchase-to-Maturity Transactions, Repurchase Financings, and Disclosures*.

<sup>123</sup> See Rule 4-08(m)(1)(i) of Regulation S-X.

<sup>124</sup> See ASC 860-30-45-2.

<sup>125</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

S-X, unlike U.S. GAAP, sets forth a 10 percent threshold for separate presentation.<sup>126</sup> The Commission proposed to delete the requirement for separate presentation in Rule 4-08(m)(1)(i) and the related 10 percent threshold and noted the Bright Line Disclosure Threshold Considerations. The Commission also proposed to retain the requirement to include accrued interest payables in the separately presented liability amounts.

### **(b) Disaggregated Disclosures**

While Regulation S-X<sup>127</sup> and U.S. GAAP<sup>128</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. U.S. GAAP permits an entity to determine the appropriate level of disaggregation and classes of collateral to be presented on the basis of the nature, characteristics, and risks of the collateral pledged, whereas Regulation S-X provides a few illustrative examples of classes. 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, Rule 4-08(m)(1)(ii) of Regulation S-X requires the disaggregated disclosure to be combined in the form of a single table. Although U.S. GAAP is silent about the form of disclosure, its sole example of an approach to comply with its requirements is a single table that includes both classes of collateral as well as maturity intervals

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an opposite exchange later,” such as dollar rolls (an agreement to sell and repurchase similar but not identical securities) and securities lending transactions. *See* ASC 860-30-15-3.

<sup>126</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>127</sup> *See* Rule 4-08(m)(1)(ii) of Regulation S-X.

<sup>128</sup> *See* ASC 860-30-50-7.

similar to those required by Regulation S-X.<sup>129</sup> Overall, U.S. GAAP permits more judgment to determine the classes to be presented, the range of maturity intervals, and the form of disclosure than Regulation S-X.<sup>130</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>131</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>132</sup> U.S. GAAP also requires disclosure in the notes to the financial statements of the carrying amount and balance sheet classification of both the 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>133</sup>

The Commission proposed to delete the identified Regulation S-X requirements because the disclosures that result from compliance with U.S. GAAP, and the accompanying disclosure objectives and aggregation principles, convey reasonably similar information as the disclosures required by Regulation S-X.<sup>134</sup>

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<sup>129</sup> See ASC 860-30-55-4.

<sup>130</sup> *Id.*

<sup>131</sup> See Rules 4-08(m)(1)(ii)(A)(i) and 4-08(m)(1)(ii)(B) of Regulation S-X.

<sup>132</sup> See ASC 860-30-25-5a.

<sup>133</sup> See ASC 860-30-50-1A.b.1 and 2.

<sup>134</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.

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>135</sup> Although the FASB deliberated adding a requirement to U.S. GAAP to disclose the market value of these assets, it ultimately decided against doing so due to operability concerns.<sup>136</sup>

Based on the foregoing, the Commission proposed 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 the Commission would retain. Regulation S-X, unlike U.S. GAAP, sets forth a 10 percent threshold for the disaggregated disclosures;<sup>137</sup> therefore, the proposed amendments give rise to Bright Line Disclosure Threshold Considerations.

### (c) Collateral Policy

The Commission proposed to delete the requirement in Regulation S-X<sup>138</sup> to disclose an issuer's policy with regard to taking possession of assets purchased under reverse repurchase agreements because U.S. GAAP requires disclosure of the issuer's policy for requiring collateral or other security.<sup>139</sup> Although U.S. GAAP is not as specific as Regulation S-X about taking

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<sup>135</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>136</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>137</sup> Specifically, Regulation S-X requires the tabular disclosures if the aggregate carrying amount (or market value, if higher than the carrying amount) of the securities or other assets sold under repurchase agreements exceeds 10 percent of total assets. The amount of securities or other assets sold under repurchase agreements excludes securities and other assets for which unrealized changes in market value are reported in current income or have been obtained under reverse repurchase agreements

<sup>138</sup> See Rule 4-08(m)(2)(i)(B)(1) of Regulation S-X.

<sup>139</sup> See ASC 860-30-50-1Aa.

possession of collateral, the Commission believed Regulation S-X requires disclosures that are encompassed by the disclosures that result from compliance with U.S. GAAP.

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, the proposed amendment gives rise to Bright Line Disclosure Threshold Considerations.

## (2) Comments on Proposed Amendments

Commenters were split on the proposals related to the requirements for repurchase and reverse repurchase agreements. A number of commenters expressed support for the proposed amendments except for the elimination of the collateral policy disclosure requirement.<sup>140</sup> These commenters agreed that the U.S. GAAP disclosures provide reasonably similar information for the balance sheet presentation and disaggregated disclosure requirements. Certain commenters were not supportive of the deletion of the collateral policy disclosure requirements<sup>141</sup> and recommended referring the requirement to the FASB for potential incorporation into U.S. GAAP.<sup>142</sup> These commenters stated that the disclosure provides useful information to understanding the credit risk associated with the transactions in which the issuer does not take possession of the collateral.

Several other commenters opposed the proposed amendments, expressing concern that the amendments would eliminate disclosures that are material to investors and other users of the financial statements.<sup>143</sup> For example, one of the commenters stated that the information required

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<sup>140</sup> See letters from CAQ; Clearing House; Deloitte; E&Y; and KPMG.

<sup>141</sup> See Rule 4-08(m)(2)(i)(B)(1) of Regulation S-X.

<sup>142</sup> See letters from CAQ; Grant; and PwC.

<sup>143</sup> See, e.g. letters from As You Sow, Bellamy Woods LLC, Brighton Shores LLC, CSC LLC, Essential Information, Greenpeace, Howard's End LLC, Institute for Policy Studies – Global Economy Project, Interfaith Center on Corporate Responsibility, NF Trust, OpenTheGovernment, Public Citizen, Rolyan

by Rule 4-08(m)(1)(ii) is essential to understanding an issuers' liabilities in the repo market.<sup>144</sup> Another commenter indicated that it cannot support the proposed revisions to repurchase and reverse repurchase agreements disclosure requirements at this time, given the importance of these disclosures, the relative newness of the changes to the U.S. GAAP requirements, and the existence of differences in the form and content of the respective requirements.<sup>145</sup> One commenter also indicated that it believes repurchase and reverse repurchase agreements should be discussed in SEC filings more than just in the financial statement footnotes because they are complex financial instruments that can have a dramatic impact on the financing and liquidity of financial institutions and other businesses.<sup>146</sup>

Additionally, while one commenter explicitly supported the elimination of the 10 percent threshold in Rule 4-08(m)(1)(ii),<sup>147</sup> other commenters expressed concerns, indicating that the removal could result in less disclosure of information that is material to investors.<sup>148</sup>

### **(3) Final Amendments**

In light of the comments about the importance of the information, we are retaining the Regulation S-X disclosure requirements related to repurchase and reverse repurchase agreements and referring these requirements to the FASB for potential incorporation into U.S. GAAP.

#### **b) Derivative Accounting Policies**

##### **(1) Proposed Amendments**

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Fund, Sunlight Foundation and Zevin Asset Management, LLC (Oct. 31, 2016) (“As You Sow, et. al”); CalPERS; and CII.

<sup>144</sup> See letter from Zevin Asset Management, LLC (Nov. 2, 2016) (“Zevin”).

<sup>145</sup> See letter from CII.

<sup>146</sup> See letter from Elise J. Bean (Oct. 3, 2016) (“Bean”).

<sup>147</sup> See letter from Clearing House.

<sup>148</sup> See letters from As You Sow, et. al and Public Citizen.

Regulation S-X<sup>149</sup> and U.S. GAAP<sup>150</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 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>151</sup> In the Proposing Release, the Commission stated that it believes 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.

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<sup>149</sup> See Rule 4-08(n) of Regulation S-X and Note 2(b) to Rule 8-01 of Regulation S-X. 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>150</sup> See ASC 815-10-50.

<sup>151</sup> See ASC 235-10-50-1 and ASC 235-10-50-3.

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>152</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>153</sup> Since that time, the FASB has adopted an accounting model for derivative financial instruments, as defined under U.S. GAAP.<sup>154</sup> Because U.S. GAAP has a comprehensive accounting model for contracts that meet the definition of a derivative financial instrument, the Commission stated in the Proposing Release that it believes that the additional specific disclosure requirements in Rule 4-08(n) are no longer applicable.

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

## **(2) Comments on Proposed Amendments**

While several commenters<sup>155</sup> supported the proposed deletion of the Regulation S-X requirements related to derivative accounting policies, two commenters<sup>156</sup> expressed concern.

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<sup>152</sup> See ASC 815-10-50.

<sup>153</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, (Jan. 31, 1997) [62 FR 6044 (Feb. 10, 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 observed that the underlying concepts and criteria used in determining the applicability of those accounting methods is not consistent.

<sup>154</sup> See SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*, codified in ASC 815.

<sup>155</sup> See letters from CAQ; Deloitte; E&Y; Grant; and PwC.

One of these commenters,<sup>157</sup> while supportive of deleting the disclosure requirements, indicated that U.S. GAAP does not provide clear guidance on how to measure written options that do not meet the definition of a derivative financial instrument under U.S. GAAP.<sup>158</sup> For this reason, this commenter recommended referring this issue to the FASB for potential incorporation into U.S. GAAP. The other commenter stated that the Commission should increase instead of decrease disclosures related to derivatives.<sup>159</sup>

### (3) Final Amendments

We are eliminating most of the requirements in Rule 4-08(n) as proposed. However, after additional consideration, we are not eliminating the requirement to disclose where in the statement of cash flows the effect of derivative financial instruments is reported.<sup>160</sup> U.S. GAAP does not have a similar disclosure requirement.<sup>161</sup> We also are referring the statement of cash flows disclosure requirement to the FASB for potential incorporation into U.S. GAAP. We continue to believe that the U.S. GAAP disclosure requirements and related principles<sup>162</sup> call for information that is reasonably similar to the information called for by the disclosure requirements in Regulation S-X and that some of the additional disclosure requirements in Rule 4-08(n) are no longer applicable. Finally, we are sharing the comment letters that request review

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<sup>156</sup> See letters from Bean and KPMG.

<sup>157</sup> See letter from KPMG.

<sup>158</sup> ASC 815-10-35-1 requires all derivative instruments to be measured subsequently at fair value and written options that do not qualify for equity classification have been measured at fair value in the financial statements. See ASC 815-10-S99-4. The commenter stated the disclosure requirement in Rule 4-08(n) has been applied by analogy to measure these options at fair value. Rule 4-08(n) is not measurement guidance.

<sup>159</sup> See letter from Bean.

<sup>160</sup> Because we are no longer eliminating all of 4-08(n), we are retaining Note 2(b) to Rule 8-01.

<sup>161</sup> ASC 815 and ASC 230.

<sup>162</sup> See ASC 235-10-50-1, ASC 235-10-50-3, and ASC 815-10-50.

of the disclosures for derivatives and accounting for written options with the FASB because these considerations are beyond the scope of this rulemaking.<sup>163</sup>

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<sup>163</sup> The FASB, in its role of establishing and maintaining U.S. GAAP, continuously monitors the financial reporting environment and objectively considers all stakeholder views on accounting and reporting issues in order to evaluate the effectiveness of U.S. GAAP in providing investors with decision useful information and to determine whether changes to U.S. GAAP are needed. The items raised by commenters here is an external source of data available for the FASB's consideration when evaluating potential improvements to U.S. GAAP.

**c) Research and Development Activities**

**(1) Proposed Amendments**

Regulation S-K requires disclosures, if material, of the amount spent on research and development activities for all years presented.<sup>164</sup> The Commission proposed to delete this requirement because, although Regulation S-K uses terms that differ from U.S. GAAP,<sup>165</sup> U.S. GAAP requires reasonably similar disclosures.

First, Regulation S-K refers to the “amount spent,” while U.S. GAAP refers to “costs charged to expense” or “costs incurred.” The Commission release adopting this requirement used the term “expense” when discussing this requirement.<sup>166</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 research and development expenses to be disclosed should be determined in accordance with U.S. GAAP, suggesting no difference in scope was intended.<sup>167</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 refers to all other parties, which is broader than 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

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<sup>164</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>165</sup> See ASC 730-10-50-1 and ASC 730-20-50-1.

<sup>166</sup> See *Adoption of Disclosure Regulation and Amendments of Disclosure Forms and Rules*, Release No. 33-5893 (Dec. 23, 1977) [42 FR 65554 (Dec. 30, 1977)] (“Regulation S-K Adopting Release”).

<sup>167</sup> *Id.*

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>168</sup>

Similarly, 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. The Commission proposed 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>169</sup> In certain circumstances, IFRS requires that amounts spent on development be capitalized as an intangible asset, instead of expensed, and also disclosed.<sup>170</sup> While Commission disclosure requirements use terms different from IFRS, the Commission stated in the Proposing Release that it believes IFRS results in reasonably similar disclosures for the same reasons discussed above with regards to differences in terminology between Commission disclosure requirements and U.S. GAAP.

Form 1-A also requires Regulation A issuers to disclose, if material, the amount spent on research and development activities for all years presented.<sup>171</sup> As this requirement is based on the requirement in Regulation S-K, Regulation A issuers that report under either U.S. GAAP or

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<sup>168</sup> See *Small Business Initiatives*, Release No. 33-6949, (Jul. 30, 1992) [57 FR 36442 (Aug. 13, 1992)].

<sup>169</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.

<sup>170</sup> See paragraphs 57 and 118 of IAS 38, *Intangible Assets* for the criteria to be used when determining whether to capitalize development expenditures, including internal costs, and the related disclosures. The capitalized amounts are amortized and reflected as amortization expense on the income statement.

<sup>171</sup> Item 7(a)(1)(iii) of Form 1-A.

IFRS provide substantially the same information in the notes to their financial statements, as described above.

Accordingly, the Commission proposed to delete Item 101(c)(1)(xi) of Regulation S-K and Item 101(h)(4)(x) of Regulation S-K, Item 5.C of Form 20-F, and Item 7(a)(1)(iii) of Form 1-A. The Proposing Release noted Disclosure Location – Prominence Considerations, because these disclosures are located in the business description section of the filing, while the corresponding U.S. GAAP and IFRS disclosures are in the notes to the financial statements.

## **(2) Comments on Proposed Amendments**

Most commenters were supportive of the proposed amendments.<sup>172</sup> Additionally, a commenter recommended that the Commission consider feedback from preparers and users, including feedback provided in response to the S-K Concept Release, that issuers may 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 the safe harbor under the PSLRA. This commenter indicated some registrants do voluntarily provide qualitative disclosures about research and development activities and the loss of this information may be material to a user's understanding of the registrant's financial statements.<sup>173</sup> Another commenter recommended also rescinding the requirement to disclose a description of a foreign private issuer's research and development policies for the last three years in Item 5.C of Form 20-F or clarifying whether this disclosure requirement relates to accounting policies or research and development activities.<sup>174</sup>

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<sup>172</sup> See letters from CAQ; Deloitte; E&Y; Grant; KPMG; and PwC.

<sup>173</sup> See letter from KPMG.

<sup>174</sup> See letter from E&Y.

One commenter did not support the deletion of Item 101(c)(1)(xi) and Item 101(h)(4)(x) of Regulation S-K, indicating that these disclosures, along with other disclosures required by Item 101, are necessary in assessing and understanding a company's ability to create long-term value for shareholders.<sup>175</sup>

### **(3) Final Amendments**

We are adopting the amendments as proposed. We do not believe eliminating these requirements regarding amounts spent on research and development activities will affect the assessment and understanding of a company's ability to create long-term value for shareholders, as this information will remain in the notes to the financial statements. In addition, disclosure of trend information related to research and development activities and expenses, where material, is required by Item 303 of Regulation S-K,<sup>176</sup> and we expect registrants to continue to provide such disclosures as necessary. Further, the proposed amendments do not preclude registrants from continuing to provide voluntary disclosures as part of the description of their business or elsewhere outside the financial statements.

We are not eliminating the requirement to disclose a description of a foreign private issuer's research and development policies for the last three years, as one commenter suggested.

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<sup>175</sup> See letter from CalSTRS.

<sup>176</sup> For example, Item 303(a)(3)(ii) of Regulation S-K requires a description of “*any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the registrant knows of events that will cause a material change in the relationship between costs and revenues (such as known future increases in costs of labor or materials or price increases or inventory adjustments), the change in the relationship shall be disclosed.*”

This requirement was initially adopted as part of the description of business disclosure, and it is intended to cover research and development activity rather than an accounting policy.<sup>177</sup>

**d) Warrants, Rights, and Convertible Instruments**

**(1) Proposed Amendments**

Item 201(a)(2)(i) of 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 common equity has no established United States public trading market. 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>178</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>179</sup> As such, the Commission proposed to delete Item 201(a)(2)(i) of Regulation S-K.

The Proposing Release explained that the proposed amendments give rise to Disclosure Location – Prominence Considerations 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, while the U.S. GAAP disclosures are in the notes to the financial statements.

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<sup>177</sup> See *Adoption of Foreign Issuer Integrated Disclosure System*, Release No. 34-19258 ((Nov. 19, 1982) [47 FR 54764 (Dec. 6, 1982)]; *Foreign Private Issuers*, Release No. 34-14128 (Nov. 2, 1977) [42 FR 58684 (Nov. 10, 1977)].

<sup>178</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>179</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.

## **(2) Comments on Proposed Amendments**

Most commenters were supportive of the proposed amendments.<sup>180</sup> One commenter opposed the amendments, stating that these requirements should not be eliminated because U.S. GAAP does not explicitly require the same information and the disclosure requirements in Regulation S-K are more “straightforward.”<sup>181</sup>

## **(3) Final Amendments**

We are eliminating Item 201(a)(2)(i) of Regulation S-K as proposed. We believe U.S. GAAP elicits reasonably similar information to that required by the disclosure requirement in Regulation S-K, and in some cases, would elicit information for a broader array of potentially dilutive arrangements. For example, disclosure of the existence of contingently issuable shares is not an explicit requirement in Item 201(a)(2)(i), though it is explicitly contemplated by the U.S. GAAP requirement.<sup>182</sup>

### **e) Equity Compensation Plans**

#### **(1) Proposed Amendments**

Regulation S-K prescribes the form and content for the disclosure of existing equity compensation plans where equity securities are authorized for issuance.<sup>183</sup> This information is currently required in Part III of Form 10-K, Item 11 of Form S-1, Item 9 of Form 10, and Item 10

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<sup>180</sup> See letters from CAQ; Deloitte; E&Y; Grant; KPMG; and PwC.

<sup>181</sup> See letter from Bean.

<sup>182</sup> See ASC 260-10-50.

<sup>183</sup> See Item 201(d) of Regulation S-K.

of Schedule 14A.<sup>184</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>185</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>186</sup> and (2) disclosure of any formula for calculating the number of securities available for issuance under the plan.<sup>187</sup> Item 201(d) further provides instructions about the aggregation of equity compensation plan disclosures. Although these requirements are not explicitly contained in U.S. GAAP, the Commission stated in the Proposing Release that it believes 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>188</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. The Commission adopted these requirements in 2001<sup>189</sup> before the major national securities exchanges required listed issuers to have, with limited exceptions, shareholder approved plans.<sup>190</sup>

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<sup>184</sup> 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>185</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>186</sup> See Instruction 5 to Item 201(d).

<sup>187</sup> See Instruction 8 to Item 201(d).

<sup>188</sup> ASC 718-10-50-1a.

<sup>189</sup> See *Disclosure of Equity Compensation Plan Information*, Release No. 33-8048 (Dec. 21, 2001) [67 FR 232 (Jan. 2, 2002)].

<sup>190</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*

Because the exchanges<sup>191</sup> on which the majority of domestic issuers, representing substantially all domestic issuer market capitalization, are listed now have such requirements, the Commission stated in the Proposing Release that it believed disaggregation of the disclosures about the plans in this manner is no longer useful to investors.<sup>192</sup>

Based on the foregoing, the Commission proposed to delete Item 201(d) and the references to it in Part III of Form 10-K and Item 10(c) of Schedule 14A. These proposed amendments would not affect the disclosures related to new plans or modifications of existing plans subject to shareholder action.<sup>193</sup> 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 proposed amendments, Item 201(d) disclosures would no longer be provided in Schedule 14A<sup>194</sup> alongside information on equity compensation plans subject to security holder action. Instead, investors would obtain that information from the notes to the financial

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*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) [68 FR 39995 (Jul. 3, 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) [68 FR 59650 (Oct. 16, 2003)]; and NYSE MKT Company Guide § 711.

<sup>191</sup> These exchanges are the NYSE, NYSE MKT, and Nasdaq.

<sup>192</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 Disclosure Effectiveness Working Group of the Federal Regulation of Securities Committee and the Law & Accounting Committee of the American Bar Association (“ABA Committee”) (Mar. 6, 2015), available at <https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness.shtml>.

<sup>193</sup> *See* Items 10(a), 10(b), and the Instructions to 10(c) of Schedule 14A.

<sup>194</sup> The proposed amendment to delete the Item 201(d) requirements from Schedule 14A would 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.

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 the safe harbor under the PSLRA.

## **(2) Comments on Proposed Amendments**

Some commenters<sup>195</sup> supported the proposed amendments, but a number of commenters<sup>196</sup> opposed eliminating certain Item 201(d) disclosure requirements. Some commenters expressed concern that the proposed amendments would eliminate the requirement to disclose the number of shares available for future issuance,<sup>197</sup> which they stated is material to shareholders.<sup>198</sup> Other commenters<sup>199</sup> opposed deleting the requirement to disclose the formula for calculating the number of securities available for issuance under the equity compensation plan.<sup>200</sup> These commenters indicated that such disclosure is not likely to occur without further clarification of how the general disclosure principle in U.S. GAAP applies to the calculation, and recommended we refer this item to the FASB for potential incorporation into U.S. GAAP. Additionally, some commenters opposed the deletion of the disaggregation disclosure requirement.<sup>201</sup>

## **(3) Final Amendments**

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<sup>195</sup> See letters from E&Y; FedEx Corporation (Nov. 2, 2016) (“FedEx”); Grant; and KPMG.

<sup>196</sup> See, e.g. letters from AFL-CIO and AFR; CalSTRS; CalPERS; CAQ; and Public Citizen.

<sup>197</sup> See Instruction 5 of Item 201(d) of Regulation S-K.

<sup>198</sup> See, e.g. letter from AFL-CIO and AFR.

<sup>199</sup> See letters from CAQ; Deloitte; and PwC.

<sup>200</sup> See Instruction 8 of Item 201(d) of Regulation S-K.

<sup>201</sup> See letters from As You Sow, et al. and Public Citizen.

After further consideration, we are retaining the equity compensation plans disclosure requirements and are referring them to the FASB for potential incorporation into U.S. GAAP. We recognize the concerns expressed by commenters that U.S. GAAP does not explicitly require certain information, such as the formula for calculating the number of securities available for issuance under the plan. This information may be material to investors in making informed decisions about the scope of an issuer’s equity compensation program and the potential dilutive effect, both economically and in voting power, of awards authorized for issuance under all equity compensation plans.

**f) Ratio of Earnings to Fixed Charges**

**(1) Proposed Amendments**

Regulation S-K requires issuers that register debt securities to disclose the historical and pro forma ratios of earnings to fixed charges.<sup>202</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>203</sup> Regulation S-K further requires the filing of an exhibit setting forth the computation of any ratio of earnings to fixed charges.<sup>204</sup> Similarly, 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. U.S. GAAP and IFRS require disclosure of many of the components commonly used in this ratio (e.g., income, interest

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<sup>202</sup> See Item 503(d) and Item 1010(a)(3) of Regulation M-A. These requirements only apply to non-SRCs. See Item 503(e) and Item 601(c) of Regulation S-K.

<sup>203</sup> *Id.*

<sup>204</sup> Item 601(b)(12).

expense, lease expense), 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.

A variety of analytical tools are available today to investors that may accomplish a similar objective as the ratio of earnings to fixed charges. This ratio measures the issuer's ability to service fixed financing expenses – specifically, interest expense, including management's approximation of the portion of lease 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>205</sup> the interest coverage ratio,<sup>206</sup> and the debt-service coverage ratio,<sup>207</sup> which can be calculated based on information readily available in the financial statements. Certain components commonly used in the ratio of earnings to fixed charges, such as the portion of lease expense that represents interest<sup>208</sup> and the amortization of capitalized interest, are not readily available elsewhere. Despite this, the requirement to disclose the ratio of earnings to fixed charges, as opposed to the various components (e.g., income,

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<sup>205</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>206</sup> The interest coverage ratio is often calculated as earnings before interest and taxes divided by interest payments.

<sup>207</sup> The debt-service coverage ratio is often calculated as operating income divided by total debt service.

<sup>208</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.

interest expense, lease expense) of this ratio that investors may use as desired, may place undue emphasis on this particular measure.

Moreover, while debt agreements may contain fixed charge coverage covenants,<sup>209</sup> debt investors often negotiate contractual agreements with issuers to obtain financial information to meet their needs,<sup>210</sup> which may be more relevant and useful than a prescribed disclosure of a 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>211</sup>

Based on these considerations, the Commission proposed to remove the requirement to disclose the ratio of earning to fixed charges by deleting Item 503(d) and Item 601(b)(12).<sup>212</sup>

The Commission also proposed to delete Instruction 7 to “Instructions as to Exhibits” of Form 20-F.

## (2) Comments on Proposed Amendments

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<sup>209</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>210</sup> One commenter on the Disclosure Effectiveness Initiative stated: “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 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.” See letter from ABA Committee (Mar. 6, 2015), available at <https://www.sec.gov/comments/disclosure-effectiveness/disclosureeffectiveness-32.pdf>.

<sup>211</sup> See 2003 MD&A Release.

<sup>212</sup> The Commission additionally proposed 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.

Commenters were supportive of the proposed amendments.<sup>213</sup> One of these commenters indicated that, in its experience, the ratio of earnings to fixed charges is generally not used by investors or other users of financial statements, and debt covenant financial requirements may already be disclosed where material<sup>214</sup> and vary significantly from company to company.<sup>215</sup> Another commenter, while supportive of the proposed amendments, recommended that the Commission obtain feedback from investors about the continued utility of the pro forma ratio disclosure, as information on a pro forma basis may not be as readily available.<sup>216</sup>

### **(3) Final Amendments**

We are adopting the amendments as proposed, including the elimination of the pro forma ratio. Although one commenter suggested that pro forma information may be less readily available, we note that information about the offering's effect on fixed charges, such as the interest rate, maturities, and amount of proceeds used to discharge indebtedness, is currently required by Item 504 of Regulation S-K.<sup>217</sup>

#### **g) Other**

##### **(1) Proposed Amendments**

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<sup>213</sup> See, e.g. letters from CAQ; CGCIV; National Association of Real Estate Investments Trusts (Oct. 28, 2016) ("NAREIT"); and Shearman and USCC.

<sup>214</sup> For example, the 2003 MD&A release (<https://www.sec.gov/rules/interp/33-8350.htm>) states that if covenants limit, or are reasonably likely to limit, a company's ability to undertake financing to a material extent, the company is required to discuss the covenants in question and the consequences of the limitation to the company's financial condition and operating performance.

<sup>215</sup> See letter from FedEx.

<sup>216</sup> See letter from Deloitte.

<sup>217</sup> Item 504 of Regulation S-K requires disclosure of the principal purposes for which the net proceeds to the registrant from the securities to be offered are intended to be used and the approximate amount intended to be used for each such purpose. In addition, Instruction 4 of Item 504 of Regulation S-K requires disclosure of the interest rate and maturity of such indebtedness, if any material part of the proceeds is to be used to discharge indebtedness.

The table below describes each of the remaining disclosure requirements that are overlapping with U.S. GAAP and the proposed amendments.<sup>218</sup>

Topic	Commission Disclosure Requirement(s)	Proposed Amendments
REIT Disclosures – Undistributed Gains or Losses on the Sale of Properties	Rule 3-15(a)(2) of Regulation S-X	Delete as U.S. GAAP <sup>219</sup> also sets forth presentation of components of stockholders’ equity and the incremental requirement to separately present undistributed gain/loss on the sale of properties on a book basis is not useful to investors because of the unique tax status of REITs. <sup>220</sup>
Consolidation - Difference in Fiscal Periods	Rule 3A-02(b)(1) of Regulation S-X	Delete as U.S. GAAP <sup>221</sup> requires similar presentations. The incremental requirements in Rule 3A-02(b)(1) (1) to disclose the subsidiary’s fiscal year closing date and (2) an explanation of the necessity for using different closing dates are no longer useful to investors because U.S. GAAP’s requirements to recognize by disclosure or otherwise the effect of intervening events that materially affect the financial position or results of operations eliminates the effect of differences in the fiscal periods of the issuer and its subsidiaries.
Consolidation - Changes in Fiscal Periods	Final sentence of Rule 3A-03(b) of Regulation S-X	Delete the final sentence of this requirement as U.S. GAAP <sup>222</sup> provides similar, but more specific, requirements, which limit potential changes, provide for more consistency in issuer financial statements and result in better financial reporting.

<sup>218</sup> These proposed amendments are discussed in further detail in Section III.C. of the Proposing Release.

<sup>219</sup> See, e.g., ASC 505-10-45.

<sup>220</sup> As described in the Proposing Release, 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.

<sup>221</sup> See ASC 810-10-45-12.

<sup>222</sup> See ASC 810-10-45-13.

Topic	Commission Disclosure Requirement(s)	Proposed Amendments
Distributable Earnings for Registered Investment Companies	Rule 6-04.17 of Regulation S-X	Amend to require presentation of the total, rather than the components, of distributable earnings on the balance sheet. U.S. GAAP <sup>223</sup> requires similar presentation and the incremental requirement to separately present three components of distributable earnings on a book basis is not useful to investors because they do not provide insight into the tax implications of distributions. <sup>224</sup>
	Rule 6-09.7 of Regulation S-X	Delete the requirement for parenthetical disclosure of undistributed net investment income on the statement of changes in net assets on a book basis, as it does not provide insight into the tax implications of distributions.
Insurance Companies - Liability Assumptions	Rule 7-03(a)(13)(b) of Regulation S-X	Delete as U.S. GAAP <sup>225</sup> does not limit its disclosure to certain assumptions, and therefore, it may elicit more disclosure.
Interim Financial Statements – Changes in Accounting Principles	Rule 8-03(b)(5) and Rule 10-01(b)(6) of Regulation S-X	Delete the requirement for disclosure of the date of any material accounting change, as U.S. GAAP <sup>226</sup> requires disclosure of the accounting change in the period of the change.

## (2) Comments on Proposed Amendments

Commenters supported these proposed amendments.<sup>227</sup> In addition, commenters identified another overlapping requirement in Regulation S-X for Registered Investment

<sup>223</sup> See ASC 946-20-50-11.

<sup>224</sup> Similar to REITs, registered investment companies are generally structured such that they are not subject to entity-level taxation on the amounts distributed to their investors.

<sup>225</sup> See ASC 944-40-50.

<sup>226</sup> See ASC 250-10-50-1 and ASC 270-10-50-1g.

<sup>227</sup> See, e.g. letters from CAQ and NAREIT.

Companies.<sup>228</sup> The commenters noted that Rule 6-09.3 of Regulation S-X requires separate disclosure of distributions paid to shareholders from (a) Investment income – net; (b) realized gain from investment transactions – net; and (c) other sources, while U.S. GAAP requires distributions paid to be disclosed as a single line item.<sup>229</sup> These commenters recommended amending Regulation S-X to align it with the requirements in U.S. GAAP.

### (3) Final Amendments

We are adopting all of the amendments described in the table above as proposed. We are also amending Rule 6-09.3 of Regulation S-X, as suggested by commenters and similar to the amendments to Rule 6.04-17, to require presentation of the total, rather than the components, of distributions to shareholders, except for tax return of capital distributions. U.S. GAAP requires similar presentation of information as the Regulation S-X requirements, and the incremental requirement to separately present certain components is not useful to investors because of the unique tax status of registered investment companies.

## 2. Other Overlapping Disclosure Requirements

The Proposing Release also identified overlapping Commission disclosure requirements. These disclosure requirements and the related proposed amendments are described in the table below.<sup>230</sup>

Topic	Commission Disclosure Requirement(s)	Proposed Amendments
REIT Disclosures – Status as a REIT	Rule 3-15(b) of Regulation S-X	Delete, as Regulation S-K <sup>231</sup> requires similar disclosures and the incremental requirement to disclose assumptions in making or not

<sup>228</sup> See letters from E&Y and Investment Company Institute (Nov. 2, 2016).

<sup>229</sup> See ASC 946-20-50-8.

<sup>230</sup> These proposed amendments are discussed in further detail in Section III.C. of the Proposing Release.

<sup>231</sup> Items 101(a)(1), 503(c), and 303(a)(3)(ii) of Regulation S-K.

Topic	Commission Disclosure Requirement(s)	Proposed Amendments
		making federal income tax provisions is encompassed by the disclosures provided to comply with Regulation S-K. <sup>232</sup>
Dividends	Item 201(c)(1) of Regulation S-K	Delete requirement to disclose the frequency and amount of cash dividends declared, as amended Rule 3-04 of Regulation S-X <sup>233</sup> will require disclosure of the amount of dividends in interim periods, similar to Item 201(c)(1). In addition, the frequency of dividends will be evident from this disclosure.
Invitations for Competitive Bids	Item 601(b)(26) of Regulation S-K <sup>234</sup>	Delete, as this disclosure does not provide 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.

Commenters supported the proposed amendments.<sup>235</sup> We are adopting all of the amendments described in the table above as proposed because investors will continue to receive similar information under other Commission disclosure requirements.

### 3. Overlapping Disclosure Requirements with Both U.S. GAAP and Other Commission Disclosure Requirements

The Proposing Release identified several Commission disclosure requirements that overlap with both U.S. GAAP and other Commission disclosure requirements.

<sup>232</sup> 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. Therefore, the Regulation S-K requirement to disclose significant risk factors and a description of known uncertainties that are reasonably expected to have a material effect on income elicit this information. In addition, issuers often repeat or expand on the Regulation S-X disclosures in their risk factor disclosures.

<sup>233</sup> In this release, we are adopting amendments to Rule 8-03 and Rule 10-01 of Regulation S-X to mandate that Rule 3-04 be applied to interim periods. See Section V.B.2 below.

<sup>234</sup> The Commission also proposed to delete its accompanying reference in the Exhibit Table within Item 601.

<sup>235</sup> See, e.g. letters from CAQ; KPMG; and PwC.

**a) Interim Financial Statements – Pro Forma Business Combination Information**

**(1) Proposed Amendments**

Regulation S-X<sup>236</sup> and U.S. GAAP<sup>237</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, the Proposing Release noted that U.S. GAAP and Item 9.01 of Form 8-K<sup>238</sup> result in disclosures reasonably similar to the corresponding requirements in Regulation S-X.

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 apply to the same or a greater number of business combinations and, thus, subsume the scope of the corresponding requirements in Regulation S-X.

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>236</sup> See Rule 8-03(b)(4) and Rule 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>237</sup> See ASC 270-10-50-7, which refers to ASC 805-10-50-2h.3 for purposes of interim disclosures.

<sup>238</sup> 17 CFR 249.308.

U.S. GAAP only requires disclosure of pro forma revenue and earnings. This difference resulted from changes to U.S. GAAP, in part to converge with IFRS, in 2007.<sup>239</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>240</sup> even though Regulation S-X generally imposes fewer obligations with regard to interim financial statements.<sup>241</sup> Moreover, Rule 8-03(b)(4) requires SRCs and Regulation A issuers in a Tier 2 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>242</sup> and Regulation A issuers.

In proposing these amendments, the Commission noted that 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 pro forma financial information for significant acquisitions, including earnings per share, through the issuer's most recently filed balance sheet.<sup>243</sup> We note, however, this pro forma financial information would not cover the

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<sup>239</sup> For additional discussion of this difference, *see* Section III.C.9 of the Proposing Release, *supra* note 1, at 51621.

<sup>240</sup> *See* ASC 805-10-50-2h.3.

<sup>241</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.

<sup>242</sup> For example, SRCs are required to present 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>243</sup> Rule 11-01(a) and Rule 11-02(b)(7) of Regulation S-X. [17 CFR 210.11-01(a)].

same periods as the pro forma information required under Rule 8-03(b)(4) and Rule 10-01(b)(4) for SRCs and non-SRCs, and Form 8-K does not apply to Regulation A issuers.<sup>244</sup>

Based on the foregoing, the Commission proposed to eliminate 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).

## **(2) Comments on Proposed Amendments**

Several commenters supported the proposal to eliminate pro forma business combination financial information in interim filings.<sup>245</sup> However, other commenters opposed eliminating these requirements, expressing concern over the level of disclosure about merger and acquisition activities.<sup>246</sup> One commenter stated that frequent financial reporting about mergers, such as pro forma results on an interim basis, results in the issuer more timely identifying and disclosing problems related to a merger.<sup>247</sup> Another commenter recommended the disclosure requirements be improved rather than deleted because they provide a window into merger and acquisition activities.<sup>248</sup>

## **(3) Final Amendments**

We are deleting the requirement for pro forma financial information in interim filings for business combinations in Rule 8-03(b)(4) and Rule 10-01(b)(4) as proposed. We continue to believe that U.S. GAAP, and Item 9.01 of Form 8-K for SRCs and non-SRCs, result in

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<sup>244</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.

<sup>245</sup> See letters from CAQ; Deloitte; E&Y; Grant; KPMG, and PwC.

<sup>246</sup> See letters from As You Sow, et al. and Zevin.

<sup>247</sup> See letter from Public Citizen.

<sup>248</sup> See letter from Zevin.

reasonably similar disclosures as the corresponding requirements we are deleting. We also believe the elimination of these requirements will not result in less frequent financial reporting about mergers and their impact on issuers because U.S. GAAP will continue to require disclosure of such activities in interim periods as well as year-end.<sup>249</sup>

**b) Interim Financial Statements – Dispositions by SRCs and Tier 2 Regulation A Issuers**

**(1) Proposed Amendments**

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 information. The pro forma disclosure requirements for dispositions for these issuers are the same as described above for significant business combinations.<sup>250</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>251</sup> thereby obviating the need for pro forma information for discontinued operations in the notes to the financial statements.

For other dispositions, we believe the disclosures required by U.S. GAAP generally result 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

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<sup>249</sup> See ASC 270-10-50, which requires disclosure of unusual and infrequent items and references business combinations.

<sup>250</sup> See Rule 8-03(b)(4) of Regulation S-X, which requires 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>251</sup> See ASC 205-20-45.

parent for individually significant dispositions for all interim periods presented.<sup>252</sup> However, U.S. GAAP does not contain an equivalent to the requirement in Rule 8-03(b)(4) to disclose pro forma revenues as if the other disposal occurred at the beginning of the periods presented.

The Proposing Release noted that Item 9.01(b) of Form 8-K may help mitigate any loss of information about pro forma revenues, as it requires SRCs to file within four business days after a significant disposition, pro forma financial information pursuant to Rule 8-05 of Regulation S-X, including revenue, income from continuing operations, and income per share, through the most recently filed balance sheet date. This pro forma financial information would not cover the same periods as the separate results required under Rule 8-03(b)(4) and is not applicable to Regulation A issuers.<sup>253</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>254</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>255</sup> even

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<sup>252</sup> See ASC 270-10-50-7, which refers to ASC 360-10-50-3A for purposes of interim disclosures.

<sup>253</sup> For example, for a significant disposal that occurs on August 3, 2017, the Form 8-K filed by August 7, 2017, would contain pro forma financial information for the year ended December 31, 2016 and the three months ended March 31, 2017 and 2016, as if the disposal had occurred on January 1, 2016. In contrast, Rule 8-03(b)(4) would require pro forma disclosures in the September 30, 2017 interim financial statements, filed on Form 10-Q by November 16, 2017, for the nine months ended September 30, 2017 and 2016, as if the disposal had occurred at the beginning of each period presented.

<sup>254</sup> See ASC 360-10-50-3A.

<sup>255</sup> See Rule 10-01(b)(5) of Regulation S-X.

though Commission disclosure requirements, as a general matter, provide certain scaled disclosure accommodations for SRCs.<sup>256</sup>

Accordingly, the Commission proposed to delete the pro forma disclosure requirements in Rule 8-03(b)(4).

## (2) Comments on Proposed Amendments

Commenters<sup>257</sup> indicated that the requirement in Item 9.01 of Form 8-K<sup>258</sup> to provide pro forma financial information pursuant to Rule 8-05 does not sufficiently substitute for the pro forma disclosure requirement for significant dispositions in Rule 8-03(b)(4) for SRCs because Item 9.01 of Form 8-K only refers to significant acquisitions and does not reference dispositions. Several of these commenters were nevertheless supportive of the proposed deletion because, in their observation, a number of issuers provide pro forma information for significant dispositions under Item 9.01 of Form 8-K despite there not being an explicit requirement.<sup>259</sup> Some commenters recommended that the Commission amend Article 8 to encompass significant dispositions.<sup>260</sup>

## (3) Final Amendments

After further consideration, we are retaining the pro forma disposition disclosure requirement in Rule 8-03(b)(4). We believe the views expressed by commenters about Item

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<sup>256</sup> See *supra* note 234.

<sup>257</sup> See letters from BDO USA LLP (November 1, 2016) (“BDO”); CAQ; Deloitte; E&Y; and PwC.

<sup>258</sup> Item 9.01(b)(1) of Form 8-K states, “For any transaction required to be described in answer to Item 2.01 of this form, furnish any pro forma financial information that would be required pursuant to Article 11 of Regulation S-X [17 CFR 210] or Rule 8-05 of Regulation S-X [17 CFR 210.8-05] for smaller reporting companies.”

<sup>259</sup> See letters from BDO; CAQ; Deloitte; E&Y; Grant; KPMG; and PwC.

<sup>260</sup> See letters from BDO; CAQ; Deloitte; E&Y; and PwC.

9.01(b) of Form 8-K and its reference to the pro forma requirements for significant acquisitions in Article 8 of Regulation S-X<sup>261</sup> warrant additional analysis and consideration.

**c) Segments**

**(1) Proposed Amendments**

Item 101(b) of Regulation S-K 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>262</sup> and Item 303(b) of Regulation S-K<sup>263</sup> require similar disclosures. Moreover, 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. The Commission, therefore, proposed to delete Item 101(b).

Regulation A issuers are similarly required to cross-reference to their segment disclosures under U.S. GAAP or IFRS.<sup>264</sup> The Commission, therefore, also proposed to delete Item 7(b) of Form 1-A.

Because the disclosure required by Item 101(b) of Regulation S-K and Item 7(b) of Form 1-A (or the cross-reference to the notes to the financial statements) are located in the business

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<sup>261</sup> Rule 8-05 of Regulation S-X.

<sup>262</sup> See ASC 280-10-50-22, ASC 280-10-50-34, and ASC 280-10-50-35.

<sup>263</sup> 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 introductory 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.

<sup>264</sup> See Item 7(b) of Form 1-A.

description section of the filing, while the corresponding U.S. GAAP disclosures are in the notes to the financial statements, the Commission noted in the Proposing Release that the proposed elimination gives rise to Disclosure Location – Prominence Considerations.

## **(2) Comments on Proposed Amendments**

Most commenters supported the proposed amendments.<sup>265</sup> One of these commenters<sup>266</sup> observed that another disclosure requirement,<sup>267</sup> which requires segment disclosures for each year an audited financial statement is provided, also overlaps with U.S. GAAP.<sup>268</sup> One commenter opposed the proposed amendments, stating that the segment disclosures in Item 101(b) of Regulation S-K, along with other disclosures required by Item 101, are necessary in assessing and understanding a company’s ability to create long-term value for shareholders.<sup>269</sup>

## **(3) Final Amendments**

We are eliminating the requirements in Item 101(b) of Regulation S-K and Item 7(b) of Form 1-A as proposed. While this will remove the requirement to provide financial information about segments in the business description section, these disclosures will continue to be available in the notes to the financial statements. Accordingly, we do not believe eliminating the requirement will affect the assessment and understanding of a company’s ability to create long-term value for shareholders. Additionally, we are eliminating Rule 3-03(e) of Regulation S-X, as suggested by a commenter, because it is also redundant with U.S. GAAP.<sup>270</sup> Further, U.S. GAAP requirements are broader than Rule 3-03(e) because U.S. GAAP requires segment

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<sup>265</sup> See letters from CAQ; Deloitte; E&Y; Grant; KPMG; and PwC.

<sup>266</sup> See letter from Deloitte.

<sup>267</sup> See Rule 3-03(e) of Regulation S-X.

<sup>268</sup> See ASC 280-10-50-20

<sup>269</sup> See letter from CalSTRS.

<sup>270</sup> See ASC 280-10-50-20

disclosures for all periods for which a statement of income is provided, including unaudited interim periods, while Rule 3-03(e) requires the disclosure for each year for which an audited statement of income is provided.

**d) Geographic Areas**

**(1) Proposed Amendments**

Regulation S-K<sup>271</sup> requires disclosure of financial information by geographic area. U.S. GAAP requires similar disclosures.<sup>272</sup> 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. The Commission, therefore, proposed to delete Item 101(d)(1) and Item 101(d)(2).

Further, 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. The Proposing Release stated that Item 101(d)(3) requires disclosures that appear to be largely encompassed by the disclosures that result from compliance with other parts of Regulation S-K. For example, Item 503(c) of Regulation S-K requires disclosure of significant risk factors.

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. The Commission, therefore, proposed to delete Item 101(d)(3).

**(2) Comments on Proposed Amendments**

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<sup>271</sup> Items 101(d)(1) and 101(d)(2).

<sup>272</sup> See ASC 280-10-50-41.

Most commenters<sup>273</sup> were supportive of the proposed amendment, while a few commenters<sup>274</sup> opposed it. One commenter stated that the geographic area disclosures, along with other disclosures required by Item 101, are necessary in assessing and understanding a company's ability to create long-term value for shareholders.<sup>275</sup> Another commenter expressed concern that the Commission is proposing to reduce information about the geographic segments of a business when geographic factors are growing in importance (i.e., foreign tax consideration).<sup>276</sup> This commenter further suggested that the Commission should simultaneously add explicit references to geographic factors in the required discussions of business risk and trends, if Items 101(d)(1)-(3) are eliminated.

### **(3) Final Amendments**

We are eliminating the requirements in Item 101(d) as proposed. We believe that U.S. GAAP requires reasonably similar disclosures and note that 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. Further, we are amending, as proposed, Item 303(a) of Regulation S-K to add an explicit reference to “geographic areas.”<sup>277</sup> We believe this requirement, along with the disclosures required under Item 503(c) of Regulation S-K, will provide the disclosure necessary to understand the risks associated with geographic factors and to assess a company's ability to create long-term value for shareholders.

#### **e) Seasonality**

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<sup>273</sup> See letters from CAQ; Deloitte; E&Y; Grant; KPMG; and PwC.

<sup>274</sup> See letters from Bean; and CalSTRS.

<sup>275</sup> See letter from CalSTRS.

<sup>276</sup> See letter from Bean.

<sup>277</sup> See discussion in Section III.C.3 below.

## (1) Proposed Amendments

Regulation S-K<sup>278</sup> and U.S. GAAP<sup>279</sup> both require disclosures about seasonality in interim periods. Item 101(c)(1)(v) of Regulation S-K 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. The Proposing Release stated that interim seasonality disclosures required under U.S. GAAP seem 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. 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>280</sup> Accordingly, the Proposing Release stated that Item 303(b), in conjunction with U.S. GAAP, would seem to 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. The Commission therefore proposed to delete Item 101(c)(1)(iv). Because the disclosures required by Item 101(c)(1)(v) are located in the business description section, while the corresponding disclosures required by Item 303(b) and U.S. GAAP are in MD&A and the notes to the financial statements, the proposed amendment gives rise to Disclosure Location – Prominence Considerations.

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<sup>278</sup> Instruction 5 to Item 303(b) of Regulation S-K requires a discussion of any seasonal aspects of an issuer's business where the effect is material.

<sup>279</sup> See ASC 270-10-45-11.

<sup>280</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 when appropriate to an understanding of the business.

The Commission also proposed to delete Instruction 5 to Item 303(b) of Regulation S-K because it requires disclosures that convey reasonably similar information to the disclosures that result from compliance with U.S. GAAP.<sup>281</sup> The proposed deletion of Instruction 5 to Item 303(b) gives rise to Disclosure Location – Prominence Considerations because U.S. GAAP requires seasonality disclosures in the financial statements, whereas Instruction 5 requires disclosure in MD&A.

## (2) Comments on Proposed Amendments

Most commenters supported the proposed amendments.<sup>282</sup> Some of these commenters also provided their views on the Disclosure Location Considerations.<sup>283</sup> For example, one commenter, who supported both proposed amendments, indicated that U.S. GAAP requires disclosure about seasonality when the interim financial statements reflect material seasonal variations, but it does not require disclosure when an issuer expects interim financial results to become seasonal or an issuer expects the seasonal financial results to change significantly in the future.<sup>284</sup> Another commenter recommended that the Commission consider feedback from preparers and users about the potential for registrants to reduce any voluntary information about seasonality that may currently be provided that is subject to the safe harbor provisions of the PSLRA.<sup>285</sup>

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<sup>281</sup> See ASC 270-10-45-11. See also Item 101(c)(1)(v) of Regulation S-K.

<sup>282</sup> See letters from CAQ; CGCIV; Deloitte; E&Y; Grant; KPMG; PwC; and USCC.

<sup>283</sup> See letters from CAQ and KPMG.

<sup>284</sup> See letter from CAQ.

<sup>285</sup> See letter from KPMG.

One commenter opposed the proposed amendments indicating that these disclosures, along with other disclosures required by Item 101, are necessary in assessing and understanding a company's ability to create long-term value for shareholders.<sup>286</sup>

### **(3) Final Amendments**

We are adopting as proposed the elimination of Instruction 5 to Item 303(b). We continue to believe that U.S. GAAP in combination with the remainder of Item 303 requires disclosures in interim reports that convey reasonably similar information to the disclosures required by Instruction 5 to Item 303(b). We also believe that, even without this instruction, the requirements in Item 303 elicit disclosure of forward-looking information in interim reports to the extent that the effects of seasonality may become material.<sup>287</sup> However, we are retaining the seasonality disclosure requirements in annual reports in Item 101(c)(1)(v), due to a concern about potential loss of information in the fourth quarter about the extent to which the business of an issuer or its segment(s) is or may be seasonal because U.S. GAAP may not elicit this disclosure.<sup>288</sup>

#### **f) Other**

The table below describes each of the remaining disclosure requirements that are overlapping with both U.S. GAAP and other Commission disclosure requirements. The related proposed amendments to delete those overlapping Commission disclosure requirements are also discussed below.<sup>289</sup>

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<sup>286</sup> See letter from CalSTRS.

<sup>287</sup> See 2003 MD&A Release.

<sup>288</sup> ASC 270-10-45-11 states that entities should consider supplementing interim reports with information for 12-month periods ended at the interim date 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.

<sup>289</sup> These proposed amendments are discussed in further detail in Section III.C. of the Proposing Release.

<b>Topic</b>	<b>Commission Requirement</b>	<b>Proposed Amendments</b>
Insurance Companies - Reinsurance Transactions	Rule 7-03(a)(13)(c) of Regulation S-X	Delete, as this provision requires disclosures that are encompassed by the disclosures that result from compliance with U.S. GAAP <sup>290</sup> and Regulation S-K. <sup>291</sup>
Interim Financial Statements – Material Events Subsequent to the End of the Most Recent Fiscal Year	Rule 8-03(b)(2) and Rule 10-01(a)(5) of Regulation S-X	Delete the requirements to disclose material events subsequent to the end of the most recent fiscal year, as they require disclosures that are encompassed by the disclosures that result from compliance with U.S. GAAP <sup>292</sup> and Regulation S-K, <sup>293</sup> in combination.

Commenters generally supported the proposed amendments,<sup>294</sup> and no commenter specifically opposed the amendments. Accordingly, we are adopting all of the amendments described in the table above as proposed.

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

In the proposing release, the Commission discussed disclosure requirements that overlap with, but require information incremental to, other Commission disclosure requirements. In these cases, the Commission proposed to integrate the overlapping Commission disclosure requirements.

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

##### **a) Proposed Amendments**

If consolidation of foreign subsidiaries is deemed appropriate notwithstanding 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

<sup>290</sup> See ASC 944-20-50-3 and ASC 944-20-50-4.

<sup>291</sup> See Item 303(a)(3)(i) of Regulation S-K.

<sup>292</sup> See ASC 270-10-50-1 and 7.

<sup>293</sup> See 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).

<sup>294</sup> See letters from CAQ; Deloitte; E&Y; Grant; KPMG; and PwC.

consolidated financial position and operating results of the issuer and its subsidiaries. To streamline Commission disclosure requirements, the Commission proposed to relocate this requirement to Rule 3-20(b) of Regulation S-X, 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), the Commission proposed to delete the reference to foreign private issuers in the title of Rule 3-20,<sup>295</sup> which would broaden the scope of Rule 3-20(b) and Rule 3-20(e) to all issuers.<sup>296</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, the Commission stated in the Proposing Release that it did not intend to expand the instances in which a reporting currency other than the U.S. dollar would be permitted. The Commission therefore proposed amendments to Rule 3-20(a) to specify that domestic issuers and foreign issuers who do not meet the foreign private issuer definition<sup>297</sup> must present their financial statements in U.S. dollars.

#### **b) Comments on Proposed Amendments**

Commenters were generally supportive of the proposed amendments except for the proposed amendment to Rule 3-20(a).<sup>298</sup> Some commenters recommended that the Commission consider providing all registrants the same flexibility in selecting their reporting currency as foreign private issuers or allowing domestic issuers to report using the currency of the country in

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<sup>295</sup> Foreign private issuers would continue to apply Rule 3-20 pursuant to General Instruction B(d) of Form 20-F.

<sup>296</sup> The remaining paragraphs in Rule 3-20 specify the rule's scope, so amending the title to Rule 3-20 would have no effect on the application of these paragraphs.

<sup>297</sup> *See supra* note 19.

<sup>298</sup> *See* letters from CAQ; Deloitte; E&Y; Grant; KPMG; and PwC.

which they have substantially all of their operations.<sup>299</sup> Additionally, one of these commenters recommended further revisions to reorganize Rule 3-20 of Regulation S-X and to move the disclosure requirements for currency exchange restrictions from the financial statement footnotes to Item 303 of Regulation S-K.<sup>300</sup>

**c) Final Amendments**

We are adopting the amendments to delete the reference to foreign private issuers in the title of Rule 3-20 and relocate the requirements of Rule 3A-02(d) to Rule 3-20(b) as proposed. We are also adopting the amendment to require a non-foreign private issuer to present its financial statements in U.S. dollars. This amendment is not intended to change current disclosure practices. Domestic issuers and foreign issuers that do not meet the foreign private issuer definition may continue to request to present financial statements in a currency other than U.S. dollars in appropriate circumstances.<sup>301</sup>

In addition, while we acknowledge commenters' recommendation that we consider providing all registrants the flexibility to select their reporting currency; we are not adopting that suggestion at this time. We believe more information is needed to determine whether any unintended consequences could result, and thus believe such a change is beyond the scope of this rulemaking.

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<sup>299</sup> See letters from CAQ; E&Y; PwC; and Sullivan & Cromwell LLP (Aug. 2, 2017).

<sup>300</sup> See letter from E&Y. We considered the recommendation to reorganize Rule 3-20 of Regulation S-X and move certain disclosure requirements to Item 303 of Regulation S-K but are not adopting the recommended amendments as they could have implications that go beyond the scope of this rulemaking and would merit further consideration.

<sup>301</sup> The staff has not objected to domestic issuers and foreign issuers who do not meet the foreign private issuer definition from using a different reporting currency in situations where the issuer had few or no assets and operations in the U.S., substantially all the operations were conducted in a single functional currency other than the U.S. dollar, and the reporting currency selected was the same as the functional currency.

In a technical change for clarification, we also are replacing the word “selected”, in the phrase “*currency selected for reporting purposes,*” with “used” in Rule 3-20(d) because non-foreign private issuers are not permitted to “select” their reporting currency.

## 2. Restrictions on Dividends and Related Items

Commission requirements mandate disclosure about restrictions on the payment of dividends and related items in a number of locations. The table below describes each of the disclosure requirements related to this mandate, the proposed amendment, and reason for it.<sup>302</sup>

Issuer Type	Commission Disclosure Requirement	Proposed Amendments
Domestic Issuers	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>303</sup>	Consolidate these disclosure requirements into a single requirement in revised Rule 4-08(e)(3). <sup>304</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.	
	Rule 4-08(e) of Regulation S-X requires disclosure related to the most significant restrictions of the issuer’s payment of dividends. Rule 4-08(e)(3) requires, where restricted net assets, as defined by the rule, exceed 25 percent of consolidated net assets, a description of: (1)	Revise to require the dividend restrictions and related disclosures in subparagraphs (i) and (ii) when material, rather than when restricted net assets

<sup>302</sup> These proposed amendments are discussed in further detail in Section III.D.2 of the Proposing Release.

<sup>303</sup> In lieu of disclosure, 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>304</sup> This amendment gives rise to Bright Line Disclosure Threshold Considerations. *See also* Section III.B.2 of the Proposing Release, *supra* note 1, at 51616.

Issuer Type	Commission Disclosure Requirement	Proposed Amendments
	the restrictions on the ability of subsidiaries to transfer funds to the issuer, and (2) the amount of restricted net assets.	exceed the 25 percent threshold. <sup>305</sup>
	Rule 5-04, Rule 7-05, and Rule 9-06 of Regulation S-X 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. <sup>306</sup>	Move definition of restricted net assets in Rule 4-08(e)(3) to Rule 1-02 <sup>307</sup> and make corresponding changes to the cross reference in Rules 5-04, 7-04, and 9-06.
Foreign Private Issuers	Item 10.F of Form 20-F requires disclosure of any dividend restrictions.	Delete both requirements to disclose dividend restrictions because: (1) foreign private issuers are already required to disclose dividend restrictions in the notes to the financial statements <sup>308</sup> and (2) 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. <sup>309</sup>
	Instruction to Item 14.B of Form 20-F requires disclosure of any limitations on the payment of dividends.	

<sup>305</sup> This amendment gives rise to Bright Line Disclosure Threshold Considerations and Disclosure Location – Financial Statement Considerations discussed in Section I.E above (*See also* Section III.B.2 of the Proposing Release, *supra* note 1, at 51616).

<sup>306</sup> We did not propose and are not changing the requirements in Rules 5-04, 7-05, and 9-06 for parent only financial information.

<sup>307</sup> The definitions of terms used in Regulation S-X are located in Rule 1-02 of Regulation S-X..

<sup>308</sup> 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). 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.

<sup>309</sup> Although this requirement is similar to Rule 4-08(e), which creates some 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, the Commission did not propose its deletion because IFRS does not contain an equivalent requirement for foreign private issuers that report under IFRS.

Commenters generally supported the proposed amendments,<sup>310</sup> and no commenter specifically opposed the amendments. Accordingly, we are adopting all of the amendments described in the table above as proposed. The amendments simplify our disclosure requirements by integrating overlapping Commission disclosure requirements into existing disclosure requirements where the incremental information is reasonably similar.

### **3. Geographic Areas**

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 requirement. To streamline the requirements in Regulation S-K, the Commission proposed to revise Item 303 to add an explicit reference to “geographic areas” and delete Item 101(d)(4).

Commenters were generally supportive of the proposed amendments.<sup>311</sup> Some commenters recommended clarification of the proposed revision to Item 303, noting that it is not clear whether an issuer must discuss the geographic information as part of the segment discussion or has a choice to discuss its operations on a segment or geographical basis.<sup>312</sup>

We are adopting the amendment substantially as proposed. As suggested by commenters, we are clarifying that geographic areas are an example of a subdivision of a business that is required to be discussed when management believes such discussion would be appropriate to an

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<sup>310</sup> See, e.g. letters from CAQ; Deloitte; E&Y; and PwC.

<sup>311</sup> See, e.g. letter from CAQ; Deloitte; and PwC.

<sup>312</sup> See letters from CAQ; E&Y; and PwC.

understanding of the business and that discussion of geographic areas is not required in all circumstances.

**D. Overlapping Requirements – FASB Referrals**

In the proposing release, the Commission discussed Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP and solicited comments to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP. For the reasons discussed below, we have determined to refer the incremental Commission disclosure requirements described in this section to the FASB for its consideration of whether to incorporate such disclosure requirements into U.S. GAAP as part of its normal standard-setting process. The discussion in this section, as well as Sections I.C., II.B., and III.B., constitute our referral to the FASB.

Any incorporation of these incremental Commission disclosure requirements into U.S. GAAP could potentially affect all entities that prepare financial statements under U.S. GAAP, including those outside the scope of our regulatory authority. Additionally, the disclosure requirements described below in Section III.D.3. and certain Topics in Section III.D.5.<sup>313</sup> currently allow for scaled disclosure by SRCs and issuers relying on Regulation A or Regulation Crowdfunding. Depending on how these disclosures are incorporated, if at all, into U.S. GAAP, U.S. GAAP may not permit these issuers to scale such disclosures.

By [date that is 18 months after this is published in the Federal Register], we request that the FASB complete its process to determine whether the referred disclosure items will be added to its agenda of projects for potential standard-setting. In the meantime, we are retaining the

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<sup>313</sup> Applicable Topics in Section III.D.5. are Interim Financial Statements – Computation of Earnings Per Share, Interim Financial Statements – Retroactive Prior Period Adjustments, Interim Financial Statements – Common Control Transactions, and Oil and Gas Producing Activities.

disclosure requirements discussed in this section. Any future consideration of amendments to these disclosure requirements will take into account the outcome of the standard-setting activities undertaken by the FASB, if any, in response to the referrals we are making.

### **1. Discount on Shares**

Regulation S-X<sup>314</sup> and U.S. GAAP<sup>315</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 applicable accounts. Discounts on shares may arise, for example, from stock issuance costs, which are recognized as a reduction in equity.<sup>316</sup> In the Proposing Release, the Commission solicited comments to determine whether to retain, modify, eliminate, or refer this disclosure requirement to the FASB for potential incorporation into U.S. GAAP.

Some commenters recommended that the Commission eliminate the disclosure requirement in Regulation S-X, for the following reasons: (1) stock issuance costs recorded within equity do not amortize, and therefore, the commenters did not see the ongoing relevance of the disclosure; (2) in the period of issuance, such costs are already required to be presented separately in the financing section of the statement of cash flows; and (3) other discounts to par or stated value are likely captured by other disclosure requirements.<sup>317</sup> Other commenters recommended that the Commission refer the incremental disclosure requirement to the FASB for potential incorporation into U.S. GAAP.<sup>318</sup>

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<sup>314</sup> See Rule 4-07 of Regulation S-X. Pursuant to Rule 4-02 of Regulation S-X [17 CFR 210.4-02], this separate presentation is only required if material.

<sup>315</sup> See ASC 505-10-45.

<sup>316</sup> See SAB Topic 5:A, *Expenses of Offering*.

<sup>317</sup> See letters from CAQ; Deloitte; and PwC.

<sup>318</sup> See letters from E&Y; Grant; Institute of Management Accountants (Oct. 28, 2016) (“IMA”); and KPMG.

There are various types of transactions that could result in discount on shares. Commenters supporting elimination of the Regulation S-X requirement indicated that U.S. GAAP overlaps with Rule 4-07 with respect to stock issuance costs but did not state whether U.S. GAAP overlaps with respect to other transactions that result in discount on shares. Based on these considerations, we are retaining the disclosure requirements in Rule 4-07 and are referring them to the FASB for potential incorporation into U.S. GAAP.

## **2. Income Tax Disclosures<sup>319</sup>**

Regulation S-X<sup>320</sup> and U.S. GAAP<sup>321</sup> both require disclosures about income taxes in the notes to the financial statements.<sup>322</sup> However, Rule 4-08(h) includes certain incremental requirements, some of which give 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.

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

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<sup>319</sup> See related discussion in Sections II.B.2 and IV.B.1. See also Sections II.B.4 and IV.B.2 of the Proposing Release, *supra* note 1, at 51613 and *supra* note 1 at 51635, respectively.

<sup>320</sup> See Rule 4-08(h) of Regulation S-X.

<sup>321</sup> See ASC 740-10-50.

<sup>322</sup> 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).

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.

In the Proposing Release, the Commission solicited comments to determine whether to retain, modify, eliminate, or refer these disclosure requirements to the FASB for potential incorporation into U.S. GAAP.

Several commenters recommended elimination of the Commission disclosure requirements, if the FASB adopts its proposed income tax standard.<sup>323</sup> Some of these commenters further indicated that, if the proposed income tax standard is not adopted, the Commission should consider comments received by the FASB to determine whether further amendment should be made to Rule 4-08(h).<sup>324</sup> Some commenters recommended retaining both requirements under Rule 4-08(h) and U.S. GAAP, as they believe investors need more detailed disclosure of corporate income tax liabilities.<sup>325</sup> Only one commenter recommended that the Commission refer this issue to the FASB for potential incorporation into U.S. GAAP.<sup>326</sup>

Additionally, a number of commenters recommended that the Commission require disclosure of certain information, such as profit or loss before taxes and effective tax rate, on a

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<sup>323</sup> See, e.g. letters from BDO; CAQ; E&Y; Grant; and KPMG. The proposed Accounting Standards Update, *Income Taxes (Topic 740): Disclosure Framework – Changes to the Disclosure Requirements for Income Taxes* was issued on July 26, 2016. For a status of the project see, [https://www.fasb.org/jsp/FASB/FASBContent\\_C/ProjectUpdateExpandPage&cid=1176170683850#](https://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdateExpandPage&cid=1176170683850#).

<sup>324</sup> See letters from CAQ; E&Y; KPMG; and PwC.

<sup>325</sup> See letters from AFL-CIO and AFR; and Rutkowski.

<sup>326</sup> See letter from IMA.

country-by-country basis.<sup>327</sup> Some of these commenters indicated that this transparency would help investors assess the risks that could arise from operating in multiple jurisdictions<sup>328</sup> as well as the likelihood of repatriation of foreign earnings.<sup>329</sup> Some of the commenters who recommended the country-by-country disclosure also recommended requiring the disclosure of the aggregate amount corporations would owe in U.S. taxes should they repatriate their offshore earnings.<sup>330</sup> In contrast, one commenter indicated that further disaggregating foreign amounts by foreign jurisdiction would not provide useful information as such disaggregation would neither reflect exposure to future foreign tax nor shed light on future potential repatriation.<sup>331</sup> This commenter further recommended that the current five percent thresholds for the effective rate reconciliation be revisited, as they can result in an unnecessarily large number of line items when pre-tax income is relatively small.

After considering the comments, we are retaining the income tax disclosure requirements in Rule 4-08(h). While we acknowledge the suggestions made by commenters related to additional income tax disclosures, these are beyond the scope of this rulemaking. There also have been significant changes to the tax law that may affect the accounting and disclosure requirements for income taxes.<sup>332</sup> We are referring these disclosure requirements to the FASB for potential incorporation into U.S. GAAP. The FASB is currently reviewing its disclosure

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<sup>327</sup> See, e.g. letters from AFL-CIO and AFR; Americans for Tax Fairness (Nov. 2, 2016) (“ATF”); American Sustainable Business Council, Citizens for Tax Justice, FACT Coalition, Fair Share, Global Financial Integrity and Main Street Alliance (July 21, 2016); Main Street Alliance (Oct. 25, 2016); and Oxfam America (Nov. 2, 2016).

<sup>328</sup> See, e.g. letter from Jeffery L. Hoopes (Oct. 3, 2016).

<sup>329</sup> See, e.g. letter from Bean.

<sup>330</sup> See, e.g. letters from ATF and Citizens for Tax Justice (Oct. 3, 2016).

<sup>331</sup> See letter from IMA.

<sup>332</sup> See Tax Cuts and Jobs Act Pub. L. No. 115-97, 131 Stat. 2054 (2017)

requirements for income taxes and discussing the financial reporting effects of recent changes in tax law.<sup>333</sup>

### **3. Major Customers**

Regulation S-K<sup>334</sup> and U.S. GAAP<sup>335</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 of each customer that comprises 10 percent or more of total revenue. Although the requirements for SRCs in Item 101(h)(4)(vi) are more similar to U.S. 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

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<sup>333</sup> See FASB's Technical Agenda and Notice of Open Meetings on their website related to its Disclosure Framework project, which includes disclosures of income taxes.  
[http://fasb.org/jsp/FASB/FASBContent\\_C/ProjectUpdatePage&cid=1176163077030](http://fasb.org/jsp/FASB/FASBContent_C/ProjectUpdatePage&cid=1176163077030)

<sup>334</sup> See Item 101(c)(1)(vii) and Item 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>335</sup> See ASC 280-10-50-42.

adverse effect on the issuer.<sup>336</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>337</sup>

Because U.S. GAAP historically has scaled disclosure requirements only by public business entities versus other entities, and not by issuer status, incorporation of these requirements into U.S. GAAP could result in the application to SRCs of the disclosure threshold and the requirement to name a customer in certain instances.

Several commenters supported the Commission eliminating this disclosure requirement because it is substantially similar to the corresponding U.S. GAAP requirements, which they believe sufficiently highlight customer concentrations.<sup>338</sup> A few commenters further suggested that the disclosure of major customers could be harmful because of the competitively sensitive nature of this information.<sup>339</sup> The remaining commenters supported referring the requirement to the FASB for potential incorporation into U.S. GAAP.<sup>340</sup> One of these commenters also recommended the FASB consider whether the disclosure objective in U.S. GAAP should be clarified.<sup>341</sup> Another commenter recommended a principles-based approach rather than a bright line disclosure threshold for the requirement to disclose customer names, as this threshold may

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<sup>336</sup> Item 101(h)(4)(vi) of Regulation S-K does not require disclosure of the name of major customers.

<sup>337</sup> *See Segment Reporting*, Release No. 33-7620, (Jan. 5, 1999) [64 FR 1728 (Jan. 12, 1999)].

<sup>338</sup> *See* letters from CAQ; E&Y; EEI and AGA; KPMG; and PwC.

<sup>339</sup> *See* letters from E&Y and EEI and AGA.

<sup>340</sup> *See* letters from Davis; Deloitte; Grant; and IMA.

<sup>341</sup> *See* letter from Deloitte.

not be material to some registrants.<sup>342</sup> One commenter recommended retaining the requirement, asserting that the identity of major customers is material information to investors and it allows a reader to better assess risks associated with a particular customer, as well as material concentrations of revenues related to that customer.<sup>343</sup>

We are retaining this disclosure requirement and are referring it to the FASB for potential incorporation into U.S. GAAP. We believe the objective of the U.S. GAAP disclosure requirement is similar to the Commission disclosure requirement; however, U.S. GAAP does not require disclosure of a major customer's name.

#### **4. Legal Proceedings**

U.S. GAAP requires disclosure of certain loss contingencies.<sup>344</sup> 17 CFR 229.103 (“Item 103” of Regulation S-K) requires disclosure of certain legal proceedings, which are one type of loss contingency. Item 103 does not require disclosure of certain matters that do not exceed 10 percent of the issuer's consolidated current assets, while U.S. GAAP provides a more general materiality threshold.<sup>345</sup> 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 to those disclosures.

As further described in Section III.E.15 of the Proposing Release, 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. In the Proposing Release, the Commission described in detail (a) the differences

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<sup>342</sup> See letter from Davis.

<sup>343</sup> See letter from Bean.

<sup>344</sup> See ASC 450.

<sup>345</sup> See also Section III.E.15 of the Proposing Release, *supra* note 1, at 51616.

between Item 103 and U.S. GAAP; (b) the potential consequences of incorporating the Item 103 requirements into U.S. GAAP; and (c) other considerations related to Item 103. The Commission solicited comment about whether to retain, modify, eliminate, or refer the disclosure requirements to the FASB.

Many commenters opposed the integration of Item 103 and U.S. GAAP.<sup>346</sup> A number of commenters<sup>347</sup> stated that the objectives<sup>348</sup> of Item 103 and U.S. GAAP differ, and some of these commenters<sup>349</sup> indicated that a better articulation of the objectives may be warranted. Many commenters<sup>350</sup> also indicated that, if the Commission chooses to move forward with the integration, the American Bar Association policy statement regarding lawyers' responses to auditors' requests for information and Public Company Accounting Oversight Board ("PCAOB") auditing standards should be revisited as they both incorporate the U.S. GAAP disclosure requirements.<sup>351</sup> On a similar note, some commenters<sup>352</sup> indicated that integration would also expand audit and interim review requirements, as well as XBRL tagging requirements, which would be burdensome and costly to issuers. These commenters further expressed concern that the integration could lead to increased disclosure of immaterial items and may eliminate the safe-harbor protections currently afforded to forward-looking statements related to legal proceedings under Regulation S-K.

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<sup>346</sup> See, e.g. letters from CAQ; CGCIV; Davis; FedEx; Shearman; and USCC.

<sup>347</sup> See, e.g. letters from CAQ; and NAREIT.

<sup>348</sup> Item 103 is intended to provide a description of material pending legal proceedings, while U.S. GAAP is designed to provide information consistent with the accounting model for loss contingencies.

<sup>349</sup> See, e.g. letters from CAQ and Davis.

<sup>350</sup> See, e.g. letters from CAQ; Davis; and Shearman.

<sup>351</sup> See AS 2505C: Exhibit II – *American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information* available at <https://pcaobus.org/Standards/Auditing/Pages/AS2505.aspx>.

<sup>352</sup> See letters from CGCIV; Davis; FedEx; NAREIT; Shearman; and USCC.

Some commenters recommended the deletion of Item 103 altogether or at minimum some of the disclosure requirements contained therein.<sup>353</sup> For example, one of these commenters stated that U.S. GAAP, together with Items 303 and 503(c) of Regulation S-K, elicits the appropriate level of disclosure of material legal proceedings to inform investment and voting decisions of a reasonable investor.<sup>354</sup> Another commenter recommended the deletion of the requirement to disclose proceedings known to be contemplated but which are not probable of being asserted because this does not provide useful information to investors.<sup>355</sup>

The commenters<sup>356</sup> who supported the integration of Item 103 into U.S. GAAP noted the repetition that is currently present in many filings.<sup>357</sup> However, one of these commenters recommended the Commission consider undertaking outreach with preparers, users, and other regulators and develop disclosure objectives for the incremental disclosures.<sup>358</sup> Other commenters also recommended that the Commission conduct more analysis and outreach in this area, particularly with the accounting and legal professions.<sup>359</sup>

Some commenters indicated that the existing disclosure requirements in both Item 103 and U.S. GAAP do not provide sufficient information for investors to understand the nature, potential magnitude, and timing of any loss contingencies relating to legal proceedings, and

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<sup>353</sup> See letters from Davis; EEI and AGA; and Grant.

<sup>354</sup> See letter from Davis.

<sup>355</sup> See letter from EEI and AGA.

<sup>356</sup> See letters from Grant; and IMA.

<sup>357</sup> While it did not support the integration of all requirements, the letter from EEI and AGA recommended that the following disclosures be integrated: (1) proceedings involving capital expenditure or deferred charges; and (2) material bankruptcy, receivership, or similar proceedings.

<sup>358</sup> See letter from Grant.

<sup>359</sup> See letters from CGCIV; and USCC.

recommended specific changes to the requirements.<sup>360</sup> Some of their recommendations include greater use of bright line disclosure thresholds and preserving Item 103’s disclosure requirements for low-probability but high magnitude liabilities.<sup>361</sup>

Additionally, several commenters<sup>362</sup> expressed concerns with the bright line disclosure threshold for certain matters imposed by the existing requirements in Item 103, stating that some of the disclosures based on the threshold may not be material.

In response to the concerns expressed by commenters, we are retaining the disclosure requirements in Item 103 without amendment. In addition, we are not referring these disclosure requirements to the FASB for potential incorporation into U.S. GAAP at this time. In light of the various views expressed by commenters, we believe further consideration is warranted with respect to the implications of potential changes to these requirements.

## 5. Other

The table below describes the remaining overlapping requirements discussed in the proposing release as well as the incremental differences between these requirements.<sup>363</sup>

Topic	Commission Disclosure Requirement	Description of Requirement
REIT - Tax Status of Distributions	Rule 3-15(c) of Regulation S-X	Both Regulation S-X and U.S. GAAP <sup>364</sup> require disclosure of an issuer's tax status. Regulation S-X requires additional footnote disclosures, including distributions per unit,

<sup>360</sup> See letters from AFL-CIO and AFR; CII; and Rutkowski.

<sup>361</sup> The letter from EEI and AGA recommended that low probability but high magnitude proceedings disclosures should follow the requirements under U.S. GAAP concerning the likelihood of loss. The commenter indicated that providing this information is not helpful to investors, if the likelihood of loss is remote, and having a separate rule that requires disclosure of potential losses beyond those that are considered “reasonably possible” would create additional burdens for issuers and auditors.

<sup>362</sup> See letters from CGCIV; Clearing House; Davis; EEI and AGA; NAREIT; Shearman; and USCC.

<sup>363</sup> These proposed amendments are discussed in further detail in Section III.E. of the Proposing Release.

<sup>364</sup> See ASC 740-10-50-16.

Topic	Commission Disclosure Requirement	Description of Requirement
		for example as ordinary income, capital gain, or return of capital.
Consolidation	Rule 3A-03(b) of Regulation S-X	Regulation S-X and U.S. GAAP <sup>365</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.
Assets Subject to Lien	Rule 4-08(b) of Regulation S-X	Regulation S-X and U.S. GAAP <sup>366</sup> both require disclosure of assets subject to lien and the obligation collateralized for the most recent audited balance sheet being filed. U.S. GAAP disclosure requirements only apply to certain financial assets (e.g., repurchase agreements or securities lending transactions), whereas Regulation S-X applies to all assets.
Obligations - Defaults Not Cured	Rule 4-08(c) of Regulation S-X	Regulation S-X and U.S. GAAP <sup>367</sup> both require disclosure of information related to covenant violations. Regulation S-X requires disclosure of the facts and amounts related to defaults, while U.S. GAAP sets forth classification requirements for obligations for which there has been a covenant violation, with limited disclosure requirements.
Obligations - Waived Defaults	Rule 4-08(c) of Regulation S-X	Regulation S-X and U.S. GAAP <sup>368</sup> both require disclosure of information related to waived defaults. Regulation S-X requires disclosure of the amount of the obligation and the period of the waiver, while U.S. GAAP sets forth requirements for when to present debt subject to a covenant violation as a current liability.

<sup>365</sup> See ASC 810-10-50.

<sup>366</sup> See ASC 860-30-50-1A and ASC 860-30-50-7.

<sup>367</sup> See ASC 470-10-45-1 and ASC 470-10-45-11. See also 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.

<sup>368</sup> See ASC 470-10-45-1 and ASC 470-10-45-11.

<b>Topic</b>	<b>Commission Disclosure Requirement</b>	<b>Description of Requirement</b>
Obligations - Changes in Obligations	Rule 4-08(f) of Regulation S-X	Regulation S-X and U.S. GAAP <sup>369</sup> both require disclosure of issuances of debt subsequent to the balance sheet date. However, Regulation S-X incrementally requires disclosure of significant changes in the authorized amounts of debt subsequent to the latest balance sheet date.
Obligations - Amounts and Terms of Financing Arrangements	Rule 5-02.19(b), Rule 5-02.22(b), Rule 6-04.13(b), Rule 7-03.16(b), Rule 7-03.16(c), Rule 9-03.13(a), and Rule 9-03.16 of Regulation S-X	Regulation S-X and U.S. GAAP <sup>370</sup> both require disclosures of an issuer's financing arrangements. Regulation S-X incrementally requires disclosure of specific information related to the financing arrangement.
Preferred Shares	Rule 4-08(d)(1) of Regulation S-X	Regulation S-X and U.S. GAAP <sup>371</sup> both require disclosure about preferred share preferences in involuntary liquidation. However, Regulation S-X requires disclosure in more circumstances than U.S. GAAP.
Related Parties	Rule 4-08(k)(1) of Regulation S-X	Regulation S-X and U.S. GAAP <sup>372</sup> both require the amount of related party transactions to be disclosed in the financial statements. Regulation S-X incrementally requires that these amounts be presented on the face of the financial statements, if material.
Repurchase and Reverse Purchase Agreements	Rule 4-08(m) of Regulation S-X	Regulation S-X and U.S. GAAP <sup>373</sup> both set forth presentation and disclosure requirements for repurchase and reverse repurchase agreements in the financial statements. However, Regulation S-X provides additional requirements. <sup>374</sup>

<sup>369</sup> See ASC 855-10-50-2 and ASC 855-10-55-2a.

<sup>370</sup> See ASC 470-10-50.

<sup>371</sup> See ASC 505-10-50-4.

<sup>372</sup> See ASC 850-10-50-1.

<sup>373</sup> See ASC 860-30-45-2 and ASC 860-30-50.

<sup>374</sup> Rule 4-08(m) of Regulation S-X requires the following incremental disclosures when a specified bright line threshold is met: (1) the liabilities associated with repurchase agreements that are separately presented on the balance sheet to include accrued interest payable, (2) disclosure of the interest rates associated with

<b>Topic</b>	<b>Commission Disclosure Requirement</b>	<b>Description of Requirement</b>
Interim Financial Statements – Computation of Earnings Per Share	Rule 10-01(b)(2) of Regulation S-X, and Item 601(b)(11) of Regulation S-K	Commission disclosure requirements and U.S. GAAP <sup>375</sup> both require disclosure in the notes to the financial statements of the computation of earnings per share. However, U.S. GAAP does not specifically require disclosure of the computation in interim financial statements.
Interim Financial Statements – Retroactive Prior Period Adjustments	Rule 8-03(b)(5) and Rule 10-01(b)(7) of Regulation S-X	Regulation S-X and U.S. GAAP <sup>376</sup> both require certain disclosures of the effects of changes in accounting principles, correction of an error, and changes in reporting entities. However, Regulation S-X incrementally requires disclosures in the interim period of change, and for non-SRCs, incrementally requires disclosure of the effect on retained earnings.
Interim Financial Statements – Common Control Transactions	Rule 10-01(b)(3) of Regulation S-X	Regulation S-X and U.S. GAAP <sup>377</sup> both set forth accounting and disclosure requirements for combinations of entities under common control. However, Regulation S-X incrementally requires non-SRCs to disclose the separate results of the combined entities for periods prior to the combination.
Products and Services	Item 101(c)(1)(i) of Regulation S-K	Regulation S-K and U.S. GAAP <sup>378</sup> both require disclosure of the amount of revenue from products and services. Regulation S-K only requires this disclosure if a certain threshold is met, while U.S. GAAP includes a practicability exception.
Oil and Gas Producing Activities	Item 302(b) of Regulation S-X	Regulation S-K and U.S. GAAP <sup>379</sup> both require issuers engaged in oil and gas producing activities to disclose information

certain repurchase liabilities, (3) information about counterparties and agreements with them, where there is a concentration of counterparties, (4) separate presentation on the balance sheet of the carrying amount of reverse repurchase agreements, 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>375</sup> See ASC 260-10-50-1.

<sup>376</sup> See ASC 250-10-50-1 and 250-10-50-6 to 8.

<sup>377</sup> See ASC 805-50-45-1 to 5.

<sup>378</sup> See ASC 280-10-50-40.

<sup>379</sup> See ASC 932-235-50.

Topic	Commission Disclosure Requirement	Description of Requirement
		about those activities in the notes to the financial statements. Regulation S-K incrementally requires that the U.S. GAAP disclosures must be provided for each period presented.

Some commenters recommended that the Commission eliminate some of these disclosure requirements because the required disclosures are available elsewhere.<sup>380</sup> For example, one commenter recommended the deletion of the requirement related to tax status of distributions per unit<sup>381</sup> because this information is available to shareholders in Internal Revenue Service (IRS) Form 1099.<sup>382</sup> Some commenters recommended eliminating the consolidation disclosure requirements in Rule 3A-03(b) because they overlap with U.S. GAAP<sup>383</sup> disclosure requirements.<sup>384</sup> One commenter recommended deletion of the repurchase and reverse repurchase agreement disclosure requirements because they provide reasonably similar information as the corresponding U.S. GAAP requirements.<sup>385</sup> This commenter recommended that the only repurchase and reverse repurchase agreement disclosure requirement that the Commission should refer to the FASB for potential incorporation into U.S. GAAP is the requirement to disclose the repurchase liability and the interest rate(s) thereon.<sup>386</sup> Another commenter recommended eliminating certain interim financial statement information due to

<sup>380</sup> See, e.g. letters from CAQ; Deloitte; E&Y; KPMG; and PwC.

<sup>381</sup> Rule 3-15(c).

<sup>382</sup> See letter from NAREIT. The other Rule 3-15 amendments described in Section III.B. rely on this disclosure requirement that is incremental to U.S. GAAP.

<sup>383</sup> See ASC 805; 810-10-50; and ASC 205-10-45.

<sup>384</sup> See letters from CAQ; E&Y; Grant; and PwC.

<sup>385</sup> See letter from KPMG.

<sup>386</sup> See discussion in Section III.B.1.a below. See also Section III.C.3 of the Proposing Release, *supra* note 1, at 51618.

overlapping U.S. GAAP disclosure requirements.<sup>387</sup> Some commenters also suggested eliminating the products and services disclosure requirement<sup>388</sup> because U.S. GAAP<sup>389</sup> requires substantially similar disclosures.<sup>390</sup> These commenters observed that while U.S. GAAP provides an impracticability exception, that exception is used infrequently and, when it is relied upon, the issuer will have the same practicability issue with providing the products and services disclosures under Regulation S-K. A few commenters observed that U.S. GAAP oil and gas producing disclosures are generally interpreted to apply to each period presented.<sup>391</sup> For this reason, one commenter recommended deletion of Item 302(b) of Regulation S-K.<sup>392</sup>

Most commenters, however, including some who recommended eliminating certain disclosure requirements, supported the Commission retaining most or all of these disclosure requirements and referring them to the FASB for potential incorporation into U.S. GAAP.<sup>393</sup> One commenter specifically requested the Commission retain the disclosure requirements for repurchase and reverse repurchase agreements as they are complex financial instruments that can impact the financing and liquidity of financial institutions and other businesses.<sup>394</sup>

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<sup>387</sup> See E&Y letter. This commenter recommended that we delete Rule 10-01(b)(2) of Regulation S-X and Item 601(b) of Regulation S-K because these overlap with ASC 260-10-50-1. In addition, the commenter recommended we delete all requirements related to changes in reporting entities in Rule 10-01(b)(7) and Rule 8-03(b)(5) and ask that the FASB reconsider the disclosure requirements in ASC 250-10-50-6.

<sup>388</sup> Item 101(c)(1)(i) of Regulation S-K.

<sup>389</sup> See ASC 280

<sup>390</sup> See letters from CAQ; EEI and AGA; E&Y; Grant; KPMG; and PwC.

<sup>391</sup> See letters from CAQ; E&Y; and PwC.

<sup>392</sup> See letter from E&Y.

<sup>393</sup> See letters from CAQ; Deloitte; E&Y; IMA; KPMG; and PwC.

<sup>394</sup> See letter from Bean.

Commenters had the following additional recommendations for both the Commission and the FASB as it relates to the potential incorporation of the Commission’s disclosure requirements into U.S. GAAP:

- Revisit the bright line disclosure thresholds in the requirements (e.g., the 10% threshold in Rule 4-08(m)) and whether U.S. GAAP should require similar bright line disclosure thresholds;<sup>395</sup>
- Clarify the concept of “authorization of debt” in Rule 4-08(f);<sup>396</sup>
- Coordinate to provide enhanced disclosures for significant accounting policies that provide a more comprehensive discussion of critical accounting estimates, including more robust information about underlying assumptions that are highly judgmental, as well as their propensity to change;<sup>397</sup>
- Consider the timing of the disclosure requirements related to combinations of entities under common control because these disclosures could be useful to investors on both an interim and annual basis and ensure the disclosure objectives and requirements are clear;<sup>398</sup> and
- Work together to further reduce redundancies between Commission disclosure requirements and U.S. GAAP, such as the oil and gas disclosures in 17 CFR 229.1200 (“Item 1200” of Regulation S-K) and those in U.S. GAAP<sup>399</sup> industry standards.<sup>400</sup>

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<sup>395</sup> See letters from Clearing House and EEI and AGA.

<sup>396</sup> See letters from CAQ and Grant.

<sup>397</sup> See letters from CGCIV and FedEx.

<sup>398</sup> See letters from CAQ; E&Y; and PwC.

<sup>399</sup> ASC 932

<sup>400</sup> See letters from CAQ; Deloitte; E&Y; and PwC.

We are retaining these requirements and referring all of the disclosure requirements described in the table above to the FASB for potential incorporation into U.S. GAAP.

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

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

The Commission proposed to amend certain requirements that have become outdated as a result of the passage of time or changes in the regulatory, business, or technological environments. These amendments were intended to simplify issuer compliance efforts. Further, to reduce any loss of information or increased burdens for investors, the Commission also proposed to require additional disclosure of information that is expected to be readily available to issuers.

##### **B. Disclosure requirements outdated due to passage of time**

In the Proposing Release, the Commission noted that some of its disclosure requirements have become obsolete due to passage of time. The table below describes each outdated requirement and what the Commission proposed to eliminate.<sup>401</sup>

<b>Topic</b>	<b>Commission Disclosure Requirement(s)</b>	<b>Proposed Amendment(s)</b>
Stale Transition Dates	Rule 4-01(a)(3) and Note 6 to Rule 8-01 of Regulation S-X; Forms S-3, F-1, F-3, F-4, and 20-F; and Exchange Act Rule 13a-10(g)(3), 15d-2, and 15d-10(g)(3)	Delete references to transition dates given the passage of these transition dates.

<sup>401</sup> These proposed amendments are discussed in further detail in Section IV.B. of the Proposing Release.

Income Tax Disclosures	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	Delete the instructions to the rule that relate to adoption of ASC 740 - <i>Income Taxes</i> because all issuers are now required to apply it.
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Commenters supported the proposed amendments to delete the requirements above, which have become outdated.<sup>402</sup> We are adopting both of the amendments described in the table above as proposed.

**C. Disclosure requirements outdated due to changes in the regulatory, business, or technological environment**

In the Proposing Release, the Commission staff noted that some of its disclosure requirements have become obsolete as the regulatory, business, or technological environments have changed over time. For example, some of the Commission’s disclosure requirements are no longer relevant, or some information required to be disclosed is no longer readily available or can be derived from alternative sources. Below we discuss these outdated requirements and the related proposed amendments.

**1. Market Price Disclosure**

**a) Proposed Amendments**

Item 201(a)(1) of Regulation S-K 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

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<sup>402</sup> See letters from CAQ; Deloitte; E&Y; Grant; PwC; and R.G. Associates.

applicable, issuers must disclose that there is no established public trading market for their common equity.<sup>403</sup>

- If the principal U.S. market is an exchange, 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>404</sup>
- If the principal U.S. market is not an exchange, 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>405</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>406</sup>
- When Item 201(a)(1) disclosure is included in a Securities Act registration statement or an Exchange Act proxy or information statement, the price for their common equity as of the latest practicable date.<sup>407</sup>

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<sup>403</sup> Item 201(a)(1)(i) of Regulation S-K

<sup>404</sup> Item 201(a)(1)(ii) of Regulation S-K.

<sup>405</sup> Item 201(a)(1)(iii) of Regulation S-K. This provision 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>406</sup> Item 201(a)(1)(iv) of Regulation S-K.

<sup>407</sup> Item 201(a)(1)(v) of Regulation S-K. 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 (Dec. 17, 1968)].

Today, the daily market prices of most publicly traded common equity securities, including those quoted on an automated quotation system, are readily available free on numerous websites, including the exchanges' or quotation systems' websites.<sup>408</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 customized time horizons. These features result in more robust information than the disclosure required by Item 201(a)(1) of Regulation S-K.

As a result, the Commission proposed 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 would be required to 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 that fact and disclose the range of high and low bid

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<sup>408</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.otcmarkets.com](http://www.otcm Markets.com).

information, if applicable, for each quarter over the last two fiscal years and any subsequent interim period.<sup>409</sup> Also, such issuers would be required to disclose the source and explain the nature of such quotations.

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>410</sup> The proposed amendments would also align Item 201(a)(1) with Item 501(b)(4) of Regulation S-K.<sup>411</sup>

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

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<sup>409</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.

<sup>410</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, the Commission did not propose to change the requirements in Form N-2 relating to sales prices and bid information.

<sup>411</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. The proposed amendments to Item 201(a)(1) are also consistent with those proposed to Item 501(b)(4) and the cover pages of Forms 10-K, 20-F, 40-F, 10-Q, and 8-K in a separate rulemaking. *See FAST Act Modernization and Simplification of Regulation S-K*, Release No. 33-10425 (Oct. 10, 2017) [82 FR 50988 (Nov. 2, 2017)].

- 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 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.

The Commission also proposed to amend Item 9.A.4 of Form 20-F to be consistent with the proposals related to Item 201(a)(1) of Regulation S-K. Specifically, the Commission proposed 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 issuers whose common equity is not traded in any established public trading market, disclosure of that fact would still be required.

#### **b) Comments on Proposed Amendments**

Commenters generally supported the proposed amendments.<sup>412</sup> In the Proposing Release the Commission asked if investors and issuers understood the term “established public trading market” and whether further guidance is needed to determine what constitutes “limited or sporadic quotations.”<sup>413</sup> One commenter recommended that the Commission clarify and define these terms without suggesting specific changes.<sup>414</sup> Another commenter recommended that the Commission require disclosure of trading symbol(s) for primary markets where all issued “instruments” are traded, and define clear standards for the ticker notation so that all filers use

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<sup>412</sup> See letters from E&Y; EEI and AGA; FedEx; KPMG; R.G. Associates; and XBRL US, Inc. (Oct. 3, 2016) (“XBRL”).

<sup>413</sup> See Section IV.B.4 of the Proposing Release, *supra* note 1, at 51638.

<sup>414</sup> See letter from E&Y.

the same notation.<sup>415</sup> This commenter also recommended disclosure of the security identifier (CUSIP) in addition to the trading symbol and the ADR ratio,<sup>416</sup> as applicable.

### **c) Final Amendments**

To help investors locate listed securities and current trading prices, we are adopting the amendment to Item 201(a)(1) of Regulation S-K and Item 9.A.4 of Form 20-F substantially as proposed, with minor modifications. First, we are removing the term “established” from “principal established foreign public trading market” in Item 201(a)(1) to be consistent with the scope of disclosure required for domestic issuers in the U.S. market and for foreign private issuers in Item 9.A.4. Second, we are retaining the clarification currently in Item 9.A.4 that “principal market” means “outside the host market” as this language was inadvertently proposed for elimination. Finally, we are adding the term “principal” in front of “host market” in the amended first sentence of Item 9.A.4. to be consistent with Item 201, which requires disclosure of “principal United States market(s).”<sup>417</sup>

In addition, while we acknowledge the commenter’s recommendations that we also require disclosure of trading symbol(s) for all issued “instruments,” as well as CUSIP and ADR ratio when applicable, we are not adopting that suggestion as it is beyond the scope of this rulemaking.

## **2. Other**

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<sup>415</sup> See letter from XBRL.

<sup>416</sup> ADR ratio is the number of foreign shares represented by one ADR.

<sup>417</sup> “Host country,” as defined in General Instruction F. of Form 20-F, means the United States and its territories, as the term is used in Form 20-F.

The table below describes each of the remaining disclosure requirements that have become obsolete as the regulatory, business, or technological environments changed over time, and the related proposed amendments.<sup>418</sup>

<b>Topic</b>	<b>Commission Disclosure Requirement(s)</b>	<b>Proposed Amendments</b>
Available Information – Public Reference Room	Item 101(e)(2) and Item 101(h)(5)(iii) of Regulation S-K; Forms S-1, S-3, S-4, S-11, F-1, F-3, and F-4; Item 1118(b) of Regulation AB; and Forms SF-1, SF-3, N-1A, N-2, N-3, N-5, N-6, and N-8B-2	Delete the requirements to identify the Public Reference Room and disclose its physical address and phone number. The Commission’s Public Reference Room is rarely used by the public to obtain or review issuer filings, as paper filings are now only permitted (and sometimes required) in very limited circumstances. <sup>419</sup> Also delete the instruction in certain N Forms on how to send a written request by mail to the SEC’s Public Reference Room to obtain certain hard copy information.
	Item 101(e)(2) of Regulation S-K; and Forms S-1, S-3, S-4, S-11, F-1, F-3, F-4, 20-F, SF-1, SF-3, and N-4.	Retain the requirement to disclose the Commission’s Internet address and a statement that electronic SEC filings are available there. However, delete the qualifier “if you are an electronic filer” because all but a limited number of issuers are now required to file electronically. <sup>420</sup> Also expand this requirement to Forms 20-F and F-1 in order to align the requirements for foreign private issuers with domestic issuers.
Available Information – Issuer Internet Address	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	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. Many non-accelerated filers already disclose their Internet addresses <sup>421</sup> and the Commission has provided guidance about the liability framework for certain types of disclosures on

<sup>418</sup> These proposed amendments are discussed in further detail in Section IV.B. of the Proposing Release.

<sup>419</sup> See Rules 14 [17 CFR 232.14], 101[17 CFR 232.101], and 102 [17 CFR 232.102] of Regulation S-T.

<sup>420</sup> See Rules 100 [17 CFR 232.100] and 101 [17 CFR 232.101] of Regulation S-T.

<sup>421</sup> Existing rules only require the disclosure by accelerated and large accelerated filers.

Topic	Commission Disclosure Requirement(s)	Proposed Amendments
		company websites. Further, we believe that such a requirement would help ensure that investors are aware of an additional resource for information about issuers.
Exchange Rate data	Item 3.A.3 of Form 20-F	Delete the requirement for foreign private issuers to provide exchange rate data when financial statements are prepared in a currency other than the U.S. dollar. Exchange rate information is readily available free on a number of websites. <sup>422</sup>
Foreign Private Issuer Initial Public Offering – Age of Financial Statements	Instruction 2 to Item 8.A.4 of Form 20-F	Remove the reference to a waiver and clarify the facts and circumstances when foreign private issuers may comply with the aging requirement to include audited financial statements in an initial public offering that are not older than 15 months compared to the 12 months aging requirement.

Commenters supported the proposed amendments and agreed with the reasons provided in the Proposing Release.<sup>423</sup> We are adopting all of the amendments described in the table above as proposed, which will remove obsolete disclosure requirements and reduce issuers’ compliance burdens.

## V. Superseded Requirements

### A. Background

As accounting, auditing, and disclosure requirements have changed over time, inconsistencies have arisen between the newer requirements and existing Commission disclosure requirements. The Commission proposed amendments to update Commission disclosure

<sup>422</sup> See note [451].

<sup>423</sup> See letters from E&Y; KPMG; and R.G. Associates.

requirements to reflect more recently updated U.S. GAAP requirements or more recently updated Commission disclosure requirements.

## **B. Disclosure Requirements Superseded by U.S. GAAP**

The Commission staff has observed in its filing reviews that, in practice, issuers are able to successfully navigate inconsistencies between newer accounting and disclosure requirements and existing Commission disclosure requirements by complying with the requirement that was updated more recently. This is particularly the case with respect to changes in U.S. GAAP requirements, as the Commission has designated the FASB as the private-sector accounting standard setter.<sup>424</sup> However, the Commission sought to simplify compliance efforts by proposing changes to several disclosure requirements that the Commission believed were superseded by U.S. GAAP.<sup>425</sup>

### **1. Gains or Loss on Sale of Properties by REITS**

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>426</sup> U.S. GAAP, however, restricts that presentation to gains and losses on disposals that meet the definition of discontinued operations.<sup>427</sup> As a result, the Commission proposed to eliminate Rule 3-15(a)(1) of Regulation S-X.

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<sup>424</sup> See Section I.C.I of the Proposing Release, *supra* note 1, at 51611.

<sup>425</sup> Some of the proposed amendments to eliminate superseded Commission disclosure requirements apply both to issuers that report under U.S. GAAP and IFRS. We do not expect the 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.

<sup>426</sup> Rule 3-15(a)(1) of Regulation S-X.

<sup>427</sup> ASC 205-20-45-1B.

Commenters were supportive of the proposed amendment.<sup>428</sup> We are adopting the elimination of Rule 3-15(a)(1) of Regulation S-X as proposed. We believe this amendment will simplify compliance for issuers by eliminating the disclosure requirement in Rule 3-15(a)(1) of Regulation S-X that conflicts with the requirement in U.S. GAAP.

## 2. Consolidation

### a) Proposed Amendments

The Commission provided guidance on the presentation of consolidated and combined financial statements when it first issued Regulation S-X in 1940.<sup>429</sup> Since that time, certain U.S. GAAP consolidation requirements have changed significantly, creating inconsistencies between Regulation S-X and U.S. GAAP.<sup>430</sup> For instance, Article 3A of Regulation S-X, *Consolidated and Combined Financial Statements*, includes several inconsistencies with U.S. GAAP related to difference in fiscal periods, the Bank Holding Company Act of 1956 (“BHC Act”), and intercompany transactions. The table below describes each requirement related to consolidation that the Commission proposed to eliminate and the reason for its proposed elimination.<sup>431</sup>

Topic	Commission Disclosure Requirement(s)	Proposed Amendments
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<sup>428</sup> See letters from CAQ; Deloitte; E&Y; Grant; KPMG; NAREIT; PwC; and R.G. Associates.

<sup>429</sup> See *Adoption of Regulation S-X*, (March 6, 1940) [5 FR 954 (Mar. 6, 1940)].

<sup>430</sup> For example, Accounting Research Bulletin (“ARB”) No. 51, *Consolidated Financial Statements* (“ARB No. 51”), was issued in 1959. Since then, the FASB has issued additional guidance, including but not limited to 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>431</sup> These proposed amendments are discussed in further detail in Section V.B.4. of the Proposing Release.

Topic	Commission Disclosure Requirement(s)	Proposed Amendments
Consolidation - Difference in Fiscal Periods	Rule 3A-02(b) <sup>432</sup> and Rule 3A-02(b)(2) <sup>433</sup> of Regulation S-X	Delete the requirements because U.S. GAAP <sup>434</sup> requires consolidation despite different fiscal periods and the fiscal periods of combined entities must differ by less than three months.
Consolidation - Bank Holding Company Act of 1956	Rule 3A-02(c) of Regulation S-X <sup>435</sup>	Delete the requirement because U.S. GAAP <sup>436</sup> does not provide an exception to consolidation for subsidiaries of issuers subject to the BHC Act in relation to a divestiture.
Consolidation - Intercompany Transactions Generally	Rule 3A-04 of Regulation S-X <sup>437</sup>	Delete the requirement because U.S. GAAP <sup>438</sup> requires the elimination of intercompany transactions from consolidated financial statements.
Consolidation - Intercompany Transactions in	Rule 4-08(k)(2) of Regulation S-X <sup>439</sup>	Delete the requirement to disclose, in separate financial statements of a subset of a consolidated group, <sup>440</sup> the intercompany

<sup>432</sup> 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>433</sup> 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>434</sup> ASC 810-10-15-11.

<sup>435</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>436</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>437</sup> If an issuer does not eliminate intercompany transactions from its financial statements, Regulation S-X requires it to explain why and how the transactions are treated.

<sup>438</sup> *See* ASC 323-10-35-5a and ASC 810-10-45-1.

<sup>439</sup> 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>440</sup> A subset of a consolidated group that may present separate financial statements includes financial statements of the registrant, certain investees, or subsidiaries.

Topic	Commission Disclosure Requirement(s)	Proposed Amendments
Separate Financial Statements		transactions which are eliminated or not eliminated, because U.S. GAAP <sup>441</sup> prohibits elimination of these transactions in the separate financial statements.
Dividends Per Share in Interim Financial Statements	Rule 8-03(a)(2) and Rule 10-01(b)(2) of Regulation S-X <sup>442</sup>	Delete the requirements to present dividends per share on the face of the income statement for interim periods because U.S. GAAP <sup>443</sup> (1) prohibits this disclosure on the face of the financial statements and (2) instead permits it in the notes to the financial statements.
	Rule 3-04 of Regulation S-X <sup>444</sup>	Extend the annual disclosure requirement of changes in stockholders' equity and the amount of dividends per share for each class of shares to interim periods. <sup>445</sup>

<sup>441</sup> ASC 810-10-45-1.

<sup>442</sup> Regulation S-X requires, for interim periods, the presentation of dividends per share on the face of the income statement. 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>443</sup> See ASC 260-10-45-5.

<sup>444</sup> Rule 3-04 of Regulation S-X allows annual disclosures of changes in stockholders' equity, including dividends per share amounts, to be provided in a note to the financial statements or in a separate financial statement.

<sup>445</sup> The option to present dividend per share disclosures in a separate financial statement does not comply with U.S. GAAP, which prohibits this per share presentation on the face of financial statements. However, the Commission saw 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. The Commission believed that the presentation of dividends per share alongside disclosure of changes in stockholders' equity facilitates investor understanding of stockholders' equity, as dividends are distributed from stockholders' equity. In addition, the proposed amendments 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, the Commission proposed 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, the Commission did 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*. The Commission expected 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.

## **b) Comments on Proposed Amendments**

Commenters were generally supportive of the proposed amendments.<sup>446</sup> Some commenters asked for clarification on whether the amendment to extend the changes in stockholders' equity and non-controlling interests disclosure requirement to interim periods would be presented only for the year-to-date period, or for quarterly period(s) as well.<sup>447</sup> One commenter supported the proposed elimination of Rule 8-03(a)(2) and Rule 10-01(b)(2) in Regulation S-X, but questioned whether the extension of the disclosure requirement in Rule 3-04 of Regulation S-X to interim periods was necessary or efficient.<sup>448</sup> As an alternative, the commenter recommended amending Regulation S-X to move the dividend per share disclosure requirements from the face of the financial statements to the notes to the financial statements, which would eliminate the conflict with U.S. GAAP.

One commenter observed the need to update Rule 6-03(c)(1)(i) of Regulation S-X, which also has been superseded by U.S. GAAP.<sup>449</sup> The commenter noted the Commission disclosure requirement permits the consolidation of the financial statements of registered investment companies and business development companies only with the financial statements of subsidiaries which are investment companies, whereas U.S. GAAP also permits consolidation when an investment company holds a controlling financial interest in an operating entity that provides services to the investment company.<sup>450</sup>

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<sup>446</sup> See letters from CAQ; Deloitte; E&Y; Grant; KPMG; PwC; and R.G. Associates.

<sup>447</sup> See letters from CAQ and PwC.

<sup>448</sup> See letter from E&Y.

<sup>449</sup> See letter from E&Y.

<sup>450</sup> ASC 946-810-45.

### c) Final Amendments

We are adopting the amendments as proposed with one minor change. As suggested by commenters, the final amendments clarify that Rule 3-04 of Regulation S-X requires both the year-to-date information and subtotals for each interim period.

The extension of the disclosure requirement in Rule 3-04 of Regulation S-X may create some additional burden for issuers, including Regulation A issuers, because it will require disclosure of dividends per share for each class of shares, rather than only for common stock, and disclosure of changes in stockholders' equity in interim periods.<sup>451</sup> However, as noted in the Proposing Release, we expect this burden will be minimal, as the required information is already available from the preparation of other aspects of the interim financial information such as the balance sheet and earnings per share.<sup>452</sup> The amended rule will require companies to provide information on the dividends issued and the relationship the dividends have to stockholders' equity in one place, which may help investors understand some of the strategic decisions made by management, such as dividend payout versus share buyback.

In response to a commenter's suggestion, we are deleting the requirements for consolidation by investment companies in Regulation S-X<sup>453</sup> because it conflicts with U.S. GAAP. The U.S. GAAP requirement is broader and additionally requires consolidated financial statements when a reporting entity has a controlling financial interest in another entity.

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<sup>451</sup> ASC 505-10-50-2 requires disclosure of changes in the separate accounts comprising stockholders' equity (e.g., common stock, additional paid-in capital, retained earnings) 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.

<sup>452</sup> Some registrants already include the disclosure required by Rule 3-04 in the Form 10-Q. U.S. GAAP also requires disclosure of significant changes in financial position, like stockholders' equity, in interim reporting. ASC 270-10-50.

<sup>453</sup> Rule 6-03(c)(1)(i) of Regulation S-X.

### 3. Development Stage Companies

U.S. GAAP previously required presentation of cumulative financial information from inception and related disclosures for development stage companies.<sup>454</sup> Regulation S-X requires the U.S. GAAP disclosures for development stage companies in interim periods.<sup>455</sup> In June 2014, the FASB eliminated the U.S. GAAP disclosure requirements for development stage companies.<sup>456</sup> Accordingly, the Commission proposed to eliminate the superseded U.S. GAAP disclosure requirement for development stage companies in Rule 8-03(b)(6) and Rule 10-01(a)(7).

Commenters supported our proposal to eliminate these requirements.<sup>457</sup> Some of these commenters also recommended deleting the definition of development stage company in Rule 1-02(h) of Regulation S-X.<sup>458</sup>

We are adopting the amendments as proposed. We are not deleting the definition of development stage company in Rule 1-02(h) of Regulation S-X as it is used in other Commission requirements (e.g., Rule 251(b)(3) of Regulation A and Rule 419(a)(2)(i) of Regulation C). As a result, we believe the definition in Rule 1-02(h) of Regulation S-X continues to be useful when applying these other Commission requirements.

### 4. Insurance Companies

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<sup>454</sup> FASB ASC Topic 915, *Development Stage Entities*.

<sup>455</sup> See Rule 8-03(b)(6) and Rule 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 Rule 10-01(a)(7) applies to non-SRCs.

<sup>456</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*. After public comment, the FASB determined that the disclosure provided “information that had limited relevance.”

<sup>457</sup> See letters from CAQ; Deloitte; E&Y; Grant; KPMG; PwC; and R.G. Associates

<sup>458</sup> See letters from CAQ; Deloitte; Grant; and PwC. The definition of development stage entities under U.S. GAAP was the same as development stage companies under Regulation S-X.

**a) Proposed Amendments**

17 CFR 210.7-02(b) (“Rule 7-02(b)” of 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. In the proposing release, the Commission proposed to eliminate this rule, as the Commission did not believe that issuers under the Securities Act or the Exchange Act currently rely on Rule 7-02(b) of Regulation S-X as a basis to report under statutory accounting requirements.<sup>459</sup>

The Commission also proposed two other amendments related to Insurance Companies and Regulation S-X. The first amendment relates to the separate presentation on the balance sheet of an asset called “reinsurance recoverable on paid losses.”<sup>460</sup> The Commission proposed to delete the reference to “paid losses” in this line item because U.S. GAAP was revised in 1992 to allow reinsurance recoverable receivables on paid and unpaid losses to be presented together.<sup>461</sup> The second amendment relates to the definition of “Separate Account Assets” that are presented separately as a summary total on the balance sheet.<sup>462</sup> U.S. GAAP defines

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<sup>459</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; and Form N-6, Item 24(b), Instruction 1. The proposed elimination of Rule 7-02(b) would not change these forms.

<sup>460</sup> *See* Rule 7-03(a)(6) of Regulation S-X.

<sup>461</sup> In 1992 the FASB issued SFAS No. 113, which established that reinsurance receivables on unpaid losses are also assets and may be presented together or separately with other reinsurance receivables. *See* paragraphs 74 to 76 in SFAS No. 113 and paragraph 76 was codified in ASC 944-20-50-5.

<sup>462</sup> *See* Rule 7-03(a)(11) of Regulation S-X.

differently separate account assets that are required to be reported as a summary total.<sup>463</sup> Thus, the Commission proposed 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.

**b) Comments on Proposed Amendments**

Many commenters supported all three proposals.<sup>464</sup> However, some commenters opposed the elimination of the ability of mutual life insurance companies to utilize statutory accounting principles for registration of insurance products under the Securities Act.<sup>465</sup> These commenters stated that the preparation of U.S. GAAP financial statements would impose significant financial and administrative burdens on mutual life insurers. These commenters indicated that if the amendments to Rule 7-02(b) were adopted, a mutual insurance company issuing a general account insurance product would have to comply with the requirement to provide U.S. GAAP financial statements in Form S-1 or S-3, and as a result, mutual life insurance companies that do not already prepare U.S. GAAP financial statements may limit their offerings of general account insurance products. One commenter suggested that the Commission should expand Rule 7-02(b) to allow its application to all insurance companies that do not otherwise prepare U.S. GAAP financial statements.<sup>466</sup> Other commenters advised that elimination of the rule should involve a full analysis of the potential costs and benefits.<sup>467</sup> These commenters also outlined the relevance of financial statements prepared under statutory accounting principles for general account insurance products.

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<sup>463</sup> See ASC 944-80-25-1 to 5.

<sup>464</sup> See letters from CAQ; Deloitte; E&Y; Grant; KPMG; PwC; and R.G. Associates.

<sup>465</sup> See letters from American Council of Life Insurers (Oct. 21, 2016) (“ACLI”); Committee of Annuity Insurers (Oct. 11, 2016); and Northwestern Mutual Life Insurance Company (Nov. 1, 2016) (“Northwestern Mutual”).

<sup>466</sup> See letter from Committee of Annuity Insurers.

<sup>467</sup> See letters from ACLI and Northwestern Mutual.

### **c) Final Amendments**

After further consideration and in light of the concerns expressed by commenters, we are not adopting the proposed amendment to eliminate Rule 7-02(b). We are adopting the amendments to Rule 7-03(a)(6) and 7-03(a)(11) as proposed to simplify compliance for issuers by removing the elements of those rules that conflict with U.S. GAAP.

## **5. Extraordinary Items**

### **a) Proposed Amendments**

Various Commission disclosure requirements and forms refer to extraordinary items. In January 2015, the FASB eliminated extraordinary items from U.S. GAAP.<sup>468</sup> To update Commission disclosure requirements, the Commission proposed to delete references to extraordinary items in our rules and forms.<sup>469</sup> The Commission proposed to delete the requirement in Item 302(a)(1) of Regulation S-K to disclose “income (loss) before extraordinary items and cumulative effect of a change in accounting” in supplemental quarterly financial information, and in its place, require disclosure of “Income (loss).” The Commission also

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<sup>468</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.

<sup>469</sup> The proposed amendments apply to the following rules: Rule 1-02(w)(3), Rule 1-02(bb)(1)(ii), Rule 3-01(c)(2), Rule 3-01(c)(3), Rule 3-15(a)(1), Rule 3A-02(b)(2), Rule 5-03(b), Rule 7-04, Rule 8-03(a)(2), Rule 8-04(b)(3), Rule 9-04, Rule 10-01(b)(4), Rule 11-02(b)(7), and Instruction 1 to Rule 11-02; Item 10(b)(2), Item 302(a)(1), and Item 302(a)(3) of Regulation S-K; Securities Act Rule 405, Exchange Act Rule 3a51-1(a)(2)(i)(A)(3); Exchange Act Rule 12b-2; Exchange Act Rule 13a-10(b); and Exchange Act 15d-10(b). The proposed amendments also apply to Form X-17A-5.

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” would be deleted, but the exclusion of non-recurring items from net income would 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 we believe 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.

proposed amendments to the investment company registration forms (Form N-1A, Form N-3, Form N-4, and Form N-6) to replace the outdated reference to the U.S. GAAP definition of extraordinary items with a definition of extraordinary expenses<sup>470</sup> The Proposing Release indicated that the proposed amendments were not intended to change the content required to be presented in these forms.<sup>471</sup>

### **b) Comments on Proposed Amendments**

While commenters<sup>472</sup> generally supported the proposed amendments, some commenters<sup>473</sup> recommended requiring disclosure of “income (loss) from continuing operations” and “net income (loss)” where the existing rule previously required “income (loss) before extraordinary items and cumulative effect of a change in accounting principle.” This recommendation was based on a view that: (1) it was unclear what income statement line “income (loss)” referred to; and (2) the alternative formulation would highlight the effects of discontinued operations. Additionally, these commenters recommended that the Commission reconsider the per share financial metrics required to be disclosed in interim periods, such as the disclosure requirement in Item 302(a)(1) of Regulation S-K,<sup>474</sup> and make the metrics consistent with measures that are presented on the face of the interim income statements. One commenter

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<sup>470</sup> The proposed definition is consistent with the historical U.S. GAAP definition of “extraordinary items.”

<sup>471</sup> 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. The proposed amendment did not seek to change the requirement that extraordinary expenses be excluded in the fee table and included in footnote disclosure reflecting extraordinary expenses if they would have a material effect. *See* Section V.B.11 of the Proposing Release.

<sup>472</sup> *See* letters from CAQ: Deloitte; E&Y; Grant; KPMG; PwC; and R.G. Associates.

<sup>473</sup> *See* letters from CAQ, E&Y, and PwC.

<sup>474</sup> Item 302(a)(1) of Regulation S-K requires per share data based upon the income (loss) before extraordinary items and cumulative effect of a change in accounting.

expressly supported the proposed amendments to retain the historical U.S. GAAP definition of “extraordinary expenses” in certain investment company registration forms.<sup>475</sup>

**c) Final Amendments**

We are adopting the amendments as proposed, eliminating all references to extraordinary items and adding a definition of extraordinary expenses within certain N-Forms. We are also making several revisions recommended by commenters related to Item 302(a)(1). Specifically, we are replacing the proposed reference to “income (loss)” with “income (loss) from continuing operations” and the reference to “per share data based upon such income” with “per share data based upon income (loss) from continuing operations”<sup>476</sup> and “per share data based upon net income (loss).” These additional changes should help to simplify the resulting disclosure and reduce any confusion for issuers.

**6. Other**

The table below describes each of the remaining disclosure requirements that are superseded by U.S. GAAP and the related proposed amendments.<sup>477</sup>

Topic	Commission Disclosure Requirement(s)	Proposed Amendments
Statement of Cash Flows	Rule 3-02 of Regulation S-X	Amend to replace the reference to “changes in financial position” in the title with “cash flows” because similar amendments to various rules and forms were made in 1992. <sup>478</sup>
Consolidation – Interim Financial	Rule 8-03(b)(4) and Rule 10-01(b)(4) of Regulation S-X	Delete reference to when a business combination should be assumed to have

<sup>475</sup> See letter from ICI.

<sup>476</sup> See ASC 260-10-45-2.

<sup>477</sup> These proposed amendments are discussed in further detail in Section V.B. of the Proposing Release.

<sup>478</sup> See *Amendments to Rules and Forms*, Release No. 33-6958A, (Oct. 1, 1992) [57 FR 45287 (Oct. 1, 1992)].

Topic	Commission Disclosure Requirement(s)	Proposed Amendments
Statements – Pro Forma Business Combination Information		occurred in pro forma financial information because U.S. GAAP <sup>479</sup> requires reflection of the business combination at the beginning of the preceding fiscal year.
Bank Holding Companies – Net Presentation	Rule 9-03.3 of Regulation S-X	Delete requirement for 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 agreements to repurchase because U.S. GAAP <sup>480</sup> permits net presentation under certain conditions.
Bank Holding Companies - Goodwill	Rule 9-03.10(1) and Rule 9-04.14(c) of Regulation S-X	Delete the parenthetical reference to net of amortization in Rule 9-03.10(1) and delete the reference to goodwill amortization in Rule 9-04.14(c) because U.S. GAAP <sup>481</sup> prohibits amortization of goodwill.
Discontinued Operations	Instruction 1 to Rule 11-02(b) of Regulation S-X; and Item 302(a)(3) of Regulation S-K	Replace the reference to “segments” with “discontinued operations” because the definition of “discontinued operations” under U.S. GAAP <sup>482</sup> has changed and no longer incorporates the term “segment.”
Pooling-of-Interests	Rule 11-02(c)(2)(ii) of Regulation S-X; 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; Introduction to Item 12 of Form F-4; and Item	Delete references to “pooling-of-interests” and replace them with references to “combinations of entities under common control” because similar amendments were made in 2009. <sup>483</sup>

<sup>479</sup> See ASC 270-10-50-7, which refers to ASC 805-10-50-2h.3 for purposes of interim disclosures.

<sup>480</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>481</sup> See SFAS No. 142, *Goodwill and Other Intangible Assets*.

<sup>482</sup> See ASC 205.

<sup>483</sup> See *Technical Amendment to Rules, Forms, Schedules, and Codification of Financial Reporting Policies*, Release No. 33-9026, (Apr. 15, 2009) [74 FR 18612 (April 23, 2009)].

Topic	Commission Disclosure Requirement(s)	Proposed Amendments
	12(b)(2)(iv) of Form F-4	
Statement of Comprehensive Income	Rule 1-02, Rule 3-02, Rule 3-03, Rule 3-04, Rule 3-05, Rule 3-12, Rule 3-14, Rule 3-17, Rule 4-08, Rule 4-10, Rule 5-02, Rule 5-03, Rule 5-04, Rule 6-07, Rule 6A-04, Rule 6A-05, Rule 7-03, Rule 7-04, Rule 7-05, Rule 8-02, Rule 8-03, Rule 8-05, Rule 8-06, Rule 9-03, Rule 9-04, Rule 9-05, Rule 9-06, Rule 10-01, Rule 11-02, Rule 11-03, Rule 12-16, Rule 12-17, Rule 12-18, Rule 12-28, and Rule 12-29 of Regulation S-X; Item 10, Item 302, and Item 303 of Regulation S-K; Item 1010 of Regulation M-A; Securities Act Rule 158; Exchange Act Rule 15c3-1g, 17a-5, 17a-12, 17g-3, and 17h-1T; Forms 1-A, 1-K, 1-SA, 20-F, 11-K, and X-17A-5 <sup>484</sup>	Replace (or, in some cases, supplement) the existing references to “income statement” and variations thereof with “statement of comprehensive income” because the FASB has replaced the income statement with the statement of comprehensive income. <sup>485</sup> Also amend to clarify the two presentation options for the statement by defining the term “statement of comprehensive income” in Regulation S-X.
	Rule 5-03, Rule 7-04, and Rule 9-04 of Regulation S-X <sup>486</sup>	Amend to add line items to present comprehensive income and related items in

<sup>484</sup> See Rule 1-02, Rule 3-02, Rule 3-03, Rule 3-04, Rule 3-05, Rule 3-12, Rule 3-14, Rule 3-17, Rule 4-08, Rule 4-10, Rule 5-02, Rule 5-04, Rule 6-07, Rule 6A-04, Rule 6A-05, Rule 7-03, Rule 7-05, Rule 8-02, Rule 8-03, Rule 8-05, Rule 8-06, Rule 9-03, Rule 9-05, Rule 9-06, Rule 10-01, Rule 11-02, Rule 11-03, Rule 12-16, Rule 12-17, Rule 12-18, Rule 12-28, and Rule 12-29 of Regulation S-X; Item 10, Item 302, and Item 303 of Regulation S-K; Item 1010 of Regulation M-A; Securities Act Rule 158; Exchange Act Rule 15c3-1g; Exchange Act Rule 17a-5; Exchange Act Rule 17a-12; Exchange Act Rule 17g-3; Exchange Act Rule 17h-1T; Form 1-A; Form 1-K; Form 1-SA; Form 20-F; Form 11-K; and Form X-17A-5.

<sup>485</sup> See ASU No. 2011-05, *Comprehensive Income (Topic 220): Presentation of Comprehensive Income*. The statement of comprehensive income may be presented as either: (1) a single statement of comprehensive income or (2) two separate but consecutive statements, composed 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.

Items of other comprehensive income include, for example: foreign currency translation adjustments, certain unrealized holding gains and losses, and gains or losses associated with pension or other postretirement benefits (that are not recognized immediately as a component of net periodic benefit cost). See ASC 220-10-45-10A for additional items.

<sup>486</sup> See Rule 5-03, Rule 7-04, and Rule 9-04.

Topic	Commission Disclosure Requirement(s)	Proposed Amendments
	Rule 5-02.30(a) and Rule 7-03(a)(23)(a) of Regulation S-X; and Form X-17-A-5	the statement of comprehensive income.  Amend to include accumulated other comprehensive income in its list of balance sheet line items. Also 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 required to be presented separately under U.S. GAAP.
Cumulative Effect of Changes in Accounting Principles	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, Rule 13a-10(b), and Rule 15d-10(b); and Form X-17A-5.	Delete references to cumulative effect of a change in accounting principle because the FASB has eliminated the requirement to report cumulative effect of a change in accounting principle in the income statement. <sup>487</sup>

Commenters supported the proposed amendments.<sup>488</sup> We are adopting all of the amendments described in the table above as proposed.

### C. Disclosure Requirements Superseded by Other Commission Requirements

Commission disclosure requirements have also changed over time, which has resulted in inconsistencies within our disclosure requirements. The Proposing Release identified disclosure requirements that have been superseded by other Commission disclosure requirements.

#### 1. Auditing Standards

<sup>487</sup> See SFAS No. 154, *Accounting Changes and Error Corrections*. This is now reflected in ASC 250, *Accounting Changes and Error Corrections*.

<sup>488</sup> See letters from CAQ; Deloitte; E&Y; Grant; KPMG; PwC; and R.G. Associates.

**a) Proposed Amendments**

Section 103(a) of the Sarbanes-Oxley Act authorized the PCAOB to establish auditing and related professional practice standards used by registered public accounting firms when conducting audits of issuers.<sup>489</sup> Prior to the creation of the PCAOB, public accounting firms conducted audits of issuers pursuant to Generally Accepted Auditing Standards (“GAAS”)<sup>490</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.

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>491</sup> Further, the Commission stated its intent to codify this interpretation in the future.<sup>492</sup> The table below describes each of the disclosure requirements that the Commission proposed to amend as part of the codification.<sup>493</sup>

<b>Commission Disclosure Requirement(s)</b>	<b>Proposed Amendments</b>
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<sup>489</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>490</sup> These standards are currently promulgated by the American Institute of Certified Public Accountants.

<sup>491</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 (May 20, 2004)]. 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>492</sup> *Id.*

<sup>493</sup> These proposed amendments are discussed in further detail in Section V.B.1. of the Proposing Release.

Rule 1-02(d) of Regulation S-X	Amend 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.
Rule 436(d)(4) of Regulation C and General Instruction G(f)(1) of Form 20-F	Amend to replace the references to GAAS with “the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”)”. Replace the term “examination” with “audit conducted.”
Instruction 2 to Item 8.A.2 of Form 20-F	Amend to state that financial statements of entities other than the issuer must be audited in accordance with “the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”).”
Rule 2-01(f)(7)(ii)(B) of Regulation S-X	Amend to make language consistent with current auditing standards.
Rules 2-02(b)(1), 8-03, and 10-01 of Regulation S-X	Amend to refer to “applicable professional standards” instead of GAAS.
Rules 10A-1(b)(3) and 13b2-2(b)(2) of the Exchange Act	Amend to replace the references to GAAS with “the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”).”
Instruction E(c)(3) of Form 20-F	Amend to replace the reference to U.S. standards for auditor independence with “qualified and independent in accordance with Article 2 of Regulation S-X.”

### **b) Comments on Proposed Amendments**

Commenters generally supported these proposed amendments.<sup>494</sup> Some commenters<sup>495</sup> also recommended that the Commission clarify when a review of interim financial information in accordance with PCAOB standards is not required under Rules 10-01 or 8-03 of Regulation S-X.

<sup>494</sup> See letters from CAQ; Deloitte; E&Y; Grant; KPMG; PwC; and R.G. Associates.

<sup>495</sup> See letters from CAQ; and KPMG.

Further, one of these commenters requested that we adopt a rule that explains which professional standards apply to every circumstance where financial statements are filed with the Commission.<sup>496</sup>

**c) Final Amendments**

We are adopting all of the amendments described in the table above as proposed. We are also eliminating the reference to U.S. standards for auditor independence from Instruction 2 to Item 8.A.2 of Form 20-F to be consistent with the amendments to Instruction E(c)(3) of Form 20-F. We believe the reference to “applicable professional standards” in Rules 10-01 and 8-03 does not create significant confusion and therefore we are not adopting any amendments to clarify the application of these rules as suggested by commenters. Further, we are not adopting a rule that explains which professional standards apply to every circumstance where financial statements are filed with the Commission because that is beyond the scope of this rulemaking.

**2. Other**

The table below describes each of the remaining superseded disclosure requirements that the Commission proposed to amend.<sup>497</sup>

Topic	Commission Disclosure Requirement(s)	Proposed Amendments
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<sup>496</sup> See letter from KPMG.

<sup>497</sup> These proposed amendments are discussed in further detail in Section V.B. of the Proposing Release.

Topic	Commission Disclosure Requirement(s)	Proposed Amendments
Published Report Regarding Matters Submitted to Vote of Security Holders	Item 601(b)(22) of Regulation S-K (including accompanying inclusion in the Exhibit Table within Item 601); Item 5 of Form 10-D	Delete requirement in light of changes made in 2009 to disclose shareholder voting results in Forms 10-K and 10-Q and Item 5.07 of Form 8-K. <sup>498</sup>
Selected Financial Data for Foreign Private Issuers that Report under IFRS	General Instruction G(c) and Instruction 2 to Item 3.A of Form 20-F	Amend (1) General Instruction G(c) to delete the requirement to present selected financial data in accordance with U.S. GAAP, and (2) Instruction 2 to Item 3.A 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 because of inconsistencies in the Form 20-F created by 2005 <sup>499</sup> and 2007 <sup>500</sup> amendments related to foreign private issuers that report under IFRS.
Canadian Regulation A Issuers	Forms 1-A and 1-SA	Amend references to Regulation S-X in Forms 1-A and 1-SA to apply only to Regulation A issuers that report under U.S. GAAP as Regulation A permits Canadian issuers to report under IFRS.

Commenters supported the proposed amendments,<sup>501</sup> and no commenter specifically opposed the amendment. Accordingly, we are adopting all of the amendments described in the table above as proposed.

<sup>498</sup> See *Proxy Disclosure Enhancements*, Release No. 33-9089, (Dec. 16, 2009) [74 FR 68334 (Dec. 23, 2009)]. 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.

<sup>499</sup> See *First-Time Application of International Financial Reporting Standards*, Release No. 33-8567 (Apr. 12, 2005) [70 FR 20674 (Apr. 20, 2005)].

<sup>500</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 No. 33-8879, (Dec. 21, 2007) [73 FR 986 (Jan. 4, 2008)] and Instruction 2 to Item 3.A of Form 20-F.

<sup>501</sup> See letters from CAQ; Deloitte; E&Y; Grant; KPMG; PwC; and R.G. Associates.

## D. Non-Existent or Incorrect References and Typographical Errors

Various Commission disclosure requirements contain incorrect references or references to rules that no longer exist. The table below describes each of the disclosure requirements that contain these references and the related proposed amendments.<sup>502</sup>

Commission Disclosure Requirement(s)	Proposed Amendments
Rule 5-02 of Regulation S-X, <i>Balance sheets</i>	Delete reference to Rule 4-05 of Regulation S-X, which no longer exists.
Rule 5-02.22(a) of Regulation S-X, <i>Bonds, mortgages and other long-term debt, including capitalized leases</i>	Delete reference to Rule 4-06 of Regulation S-X, which no longer exists.
Rule 7-04.9 of Regulation S-X, <i>Income tax expense</i>	Replace reference to Rule 4-08(g) of Regulation S-X that relates to investments accounted for under the equity method of accounting with Rule 4-08(h) that addresses income tax expense.
Rule 9-03.7(e)(3) of Regulation S-X, <i>Loans</i>	Delete reference to Rule 4-08(L)(3) of Regulation S-X, which no longer exists.
Item 512(a)(4) of Regulation S-K, <i>Undertakings</i>	Replace reference to Rule 3-19 of Regulation S-X, which no longer exists, with Item 8.A of Form 20-F, similar to changes made in 1999. <sup>503</sup>
Instruction J(1)(e) to Form 10-K	Clarify that General Instruction J(1)(e) is reserved because it is currently blank.
Instruction J(1)(f) to Form 10-K	Conform 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	Delete reference to “interim” financial statements because this paragraph addresses the age of both interim and annual financial statements.

<sup>502</sup> These proposed amendments are discussed in further detail in Section V.B.16. of the Proposing Release.

<sup>503</sup> See *International Disclosure Standards*, Release No. 33-7745 (Sept. 28, 1999) [64 FR 53900 (Oct. 5, 1999)].

<b>Commission Disclosure Requirement(s)</b>	<b>Proposed Amendments</b>
Forms F-1, F-3, F-4, F-6, F-7, F-8, F-10, F-80, 20-F, and 40-F	Replace references to the Commission's telephone numbers and offices with the correct references.

Commenters supported the amendments to correct these references and errors,<sup>504</sup> and no commenter specifically opposed the amendments. Accordingly, we are adopting all of the amendments described in the table above as proposed.

Subsequent to the Proposing Release, we identified additional incorrect references or references to rules that no longer exist that also need to be updated, as well as typographical errors. We are amending our rules to address these incorrect references and errors in this release. We describe those amendments in the table below.

<b>Commission Disclosure Requirement(s)</b>	<b>Technical Amendments</b>
Rule 1-02(w) of Regulation S-X, <i>Significant Subsidiary</i>	Replace the term “submitted” with “substituted” which was inadvertently changed in a prior technical amendment. <sup>505</sup>
Rule 9-03(12)(a) of Regulation S-X, <i>Deposits</i>	Replace reference to Rule 0-05, which does not exist, with reference to Rule 9-05 of Regulation S-X, which provides disclosure requirements concerning foreign activities.
Rules 12-21 to 24 of Regulation S-X, <i>For Face-Amount Certificate Investment Companies</i>	Replace superseded references to Rule 6-21 of Regulation S-X with correct references to Rule 6-03 and superseded reference to Rule 6-21(f) with Rule 6-03(d). <sup>506</sup>
Rules 12-22 to 24 and 12-27 of Regulation S-X,	Replace superseded references to Rule 6-22 of Regulation

<sup>504</sup> See letters from CAQ; Deloitte; E&Y; Grant; KPMG; PwC; and R.G. Associates.

<sup>505</sup> See *Technical Amendments to Rules, Forms, Schedules, and Codification of Financial Reporting Policies*, Release No. 33-9026 (Apr. 15, 2009) [74 FR 18612 (Apr. 23, 2009)].

<sup>506</sup> In 1982, the Commission replaced all prior Article 6 provisions, including the ones referenced here, with revised Rules 6-01 through 6-10 of Regulation S-X. However, the Commission did not also update the references to Article 6 rules in Article 12 of Regulation S-X. See *Financial Statement Requirements for Registered Investment Companies*, Release 33-6442 (Dec. 21, 1982) [47 FR 56835 (Dec. 21, 1982)] (“1982 Investment Company Release”).

Reference to Rule 6-21(f) of Regulation S-X is made in Footnote 4 of both Rule 12-21 and Rule 12-22, and Footnote 5 of Rule 12-24. Reference to Rule 6-21 of Regulation S-X is made in Footnote 9 of Rule 12-23.

<b>Commission Disclosure Requirement(s)</b>	<b>Technical Amendments</b>
<i>For Face-Amount Certificate Investment Companies</i>	S-X with correct references to Rule 6-06. <sup>507</sup>
Footnote 6 of Rule 12-22 of Regulation S-X, <i>For Face-Amount Certificate Investment Companies</i>	Replace superseded references to Rule 6-23(a) of Regulation S-X with correct references to Rule 6-07(1). <sup>508</sup>
Item 508(e) of Regulation S-K	Replace reference to National Association of Securities Dealers with successor entity, the Financial Industry Regulatory Authority (“FINRA”). In addition, replace reference to Rules of Fair Practice with FINRA rules. <sup>509</sup>
General Instruction I.C.2 and I.D.1.(c)(iv) of Form S-3	Replace outdated reference to the title of General Instruction B.2 of Form S-3.
Instruction 3 of the Instructions to the Signatures of Form S-3	Remove Instruction 3 which relates to a superseded transaction requirement. <sup>510</sup>
Item 17(c)(2)(v) and (vi) of Form 20-F <sup>511</sup>	Replace reference to the definition of a “significant subsidiary” in Rule 1-02(v) of Regulation S-X with correct reference to Rule 1-02(w). <sup>512</sup>

<sup>507</sup> See 1982 Investment Company Release.

<sup>508</sup> See 1982 Investment Company Release.

<sup>509</sup> The Commission approved the creation of Financial Industry Regulatory Authority (“FINRA”) through the consolidation of the member firm regulatory functions of the NASD and NYSE Regulation, Inc., a wholly-owned subsidiary of New York Stock Exchange LLC in 2007.

*See Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change to Amend the By-Laws of NASD to Implement Governance and Related Changes to Accommodate the Consolidation of the Member Firm Regulatory Functions of NASD and NYSE Regulation, Inc.*, Release No. 34-56145 (Jul. 26, 2007) [72 FR 42169 (Aug. 1, 2007)]; File No. SR-NASD-2007-023 (July 26, 2007).

<sup>510</sup> Instruction 3 of Form S-3 refers to eligibility based on the assignment of a securities rating pursuant to Transaction Requirement B.5. of Form S-3. The Transaction Requirements of Form S-3 no longer relate to securities ratings. *See Asset-Backed Securities Disclosure and Registration*, Release No. 33-9638 (Sept. 4, 2014) [79 FR 57184 (Sept. 24, 2014)].

<sup>511</sup> Items 17(c)(2)(v) and (vi) include requirements for financial statements on a basis of accounting other than U.S. GAAP that are furnished pursuant to Rule 3-05 or 3-09 of Regulation S-X.

<sup>512</sup> Rule 1-02(v) defines the term “share,” while Rule 1-02(w) defines “significant subsidiary.”

Commission Disclosure Requirement(s)	Technical Amendments
Rule 405, <i>Definition of Terms, Significant Subsidiary</i>	Revise the definition of “significant subsidiary” to correct for inadvertent omissions of changes to the definition and conform to the updated definition in Rule 1-02(w) of Regulation S-X. <sup>513</sup>
Rule 12b-2, <i>Definitions, Significant Subsidiary</i>	Revise the definition of “significant subsidiary” to correct for inadvertent omissions of changes to the definition and conform to the updated definition in Rule 1-02(w) of Regulation S-X. <sup>514</sup>
Rule 12g-3, <i>Registration of securities of successor issuers under section 12(b) or 12(g) of the Securities Exchange Act of 1934 and Rule 3-04 of Regulation S-X</i>	Revise Rules 3-04, 12g-3(a)(2), 12g-3(b)(2), and 12g-3(c)(2) for punctuation errors.
Rule 3-04, Rule 4-08(m)(2)(ii), Rule 5-03(b)(1), Rule 7-03(13)(a)(2), Rule 6-09(4)(b), Rule 9-03(10)(3), Rule 9-03(10)(4)(a), Rule 10-01(b)(7), and Rule 12-24 of Regulation S-X	Correct typographical errors.
Item 406(d) and Item 601(b)(14) of Regulation S-K	Replace superseded references to Item 10 of Form 8-K with correct references to Item 5.05 of Form 8-K. <sup>515</sup>
Form 10, Subpart C of Forms, Securities Exchange Act of 1934	Remove outdated reference to Form 10-SB in Form 10 heading.

## VI. Other Matters

<sup>513</sup> The definition of “significant subsidiary” in Rule 1-02(w) of Regulation S-X, Securities Act Rule 405 and Exchange Act Rule 12b-2 are generally intended to be conformed to each other. *See, e.g., Technical Amendments to Rules and Forms*, Release No. 33-6584 (Jun. 6, 1985) [50 FR 25214 (Jun. 18, 1985)]. Two releases inadvertently changed the definitions of “significant subsidiary” in some, but not all of these three rules, resulting in a lack of conformity. *See Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards Without Reconciliation to U.S. GAAP*, Release No. 33-8879 (Dec. 21, 2007)[73 FR 986 (Jan. 4, 2008)], and *Technical Amendments to Rules, Forms, Schedules, and Codification of Financial Reporting Policies*, Release No. 33-9026 (Apr. 15, 2009) [77 FR 18612 (Apr. 23, 2009)]. Computational Note 3 to the definition of “significant subsidiary” is only in Rule 1-02(w) of Regulation S-X. *See Financial Statements and Regulation S-X; Technical Amendments to Rules and Forms*, Release No. 33-6612 (Nov. 21, 1985) [50 FR 49529 (Dec. 3, 1985)]. Computational Note 3 relates solely to issues applicable to Regulation S-X and the use of Rule 1-02(w) therein and is not relevant to the uses of the definition in Rule 405 and Rule 12b-2. We are therefore not including Computational Note 3 in Rule 405 and Rule 12b-2.

<sup>514</sup> *See supra* note 513.

<sup>515</sup> *See Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date*, Release No. 33-8400 (Mar. 16, 2004) [69 FR 15594 (Mar. 25, 2004)].

If any of the provisions of these rules, or the application of these provisions to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

## **VII. Economic Analysis**

We are adopting amendments to certain of our disclosure requirements that 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. These amendments are the result of the staff's ongoing evaluation of our disclosure requirements<sup>516</sup> and also are part of our efforts to implement Title LXXII, Section 72002(2) of the FAST Act.

We are sensitive to the costs and benefits of the amendments. In this section, we examine the 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, and discuss the potential benefits and costs of the amendments, relative to this baseline, and their potential effects on efficiency, competition, and capital formation.<sup>517</sup>

The Proposing Release requested comment on all aspects of the economic effects of the proposed amendments, including the costs and benefits and possible alternatives to the proposed amendments. The Commission also solicited comment in the Proposing Release on whether the

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<sup>516</sup> See *supra* note 12.

<sup>517</sup> Section 2(b) of the Securities Act [15 U.S.C. 77b(b)], Section 3(f) of the Exchange Act [17 U.S.C. 78c(f)], and Section 2(c) of the Investment Company Act [15 U.S.C. 80a-2(c), and 15 U.S.C. 80b-2(c)] 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.

proposed amendments, if adopted, would promote efficiency, competition, or capital formation, or have an impact or burden on competition. We received a number of comments addressing the potential economic impacts of the proposed amendments, which we discuss below.

#### **A. Baseline and Affected Parties**

Our baseline includes the current disclosure requirements in Regulation S-K, Regulation S-X, and other Commission rules and forms promulgated under the Securities Act, the Exchange Act, and the Investment Company Act. The parties affected by the amendments include investors and other users, auditors, and issuers. Additionally, entities other than issuers may be affected (e.g., significant acquirees for which financial statements are required under Rule 3-05 of Regulation S-X, significant equity method investees for which financial statements are required under Rule 3-09 of Regulation S-X, broker-dealers, and NRSROs).

The amendments affect both domestic issuers and foreign private issuers.<sup>518</sup> We estimate that approximately 7,570 issuers that file on domestic forms<sup>519</sup> and 745 foreign private issuers that file on F-forms will be affected by the amendments. Among the issuers that file on domestic forms, 25.6% are large accelerated filers, 18.6% are accelerated filers, 19.3% are non-accelerated filers, and 36.2% are SRCs. About 23.7% of issuers that file on domestic forms are EGCs.<sup>520</sup>

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<sup>518</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 10-Q, Form 20-F, and Form 40-F or an amendment thereto with the Commission during calendar year 2017. 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 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 only initial registration statements during calendar year 2017, which will also be affected by the amendments.

<sup>519</sup> This number includes fewer than 25 foreign issuers that file on domestic forms, approximately 100 business development companies, and a portion of the approximately 12,000 investment advisers.

<sup>520</sup> Staff determined whether a registrant claimed EGC status by parsing several types of filings (e.g., Forms S-1, S-1/A, 10-K, 10-Q, 8-K, 20-F/40-F, and 6-K) filed by that registrant, with supplemental data drawn from Ives Group Audit Analytics.

Among the foreign private issuers that file on F-forms, 40.4% are large accelerated filers, 22.6% are accelerated filers, and 37.0% are non-accelerated filers.<sup>521</sup> About 19.8% of foreign private issuers that file on Forms 20-F and 40-F are EGCs. With respect to foreign private issuer accounting standards, approximately 38.5% of foreign private issuers report under U.S. GAAP, 60.5% report under IFRS, and approximately 1% report under Another Comprehensive Body of Accounting Principles with a reconciliation to U.S. GAAP.

Certain amendments also affect requirements applicable to:

- Fewer than 600 asset-backed issuing entities.<sup>522</sup>
- Issuers that rely on Regulation A exemptions.<sup>523</sup>
- Approximately 4,100 investment companies, including approximately 100 business development companies, and the portion of the approximately 12,600 investment advisers to which Regulation S-X and Regulation S-K apply.<sup>524</sup>
- Up to approximately 3,883 registered broker-dealers.<sup>525</sup>

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<sup>521</sup> Approximately 15.9% 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>522</sup> The number of asset-backed issuers is based on the number of unique companies with the SIC code of 6189 that filed Forms 10-K during calendar year 2017.

<sup>523</sup> Between June 19, 2015 and December 31, 2017, approximately 182 Regulation A offerings have been qualified. Among these qualified offerings, 57 offerings are Tier I and 125 offerings are Tier II. Over the same time period, approximately 262 Regulation A offering statements have been filed. Among these filed offerings, 94 offerings are Tier I and 168 offerings are Tier II. Withdrawals and post-qualification amendments are excluded. There are annual and semi-annual reporting requirements for Tier II offerings.

<sup>524</sup> The number of registered investment companies, excluding business development companies, is estimated from the number of registered active investment companies in EDGAR as of the end of December 2017. The number of business development companies is based on the number of unique companies that filed Forms 10-K and Forms 10-Q whose reporting periods end in the last quarter of 2017, adjusted by the number of active business development companies that did not submit such filings and late filers. The number of investment advisers is based on data from Investment Adviser Registration Depository (IARD).

<sup>525</sup> The amendments to Exchange Act Rules 17a-5, 17a-12, and 17h-1T, and Part III of Form X-17A-5 collectively affect approximately 3,883 broker-dealers who must file periodic reports with the Commission. The amendments to Part II of Form X-17A-5 affect up to approximately 467 broker-dealers, based on the

- 10 NRSROs.

This release also considers certain Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP and refers some of these incremental requirements to the FASB for potential incorporation into U.S. GAAP. While a referral alone has 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 SRCs and issuers relying on Regulation A or Regulation Crowdfunding, as well as entities that are outside the scope of our regulatory authority.

## **B. Anticipated Benefits and Costs**

In this section, we discuss the anticipated economic benefits and costs of the amendments in each category of redundant, duplicative, overlapping, outdated, and superseded disclosure requirements.

### **1. Redundant or Duplicative Requirements**

We are eliminating certain Commission disclosure requirements that require substantially the same disclosures as U.S. GAAP, IFRS, or other Commission disclosure requirements. In response to commenters' suggestions, we are retaining some of the disclosure requirements that we proposed to modify or eliminate on the basis that they required redundant or duplicative disclosure and referring one of these disclosure requirements to the FASB for potential incorporation into U.S. GAAP.

Elimination of Commission disclosure requirements that are redundant or duplicative with U.S. GAAP, IFRS, or other Commission disclosure requirements simplifies issuer

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number of broker-dealers who filed Part II as of December 31, 2017. The amendments to Part IIA of Form X-17A-5 affect approximately 3,413 broker-dealers, based on the number of broker-dealers who filed Part IIA as of December 31, 2017. The amendments to Part IIB of Form X-17A-5 affect approximately three broker-dealers, based on the number of broker-dealers who filed Part IIB as of March 31, 2018.

compliance efforts by reducing the number of rules to consider. To the extent that the redundant or duplicative requirements result in substantially the same disclosures, elimination of these requirements also potentially benefits investors and other users. Academic research suggests that duplication is associated with less efficient price discovery<sup>526</sup> and that individuals invest more in firms with more concise financial disclosures.<sup>527</sup> Thus, to the extent that the amendments alleviate duplication and do not affect the completeness of financial disclosures,<sup>528</sup> they could result in improved price discovery, enhance the allocative efficiency of the market, and facilitate capital formation.

The potential adverse effects of the amendments on investors and other users are likely to be limited as these parties would continue to 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. The potential for such changes may be mitigated by the FASB's transparent, public standard-setting process and the Commission's oversight of the FASB and the ability of the Commission to require such information through rulemaking.<sup>529</sup> In addition, issuers remain liable for their disclosures, including the omission of any information required to make the disclosures not misleading.

## 2. Overlapping Requirements

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<sup>526</sup> See A. Cazier and R. Pfeiffer, *Say Again? Assessing Redundancy in 10-K Disclosures*, *Journal of Financial Reporting*, 2(1), 2017 at 107-131.

<sup>527</sup> See A. Lawrence, *Individual Investors and Financial Disclosure*, *Journal of Accounting and Economics* 56, 2013 at 13-147.

<sup>528</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*. *Journal of Accounting Research* 54.2, 2016 at 525-622.

<sup>529</sup> See discussion in Section I.D.

The Proposing Release 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, we are: (a) deleting the overlapping Commission disclosure requirements or (b) integrating them with other related Commission disclosure requirements. For certain other overlapping requirements, we are retaining the requirements and referring them to the FASB for potential incorporation into U.S. GAAP. We discuss below the economic effects of the amendments in this category and provide examples of requirements affected by the amendments.

First, some changes may give rise to Disclosure Location Considerations. Where we proposed to relocate existing disclosure from outside the financial statements to within the financial statements, a number of commenters expressed reservations about the relocation because it would create additional audit requirements for issuers.<sup>530</sup> Issuers may incur additional costs to comply with these audit and/or interim review and ICFR requirements, to the extent the relocation results in additional information included in the financial statements. A few commenters stated that investors would benefit from the annual audit and interim review of the disclosure.<sup>531</sup> Investors and other users may consider the information more reliable because of the audit and/or interim review requirements.<sup>532</sup>

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

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<sup>530</sup> See e.g., letters from CGCIV; EEI and AGA; and USCC.

<sup>531</sup> See letters from CII and Ohio CPAs.

<sup>532</sup> In contrast, there are a few amendments that relocate disclosure from inside the financial statements to outside the financial statements. In this case, the potential economic effects would be opposite to the effects discussed above, reducing costs for issuers, but potentially decreasing benefits to users of the information to the extent that the information is considered less reliable.

located within the financial statements, issuers may be less likely to voluntarily supplement those disclosures with forward-looking information in the financial statements as compared with disclosures made outside the audited financial statements. A number of commenters expressed concern regarding liability issues for preparers that would arise from the loss of safe harbor provisions.<sup>533</sup> However, issuers retain the option of providing forward-looking information outside the financial statements and may be required to disclose the information in certain circumstances.<sup>534</sup>

The relocation of existing disclosures from outside the financial statements to within the financial statements will also subject the disclosures to XBRL tagging requirements. Commenters expressed concern about XBRL tagging requirements because of additional administrative burdens and potential costs on issuers to comply with these requirements.<sup>535</sup> A few commenters believed that XBRL tagging requirements would be of benefit to investors.<sup>536</sup> Investors and other users may benefit from more readily-available information in structured formats because of the increased use of electronic data analysis and search tools. In general, we believe the costs of applying XBRL data tagging to additional information likely would be relatively low, as issuers already have implemented software enabled processes and controls to structure previously mandated disclosures.<sup>537</sup>

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<sup>533</sup> See e.g., letters from CAQ; CalPERS; Crowe; Davis; E&Y; FEI; PwC; and R&G Associates.

<sup>534</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]. For example, Item 303 of Regulation S-K requires disclosure of other information when an issuer believes it to be necessary to an understanding of its financial condition, changes in financial condition, and results of operations.

<sup>535</sup> See e.g., letters from CGCIV; EEI and AGA; and USCC.

<sup>536</sup> See letters from CII and Ohio CPAs.

<sup>537</sup> According to a recently released AICPA and XBRL US survey, the total cost of XBRL preparation among small companies in 2017 averaged \$5,476 per year. See Research shows XBRL filing costs are lower than expected, AICPA, <https://www.aicpa.org/InterestAreas/FRC/AccountingFinancialReporting/XBRL/DownloadableDocuments>

Furthermore, 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 academic 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>538</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

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[/XBRL%20Costs%20for%20Small%20Companies.pdf](#). The incremental costs of tagging additional information under the amendments would be much lower and depend on the mix of incremental disclosures (e.g., narrative and numeric). The tagging cost associated with narrative disclosures would be minimal since these disclosures are tagged at the block text level and registrants already block tag other narrative disclosures in their filings. Numeric disclosures would need to be individually tagged, and therefore, any incremental costs would be directly associated with the volume of incremental numeric disclosures.

<sup>538</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 and finding 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).

judgment.<sup>539</sup> Other research on the effect of disclosure location shows recognized and disclosed items are treated equivalently by investors.<sup>540</sup> Commenters that provided feedback on relocation prominence considerations indicated that physical location of the disclosure is less relevant in today's environment, given the use of electronic data analysis and search tools.<sup>541</sup>

Second, besides the Disclosure Location Considerations discussed above, some deletions may change the mix of information available to investors. An example of this is the revision to require dividend restriction and related disclosures when material, rather than using the bright line of when restricted net assets exceed a 25 percent threshold.<sup>542</sup> Bright line thresholds set forth explicit quantitative criteria for disclosure and may result in more or less detail than a materiality standard. Several commenters were supportive of a more principles-based disclosure framework.<sup>543</sup> These commenters stated that materiality is a better disclosure standard because certain of the existing thresholds result in disclosure that in their view is immaterial to investors and costly to provide. Other commenters opposed the amendment, indicating that removing

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<sup>539</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.

<sup>540</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.

<sup>541</sup> See, e.g. letters from CAQ; Deloitte; and EY.

<sup>542</sup> Rule 4-08(e)(3) of Regulation S-X.

<sup>543</sup> See, e.g. letters from CAQ; CGCIV; Clearing House; Davis; FEI; and USCC.

bright line thresholds may result in the elimination of disclosure relevant to investors or diminish comparability.<sup>544</sup>

The economic effect of replacing a bright line threshold with a disclosure standard based on materiality depends on the preferences of investors and other users. The bright line threshold may be easier to apply and could enhance the comparability and verifiability of information; however, a materiality standard may permit more tailored information to be presented and potentially avoid certain distortions that can arise from the use of a bright line threshold.

**a. Deletion of Commission Disclosure Requirements**

We are eliminating certain Commission disclosure requirements that we have determined: (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.

The effects of the deletion of these overlapping disclosure requirements depend on the level of overlap between the requirements. For investors, eliminating overlapping requirements may reduce search costs and lead to more efficient information processing. This, in turn, may lead to better informed investment decisions and an increase in allocative efficiency. However, to the extent eliminating a requirement results in a loss of information incremental to the overlapping requirement, it could negatively impact investors that use the incremental information. For issuers, eliminating overlapping requirements may reduce the costs of preparation of the disclosure by reducing the need to reconcile similar requirements.

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<sup>544</sup> See, e.g. letters from CalPERS; Public Citizen; and R.G. Associates.

Requirements that are clearer and less repetitive may additionally make the disclosure easier to prepare and result in disclosure that is more responsive and easier to understand.

The examples below illustrate the potential effects of the elimination of Commission disclosure requirements on issuers, investors, and other users.

An example of an overlapping disclosure requirement that we are deleting because it results in only incremental disclosure is Item 101(d)(3) of Regulation S-K, which requires risk disclosures outside the financial statements relating to geographic areas. These disclosures 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. Item 503(c) of Regulation S-K similarly requires disclosure of “significant” risk factors. Item 101(d)(3) also requires disclosures of a segment’s dependence on foreign operations, which is similar to the requirement in Item 303(a) of Regulation S-K, requiring disclosure of trends and uncertainties by segment, if appropriate to an understanding of the issuer as a whole. We are also amending Item 303(a) to add an explicit reference to “geographic areas” to reduce the likelihood of loss of information due to the deletion of Item 101(d)(3).

Since Item 101(d)(3) is more expansive than the similar requirements in other parts of Regulation S-K, the economic effects of the deletion would depend on the nature of the incremental information required by Item 101(d)(3). Research shows that international corporate diversification may affect issuers’ stock market performance<sup>545</sup> and valuation.<sup>546</sup> Therefore,

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<sup>545</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 are attentive to international composition of the activities of U.S.-based corporations.

some investors may want incremental information on foreign operations that is not covered by the amended Item 303(a) or the requirements of Item 503(c) to disclose “significant” risk factors. 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) will benefit investors by eliminating immaterial information, reducing search costs, and facilitating more efficient information processing.<sup>547</sup> More efficient information processing could in turn result in improved price discovery and enhance the allocative efficiency of the capital markets. In addition, to the extent an issuer spends less time preparing its disclosures, investors will benefit from lower preparation costs although savings could be modest, if any.<sup>548</sup>

Another example of an overlapping disclosure requirement that involves incremental information is Item 303(b) of Regulation S-K. Instruction 5 to Item 303(b) requires seasonality disclosures outside of the financial statements in interim periods. U.S. GAAP similarly requires seasonality disclosures, but this disclosure is required in the notes to the interim financial statements.<sup>549</sup> Eliminating the specific seasonality disclosure requirements in Item 303(b) may

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<sup>546</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). See also R. Morck and B. Yeung, *Why Investors Value Multinationality*, *Journal of Business*, 64 (2), 1991 at 165–187 (supporting the notion that multinational corporations have intangible assets that can be used internationally.)

<sup>547</sup> See D. Hirshleifer and S. Teoh, *Limited Attention, Information Disclosure, and Financial Reporting*, *Journal of Accounting and Economics* 36, 2003 at 337–386 (showing that with partially attentive investors, means of presenting information may have an impact on stock price reactions, mis-valuation, long-run abnormal returns, and corporate decisions.)

<sup>548</sup> See Section VIII.B.

<sup>549</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 are required to disclose the seasonal nature of their

result in the removal of this information from MD&A. Investors and other users will only have this disclosure available in the notes to the financial statements, unless issuers provide it in both locations either because the issuer views the seasonality disclosure as appropriate or necessary to an understanding of its business or financial condition under Item 303(a) or the issuer provides it voluntarily. In addition, investors may receive less supplemental forward-looking information about seasonality because the PSLRA safe harbor is not available for such information when it is disclosed in the notes to the financial statements. To the extent that the seasonality disclosures in MD&A and in the financial statements are redundant, eliminating the requirements in Item 303(b) would reduce search costs and facilitate more efficient information processing. In addition, to the extent an issuer spends less time preparing its disclosures, investors will benefit from lower preparation costs although savings could be modest, if any.<sup>550</sup>

In addition to the economic effects of changing disclosure location and bright line disclosure thresholds, 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. As noted above, the potential for such changes may be mitigated by the FASB's transparent, public standard-setting process and the Commission's oversight of the FASB.

#### **b. Integration of Commission Disclosure Requirements**

We are amending and integrating certain Commission disclosure requirements that overlap with, but require information incremental to, other Commission disclosure requirements. In addition to the economic effects of changing disclosure location and bright line disclosure

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activities, and should consider supplementing their interim reports with information for 12-month periods ended at the interim date for the current and preceding years.

<sup>550</sup> See Section VIII.B.

thresholds, integration of overlapping Commission disclosure requirements simplifies 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 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 the Item 303 instructions. To integrate the requirements into one location in Regulation S-K, we are eliminating Item 101(d)(4) and amending Item 303(a) to explicitly refer to "geographic areas" and clarify that the geographic discussion is required when management believes such discussion would be appropriate to an understanding of the business. A number of commenters supported the proposed amendment.<sup>551</sup> As noted above, integration of these requirements should facilitate more efficient information processing by investors. However, some investors may be adversely affected if they prefer geographic performance information to be presented with other business description disclosures.

### **c. FASB Referral of Commission Disclosure Requirements**

We are referring certain Commission disclosure requirements that overlap with, but require information incremental to, U.S. GAAP requirements to the FASB for potential

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<sup>551</sup> See, e.g., letters from CAQ; Deloitte; E&Y; Grant; KPMG; and PwC.

incorporation into U.S. GAAP. While the referral alone has no direct impact on investors and issuers, any future FASB standard-setting activities, as well as any Commission rulemaking that may result from such a referral, could potentially affect investors, issuers, auditors, other users of financial statements, as well as other entities that report under U.S. GAAP. Any potential effects of standard-setting activities arising out of these referrals could be considered and taken into account by the Commission, and could be addressed through Commission rulemaking. Additionally, the potential effects may be mitigated by the FASB's transparent, public standard-setting process and the Commission's oversight of the FASB.

### **3. Outdated Requirements**

We are eliminating certain outdated Commission disclosure requirements that have become obsolete as a result of the passage of time or changes in the regulatory, business, or technological environment. Elimination of outdated disclosure requirements should 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 amendments require additional disclosure of information to avoid any loss of information or decrease the burden for investors 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 amendments on investors depends on the use of the information. If investors do not use the deleted information to make investment and voting decisions, these amendments may have little to no 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),<sup>552</sup> the effects of these amendments 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),<sup>553</sup> these amendments may make it more burdensome for investors and other users to access the information, with a potentially adverse effect on the cost of capital of issuers. We do not expect these potential adverse effects to be significant as the amendments delete only requirements that call for information that is either no longer relevant or is readily available or can be derived from alternative sources, and which may, in fact, be more robust than the information currently required to be disclosed. As noted above, some amendments require disclosure of additional information (e.g., the issuer's Internet address, if available) to mitigate any loss of information or decrease the burden for investors.

One example of an outdated disclosure requirement is Item 201(a)(1) of Regulation S-K. Item 201(a)(1) requires the disclosure of historical market price information. We are substituting this disclosure with disclosure of the issuer's ticker symbol, which can be used to obtain current and historical 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.

Commenters were generally supportive of this initiative to delete outdated requirements,<sup>554</sup> and specifically supported removing historical price information, noting that stock price information

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<sup>552</sup> Item 201(a)(1) of Regulation S-K.

<sup>553</sup> Item 3.A.3 of Form 20-F.

<sup>554</sup> *See e.g.*, letters from CAQ; EEI and AGA; FedEx; R.G. Associates; and XBRL US.

is readily available on commercial websites on a more current basis than what is required by existing disclosure requirements.<sup>555</sup>

#### **4. Superseded Requirements**

We are amending certain Commission disclosure requirements to address inconsistencies that have arisen between existing Commission disclosure requirements and newer requirements, recent legislation, or more recently updated U.S. GAAP requirements.

Eliminating or amending superseded Commission disclosure requirements 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 expect these benefits to be modest. In addition, investors 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.<sup>556</sup> 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

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<sup>555</sup> See letters from E&Y; EEI and AGA; FedEx; and KPMG.

<sup>556</sup> See SFAS No. 154, Accounting Changes and Error Corrections. This is now reflected in ASC 250, Accounting Changes and Error Corrections.

principle in the income statement in the Commission disclosure requirements resolves this contradiction and removes 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 are deleting Rule 10-01(b)(2) to conform to U.S. GAAP and simplify issuer compliance efforts.

In connection with this amendment and to avoid any loss of disclosure, we are extending the annual disclosure requirement of changes in stockholders' equity in Rule 3-04 of Regulation S-X to interim periods, which also requires disclosure of the amount of dividends per share for each class of shares, rather than only for common stock. As suggested by a few commenters, the final amendments clarify that Rule 3-04 requires both the year-to-date information and subtotals for each interim period.<sup>557</sup> Investors and other users may benefit from the additional information on dividends per share for each class of shares for interim periods. For example shareholders may use dividends to value an issuer.<sup>558</sup> Information about dividends also can be material for debtholders.<sup>559</sup> In addition, there may also be different dividend preferences based on an

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<sup>557</sup> See letters from CAQ and PwC.

<sup>558</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>559</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).

investor's characteristics.<sup>560</sup>

These amendments may give rise to Disclosure Location Considerations, in that issuers will now disclose dividends either in the changes in stockholders' equity statement or the notes to the financial statements to comply with Regulation S-X instead of on the face of the income statement.<sup>561</sup> Disclosing information on dividends issued and the relationship it has to stockholders' equity in one location may help investors understand some of the strategic decisions made by management, such as dividend payout versus share buyback. The extension of the disclosure requirement in Rule 3-04 of Regulation S-X may create some additional burden for issuers, including Regulation A issuers,<sup>562</sup> because it requires disclosure of dividends per share for each class of shares, rather than only for common stock, and disclosure of changes in stockholders' equity in interim periods. However, such costs should 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 this additional information may also lead to additional costs for issuers to comply with ICFR, audit, and XBRL tagging requirements, as applicable.

In the Proposing Release, we requested comments about other disclosure requirements that meet the criteria in any of the four sections of the release. Based on commenter responses and further internal review, we identified additional disclosure requirements that contained typographical errors, incorrect references, or references to rules that no longer exist. As a result, we are adopting additional conforming amendments, the majority of which are in the superseded

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<sup>560</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).

<sup>561</sup> ASC 260-10-45-5 requires disclosure of dividends per share in the notes to the financial statements.

<sup>562</sup> The amendments to require interim disclosure of changes in stockholders' equity and dividends per share amounts are being made directly to Forms 1-A and 1-SA for Regulation A issuers.

category. These technical and conforming amendments should lower disclosure costs for issuers.

### **C. Anticipated Effects on Efficiency, Competition, and Capital Formation**

The rules may improve capital allocation efficiency by enabling investors to make more efficient investment decisions. For example, the rules may reduce search costs for investors by eliminating information that is redundant, duplicative, overlapping, outdated, or superseded. Given that investors may have limited attention and limited information processing capabilities, 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 more efficient and less costly disclosure environment may make the public capital markets more competitive relative to private capital market alternatives and may additionally make the U.S. capital markets more competitive relative to markets in other countries. Although it is difficult to quantify these effects, to the extent that they are present, they may result in more public capital market investment opportunities for investors.

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. To the extent that certain disclosure is no longer required, issuers for which this disclosure would be unfavorable may be less likely to disclose such information voluntarily. Even if other issuers do disclose such information voluntarily, it will be difficult to estimate the relative quality of issuers without every issuer's disclosure. This will make it more difficult for higher quality issuers to distinguish their quality with respect to this metric 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 eliminate disclosure that we consider redundant, duplicative, overlapping, outdated, or superseded, we do not think these effects are likely to be significant.

#### **D. Alternatives**

We considered reasonable alternatives to the amendments. For redundant, duplicative, outdated, or superseded disclosure requirements being eliminated, we considered the alternative of retaining these requirements. However, as a general matter, given the nature of these requirements, we believe retaining the requirements could result in inefficiencies for investors, issuers, and others. For certain of the disclosure requirements that we proposed to modify or delete, where commenters indicated that the requirements may provide beneficial incremental disclosures for investors and other users, we are retaining the requirements and also are referring some of them to the FASB for potential incorporation into U.S. GAAP.

For overlapping disclosure requirements, we solicited comments in the Proposing Release on certain requirements to determine whether to retain, modify, eliminate, or refer them to the FASB for potential incorporation into U.S. GAAP. After further consideration based on our review of the issues and consideration of the comments received, we are retaining all of the requirements discussed in Section III.D. and referring all except one to the FASB for potential incorporation.

As an alternative to retaining these requirements, we could eliminate the Commission requirements and refer them to the FASB. This would deprive investors of any incremental disclosures elicited by the Commission requirements pending the FASB's deliberations. If the disclosure requirements are ultimately added to U.S. GAAP, 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.<sup>563</sup>

Another alternative to retaining these requirements is to simply eliminate the Commission requirements and forgo disclosure of the incremental information without FASB referral.

Although such an alternative would simplify issuer compliance efforts, it also may result in less informed investment decisions and diminished investor protections.

## **VIII. Paperwork Reduction Act**

### **A. Background**

Certain provisions of our rules and forms that would be affected by the final amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>564</sup> The Commission published a notice requesting comment on the collection of information requirements in the Proposing Release and has submitted these requirements to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.<sup>565</sup> The titles for the affected collections of information are:

Title	OMB Control No.
Regulation S-X <sup>566</sup>	3235-0009
Regulation S-K	3235-0071

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<sup>563</sup> Any future consideration of amendments to these disclosures requirements will take into account the outcome of standard-setting activities undertaken by the FASB.

<sup>564</sup> 44 U.S.C. 3501 et seq.

<sup>565</sup> 44 U.S.C. 3507(d) and 5 CFR 1320.11.

<sup>566</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.
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
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

Title	OMB Control No.
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
Form N-6	3235-0503
Form N-8B-2	3235-0186

The majority of these regulations, schedules, and forms were adopted under the Securities Act, the Exchange Act, and/or the Investment Company Act and 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 Advisers Act, and NRSROs in connection with the Commission's oversight of such entities.

These amendments are the result of the staff's ongoing evaluation of our disclosure requirements<sup>567</sup> and also are part of our efforts to implement Title LXXII, Section 72002(2) of the FAST Act.

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. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential,<sup>567</sup> and there is no mandatory retention period for the information disclosed.

#### **B. Summary of the Final Amendments**

As described in more detail above, we are adopting amendments to certain of our disclosure requirements that 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, we are enabling respondents 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 amendment to eliminate the requirement to disclose the ratio of earnings

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<sup>567</sup> See *supra* note 12.

to fixed charges, which may result in a modest decrease in the paperwork burden, we believe that the amendments to eliminate these redundant, duplicative, and overlapping Commission requirements would marginally reduce, if at all, respondents' overall paperwork burden.

Similarly, we expect that the amendments to eliminate outdated requirements would marginally reduce the paperwork burden on respondents by eliminating any efforts that were undertaken to prepare these disclosures. With the exception of the amendments to require the disclosure of an issuer's website address and the ticker symbol of their common equity that is publicly traded, which will slightly increase the paperwork burden, the remaining amendments related to outdated requirements would have no change or only a modest reduction in the paperwork burden when respondents are providing information in response to Forms 10, 10-K, 20-F, S-1, and F-1.

Finally, we believe that the amendments to update superseded Commission disclosure requirements would marginally reduce, if at all, respondents' paperwork burden, except for the extension of the application of Rule 3-04 of Regulation S-X to interim period disclosures,<sup>568</sup> which we estimate will modestly increase the paperwork burden. While the amendments eliminate any existing confusion related to contradictory and inconsistent requirements, in many instances, we believe respondents are currently not providing information in response to the requirements that we are deleting. Instead, we believe respondents provide information in response to U.S. GAAP or other Commission disclosure requirements that have been updated more recently, rather than the superseded requirement covered by the amendments. As a result,

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<sup>568</sup> The extension of Rule 3-04 of Regulation S-X addresses both overlapping and superseded disclosure issues and is discussed in both Sections III.C.16 and V.B.5 above.

we do not believe the majority of these amendments would result in a change to respondents' overall paperwork burden.

In light of the foregoing, our estimates for the paperwork burden for a number of the collections of information have not changed. The tables below therefore do not reflect any change in the paperwork burden for the following collections of information: Rules 405 and 436 of Regulation C and Forms F-6, F-7, F-8, F-10, F-80, 1-K under the Securities Act; Exchange Rules 10A-1, 12b-2, 15c3-1g, 17a-5, 17h-1T and Forms 40-F, 11-K, 10-D, X-17A-5 under the Exchange Act; Forms N-5, N-1A, N-2, N-3, N-4, N-6, N-8B-2 under the Investment Company Act; and Schedules 14A and 14C under the Exchange Act.

### **C. Summary of Comment Letters and Revisions to Proposals**

In the Proposing Release, we requested comment on our PRA burden hour and cost estimates and the analysis used to derive such estimates. We did not receive any comments that addressed our PRA analysis of the proposed amendments.

We did make some changes to the proposed amendments as a result of comments received, but we do not expect any of those changes to affect the compliance burdens of the existing collections of information, and therefore we are not revising our PRA burden hour and cost estimates as a result of these changes.

### **D. Burden and Cost Estimates**

As noted above, we do not believe that the overwhelming majority of the amendments will result in a change to respondents' overall paperwork burden. In this subsection we discuss the few amendments that will result in a change to respondents' overall paperwork burden.

#### **1. Forms 10, 10-K, 10-Q, 20-F, and 1-SA**

We anticipate that the amendments to eliminate the requirement to disclose the market prices for an issuer's common equity for the two most recent fiscal years will modestly reduce

affected issuers' current paperwork burdens. We estimate that issuers currently expend an average of two 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 two hour reduction in their annual paperwork burden.<sup>569</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 amendments.

Table 1.

	Number of responses (A)	Reduction in incremental burden hours/form (B)	Total incremental burden hours reduction (C)=(A)*(B)	Internal company time reduction (D)=(C)
Form 10-K	8,137	(2)	(16,274)	(16,274)
Form 20-F	725	(2)	(1,450)	(1,450)

The amendments will 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. Prior to these amendments, these disclosures were not required for interim periods. While this creates a new disclosure requirement for respondents, the information being required is generally readily available from respondents' preparation of other aspects of the interim financial statements. As a result, we estimate that this amendment will increase the average paperwork burdens by 0.5 hours each time such disclosure

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<sup>569</sup> In the Proposing Release we included estimates for the minimal paperwork burden increase associated with the proposed amendments to require disclosure of an issuer's ticker symbol and internet address. Upon further consideration, we are not making a separate burden adjustment for these two amendments. We believe the burdens for these amendments will be mostly incurred upon initial disclosure and not in subsequent periods. In addition, any increases in burden associated with the disclosure of the ticker symbol and internet address would be fully offset by the reduction in burden associated with the elimination of two years' worth of market price disclosure. Accordingly, we believe the two-hour reduction in burden hours associated with the elimination of the market price disclosure requirement will encompass the combined effect of these related changes.

is required.<sup>570</sup> We also estimate that there are 23,159 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>571</sup>

Table 2.

	Number of responses (A)	Increase in incremental burden hours/form (B)	Total incremental burden hours increase (C)=(A)*(B)	Internal company time increase (D)=(C)
Form 10	216	0.5	108	108
Form 10-Q	22,907	0.5	11,453.5	11,453.5
Form 1-SA	36	0.5	18	18

## 2. Forms S-1, S-3, S-4, S-11, SF-1, SF-3, F-1, F-3, F-4, and 1-A

We anticipate that the amendments to eliminate the market prices disclosure will have the same paperwork burden reduction for Forms S-1, S-4, S-11, F-1, and F-4 as for Forms 10-K and 20-F.<sup>572</sup> As such, we estimate that there will be a corresponding reduction in the burden estimate for these forms.<sup>573</sup> We estimate that there are approximately 1,618 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 amendments.

Table 3.

<sup>570</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 10s and 20-F, to the extent that interim period disclosures are made, the issuer would experience an increase in paperwork burden.

<sup>571</sup> While this amendment will 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 occurs so infrequently that we estimate no change in the burden estimate for Form 20-F.

<sup>572</sup> The information subject to the amendments discussed in this paragraph is incorporated by reference into Forms S-3 and F-3 and not provided in direct response to a form item requirement. As such, the amendments do not affect the paperwork burdens associated with Forms S-3 and F-3.

<sup>573</sup> See *supra* note 570.

	Number of responses (A)	Reduction in incremental burden hours/form (B)	Total incremental burden hours reduction (C)=(A)*(B)	Internal company time reduction (D)=(C)
Form S-1	901	(2)	(1,802)	(1,802)
Form S-4	551	(2)	(1,102)	(1,102)
Form S-11	64	(2)	(128)	(128)
Form F-1	63	(2)	(126)	(126)
Form F-4	39	(2)	(78)	(78)

The amendments to extend Rule 3-04 of Regulation S-X to interim periods will 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>574</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 1,730 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 amendments.

	Number of responses (A)	Increase in incremental burden hours/form (B)	Total incremental burden hours increase (C)=(A)*(B)	Internal company time increase (D)=(C)
Form S-1	901	0.5	450.5	450.5
Form S-4	551	0.5	275.5	275.5
Form S-11	64	0.5	32	32
Form F-1	63	0.5	31.5	31.5
Form F-4	39	0.5	19.5	19.5
Form 1-A	112	0.5	56	56

The 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, will reduce the current paperwork burden for issuers registering such securities on Forms S-1, S-3, S-4, S-11, F-

<sup>574</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. 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.

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 can vary greatly. We estimate that issuers expend an average of four 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 1,722 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 amendments.

	Number of responses (A) <sup>575</sup>	Reduction in incremental burden hours/form (B)	Total incremental burden hours reduction (C)=(A)*(B)	Internal company time reduction (D)=(C)
Form S-1	450	(4)	(1,800)	(1,800)
Form S-3	800	(4)	(3,200)	(3,200)
Form S-4	300	(4)	(1,200)	(1,200)
Form S-11	32	(4)	(128)	(128)
Form F-1	32	(4)	(128)	(128)
Form F-3	78	(4)	(312)	(312)
Form F-4	30	(4)	(120)	(120)

## IX. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Analysis (“FRFA”) has been prepared in accordance with the Regulatory Flexibility Act (“RFA”).<sup>576</sup> This FRFA relates to final amendments that will eliminate certain Commission disclosure requirements that 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. These amendments are the result of

<sup>575</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.

<sup>576</sup> 5 U.S.C. 601 *et seq.*

the staff's ongoing evaluation of our disclosure requirements<sup>577</sup> and also are part of our efforts to implement Title LXXII, Section 72002(2) of the FAST Act.

#### **A. Need for, and Objectives of, the Amendments**

The main purpose of the amendments is to update and simplify the Commission's current disclosure requirements. Specifically, the amendments will:

- 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 these provisions with recent legislation, more recently updated Commission disclosure requirements, or more recently updated U.S. GAAP requirements.

The need for, and objectives of, the final amendments are discussed in more detail throughout this release, particularly in Section I, above.

#### **B. Significant Issues Raised by Public Comments**

In the Proposing Release we requested comment on any aspect of the Initial Regulatory Flexibility Analysis ("IRFA"), including the number of small entities that would be affected by the proposed amendments, the nature of the impact, how to quantify the number of small entities that would be affected, and how to quantify the impact of the proposed amendments. We did not

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<sup>577</sup> See *supra* note 12.

receive comments specifically addressing the IRFA or the proposed amendments' impact on small entities.

### **C. Small Entities Subject to the Amendments**

The amendments will affect some 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. In addition, the amendments will affect some small entities that are not reporting companies and that issue securities under Regulation A exemption. The RFA defines “small entity” to mean “small business,” “small organization,” or “small governmental jurisdiction.”<sup>578</sup>

For purposes of the RFA, under 17 CFR 230.157 (“Securities Act Rule 157”), an issuer, 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 not exceeding \$5 million. Under 17 CFR 240.0-10(a) (“Exchange Act Rule 0-10(a)”), an issuer, 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. In total, we estimate that there are approximately 1,233 issuers, other than investment companies, that may be considered small entities and will be subject to the amendments.<sup>579</sup>

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<sup>578</sup> 5 U.S.C. 601(6).

<sup>579</sup> This estimate includes 1,163 reporting companies and 70 Regulation A issuers estimated to be small entities (1,233 = 1,163 + 70). The reporting company small entity estimate is based on staff analysis of XBRL data submitted by filers, other than co-registrants, with EDGAR filings of Forms 10-K, 20-F, and 40-F and amendments filed during the calendar year 2017. The Regulation A small entity estimate is based on staff analysis of Form 1-A data from EDGAR filings of Forms 1-A qualified during the calendar year 2017, excluding issuers in subsequently withdrawn offerings and issuers that became reporting companies during the calendar year 2017.

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>580</sup> We estimate that there are approximately 112 investment companies, including 18 business development companies, that will be subject to the amendments that may be considered small entities.<sup>581</sup>

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>582</sup> We estimate that there are approximately 447 investment advisers that will be subject to the amendments that may be considered small entities.<sup>583</sup>

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)

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<sup>580</sup> See 17 CFR 270.0-10(a).

<sup>581</sup> The estimate of small investment companies is derived from an analysis of data obtained from Morningstar Direct as well as data reported on Forms N-SAR filed with the Commission for the period ending December 31, 2017. The number of small business development companies is derived from data obtained from Forms 10-K and Forms 10-Q for reporting periods ended in the last quarter of 2017, adjusted by the number of active business development companies that do not submit such filings and late filers.

<sup>582</sup> See 17 CFR 275.0-7.

<sup>583</sup> The estimate is based on SEC-registered investment adviser responses to Items 5.F. and 12 of Form ADV.

under the Exchange Act,<sup>584</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>585</sup> We estimate there are approximately 1,042 broker-dealers that may be considered small entities. Of these, nine were Part II filers and 1,033 were Part IIA filers.<sup>586</sup>

The Commission has previously stated, and we continue 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>587</sup> 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 and will be subject to the amendments.

#### **D. Projected Reporting, Recordkeeping, and Other Compliance Requirements**

As noted above, the final amendments update and simplify the Commission’s disclosure requirements and do not impose any significant new disclosure obligations. While there are no particular professional skills that are required to comply with the amendments, the professional skills necessary for complying with an issuer’s disclosure obligations as a whole may include legal, accounting, or information technology skills. As adopted, the amendments address requirements that have become redundant, duplicative, overlapping, outdated, or superseded in

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<sup>584</sup> See 17 CFR 240.17a-5(d).

<sup>585</sup> See 17 CFR 240.0-10(c).

<sup>586</sup> This estimate is based on the FOCUS Reports, or “Financial and Operational Combined Uniform Single” Reports, which broker-dealers are generally required to file with the Commission and/or SROs pursuant to Exchange Act Rule 17a-5. The estimate is based on the FOCUS Reports data as of December 31, 2017. The information on Part IIB and Part III filers are not available from this data source.

<sup>587</sup> See, e.g., *Final Rules: Nationally Recognized Statistical Rating Organizations*, Release No. 34-72936 (Aug. 27, 2014) [79 FR 55077 (Sep. 15, 2014)].

light of other Commission disclosure requirements, U.S. GAAP, IFRS, or changes in the information environment. We expect these amendments to reduce slightly the existing reporting, recordkeeping, and other compliance burdens for all issuers, including small entities.

The amendments are discussed in detail in Sections II, III, IV, and V, above. We discuss the economic impact, including the estimated compliance costs and burdens, of the amendments in Section VII (Economic Analysis) and Section VIII (Paperwork Reduction Act) above.

#### **E. Agency Action to Minimize Effect on Small Entities**

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the final amendments, 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 amendments do not impose any significant new disclosure obligations, and they reduce other disclosure obligations. As noted above, the amendments address certain of our disclosure requirements that 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 amendments will clarify, consolidate, and 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 amendments, to establish different compliance or reporting requirements

or timetables or to exempt small entities from all or part of the amendments.<sup>588</sup> The Commission's existing disclosure requirements provide for scaled disclosure requirements and other accommodations for SRCs and EGCs, and the amendments would not alter these existing accommodations.

Finally, with respect to use of performance rather than design standards, the amendments to eliminate certain prescriptive Commission rules that call for information that overlaps with information required by U.S. GAAP or revise certain prescriptive rules to streamline our disclosure requirements may result in issuers, including small entities, being provided with additional flexibility when preparing their disclosures. For instance, existing Rule 4-08(e)(3) requires disclosure of dividend restrictions and related disclosures when restricted net assets exceed 25 percent. As amended, the rule will require such disclosure when it is material and not based on a bright line threshold. While not all amendments use performance standards, many 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.

## **X. Statutory Authority**

The amendments contained in this document are being adopted 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

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<sup>588</sup> The amendment discussed in Section V.B.2 that extends the disclosure requirement in Rule 3-04 of Regulation S-X to interim periods will apply to all issuers, including small entities. As the required information would be readily available from the preparation of the interim financial statements, the Commission expects the additional burdens to be limited. The new disclosure would better facilitate investor understanding of stockholders' equity, as dividends are distributed from stockholders' equity. As such, we do not believe it is necessary to scale this specific amendment for small entities.

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 the Final 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 Commission is amending 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, and sec. 102(c), Pub L. 112-106, 126 Stat. 310 (2012), unless otherwise noted.

2. Amend § 210.1-02 by:

- a. Revising paragraphs (d), (w)(3) and (bb)(1)(ii);
- b. Redesignating the COMPUTATIONAL NOTE as COMPUTATIONAL NOTE 1 TO PARAGRAPH (3);
- c. Revising paragraph 2 of the newly designated COMPUTATIONAL NOTE 1 TO PARAGRAPH (3); and
- d. 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 of the subsidiary 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.

NOTE TO PARAGRAPH (w): \* \* \*

COMPUTATIONAL NOTE 1 TO PARAGRAPH (3): \* \* \*

1. \* \* \*

2. If income of the registrant and its subsidiaries consolidated exclusive of amounts attributable to any noncontrolling interests for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

\* \* \* \* \*

(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 rule, 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 rule. 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 the rule 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 (§210.5-02.27) 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. A registrant that is an emerging growth company, as defined in §230.405 of this chapter (Rule 405 of the

Securities Act) or §240.12b-2 of this chapter (Rule 12b-2 of the Exchange Act), may, in a Securities Act registration statement for the initial public offering of the emerging growth company's equity securities, provide audited statements of comprehensive income and cash flows 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 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

- a. Revising the section heading and paragraphs (b)(2) and (d); and
- b. Removing paragraph (e).

The revisions read as follows:

**§210.3-03 Instructions to statement of comprehensive income requirements.**

\* \* \* \* \*

(b) \* \* \*

(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.

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 distributions 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 paragraph (a) introductory text; and
  - b. Redesignating the Note following paragraph (a)(1)(iii) as Note 1 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. Revising the section heading;
- b. Redesignating paragraph (a) as paragraph (a)(1);
- c. Adding paragraph (a)(2);
- d. Redesignating paragraph (b) as paragraph (b)(1) and adding paragraph (b)(2); and
- e. Revising paragraph (d).

The additions and revisions read as follows:

**§210.3-20 Currency for financial statements.**

(a)(1) \* \* \*

(2) An issuer that is not a foreign private issuer shall present its financial statements in U.S. dollars.

(b)(1) \* \* \*

(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 used 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. For purposes of this paragraph, the currency of an operation's primary economic environment is normally the currency in which cash is primarily generated and expended; a hyperinflationary environment is one that has cumulative inflation of approximately 100% or more over the most recent three year period. Departures from the methodology presented in this paragraph shall be quantified pursuant to Item 17(c)(2) of Form 20-F (§249.220f of this chapter).

\* \* \* \* \*

§210.3A-01 [Removed and Reserved]

15. Remove and reserve § 210.3A-01.
16. Amend § 210.3A-02 by:
  - a. Revising the 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 financial statements are more meaningful than separate financial 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.

(b) [Reserved]

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.**

(a) [Reserved]

(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 and Reserved]

18. Remove and reserve § 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 introductory text;
- b. Removing and reserving paragraph (a)
- c. Redesignating paragraph (d)(1) as paragraph (d) and removing paragraph (d)(2);
- d. Revising paragraphs (e)(1) and (3) introductory text;
- e. Revising paragraphs (f) and (h)(1);
- f. Redesignating the Note following paragraph (h)(1) as Note 1 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)(2)(ii) and (n); and
- k. Removing 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.

(a) [Reserved]

\* \* \* \* \*

(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.

(2) \* \* \*

(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) Income tax expense.

(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.

(i) [Reserved]

\* \* \* \* \*

(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) Repurchase and reverse repurchase agreements--

\* \* \* \* \*

(2) Reverse repurchase agreements (assets purchased under agreements to resell).

(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: (1) The registrant's policy with regard to taking possession of securities or other assets purchased under agreements to resell; and (2) 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.

(ii) If, as of the most recent balance sheet date, the amount at risk under reverse repurchase agreements with any individual counterparty or group of related counterparties exceeds 10% of stockholders' equity (or in the case of investment companies, net asset value), disclose the name of each such counterparty or group of related counterparties, the

amount at risk with each, and the weighted average maturity of the reverse repurchase agreements with each. The amount at risk under reverse repurchase agreements is defined as the excess of the carrying amount of the reverse repurchase agreements over the market value of assets delivered pursuant to the agreements by the counterparty to the registrant (or to a third party agent that has affirmatively agreed to act on behalf of the registrant) and not returned to the counterparty, except in exchange for their approximate market value in a separate transaction.

(n) Accounting policies for certain derivative instruments. Disclosures regarding accounting policies shall include, to the extent material, where in the statement of cash flows derivative financial instruments, and their related gains and losses, as defined by U.S. generally accepted accounting principles, are reported.

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 paragraphs 22.(a) introductory text, 27.(c)(3), 28 and 29; and
- e. Revising paragraph 30.(a) before the sentence that begins “Additional paid-in capital...” and redesignating that sentence as 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), (b)1, 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 rule 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) \* \* \*

1. Net sales and gross revenues. State separately:

(a) Net sales of tangible products (gross sales less discounts, returns and allowances), (b) operating revenues of public utilities or others; (c) income from rentals; (d) revenues from services; and (e) other revenues. Amounts earned from transactions with related parties shall be disclosed as required under §210.4-08(k). A public utility company using a uniform system of accounts or a form for annual report prescribed by federal or state authorities, or a similar system or report, shall follow the general segregation of operating revenues and operating expenses reported under §210.5-03.2 prescribed by such system or report. If the total of sales and revenues reported under this caption includes excise taxes in an amount equal to 1 percent or more of such total, the amount of such excise taxes shall be shown on the face of the statement parenthetically or otherwise.

\* \* \* \* \*

7. Non-operating income. State separately in the statement of comprehensive income or in a note thereto amounts earned from (a) dividends, (b) interest on securities, (c) profits on securities (net of losses), and (d) 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 (a) losses on securities (net of profits) and (b) 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.

\* \* \* \* \*

15. [Reserved]

16. [Reserved]

17. [Reserved]

\* \* \* \* \*

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.

25. Earnings per share data.

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:

- a. Revising paragraph (c)(1) introductory text; and
- b. Removing and reserving paragraph (c)(1)(i).

The revisions read as follows:

**§210.6-03 Special rules of general application to registered investment companies and business development companies.**

\* \* \* \* \*

(c) \* \* \*

(1) Consolidated and combined statements filed for registered investment companies and business development companies shall be prepared in accordance with §§210.3A-02 and 210.3A-03 (Article 3A), except that:

(i) [Reserved]

\* \* \* \* \*

26. Amend § 210.6-04 by:

- a. Revising paragraph 17 heading and introductory text; and

b. Revising paragraph 17.(a).

The revisions 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,

\* \* \* \* \*

27. Amend § 210.6-07 by revising the 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, and business development companies, shall comply with the following provisions:

\* \* \* \* \*

28. Amend § 210.6-09 by revising paragraph 3 introductory text and paragraphs 3.(a), 3.(c), 4.(b) and 7 to read as follows:

**§210.6-09 Statements of changes in net assets.**

\* \* \* \* \*

3. Distributions to shareholders. State total distributions to shareholders which generally come from: (a) investment income-net; (b) realized gain from investment transactions-net; and (c) other sources, except tax return of capital distributions, which shall be disclosed separately.

4. Capital share transactions.

(a) \* \* \*

(b) Disclose in the body of the statements or in the notes, for each class of the person's shares, the number and value of shares issued in reinvestment of dividends as well as the number and dollar amounts received for shares sold and paid for shares redeemed.

\* \* \* \* \*

7. Net assets at the end of the period.

29. Amend § 210.6A-04 by revising the heading and 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 rule shall comply with the following provisions:

\* \* \* \* \*

30. Amend § 210.6A-05 by:

- a. Revising paragraph (a) introductory text; and
- b. Revising Schedule III.

The revisions 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.

\* \* \* \* \*

- 31. Amend § 210.7-03 by:
  - a. Revising paragraphs (a)6, (a)11 and (a)13.(a)(2); 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.

\* \* \* \* \*

13. Policy liabilities and accruals.

(a) \* \* \*

(2) unearned premiums and

(3) \* \* \*

(b) [Reserved]

\* \* \* \* \*

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.

\* \* \* \* \*

32. Amend § 210.7-04 by:

- a. Revising the section heading;
- b. Revising the 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.

(c) [Reserved]

(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).)

\* \* \* \* \*

13. [Reserved]

14. [Reserved]

15. [Reserved]

\* \* \* \* \*

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.

23. Earnings per share data.

33. 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.

\* \* \* \* \*

34. Amend § 210.8-01 by:

- a. Revising paragraph (a) of Note 2 to §210.8; and
- b. Removing Note 6 to §210.8.

The revision reads 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 §§210.2-01 through 210.2-07 (Article 2 of this part); and

35. 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).

36. Amend § 210.8-03 by:

- a. Revising the introductory text;
- b. Revising paragraph (a)(2);
- c. Adding paragraph (a)(5);
- d. Removing and reserving paragraph (b)(2);
- e. Revising paragraphs (b)(4) and (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 for the current and comparative year-to-date periods, with subtotals for each interim period.

(b) \* \* \*

(2) [Reserved]

(3) \* \* \*

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

(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 §§210.8-01 through 210.8-08 (Article 8 of this part) are 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.

\* \* \* \* \*

37. 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.

\* \* \* \* \*

38. 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.

39. Amend § 210.8-06 by revising the 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:

\* \* \* \* \*

40. 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), 10 and 12.(a).

The revisions read as follows:

**§210.9-03 Balance sheets.**

\* \* \* \* \*

3. Federal funds sold and securities purchased under resale agreements or similar arrangements.

\* \* \* \* \*

7. \* \* \*

(d) [Reserved]

(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 estate.

(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.

\* \* \* \* \*

12. \* \* \*

(a) The amount of noninterest bearing deposits and interest bearing deposits in foreign banking offices must be presented if the disclosure provided by §210.9-05 is required.

\* \* \* \* \*

41. Amend § 210.9-04 by:

- a. Revising the heading and 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.

14. \* \* \*

(c) [Reserved]

\* \* \* \* \*

17. [Reserved]

18. [Reserved]

19. [Reserved]

\* \* \* \* \*

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.

\* \* \* \* \*

42. 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.

\* \* \* \* \*

43. Amend § 210.9-06 by revising it 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.

44. Amend § 210.10-01 by:

- a. Revising paragraphs (a)(3), (5) and (7);
- b. Revising paragraphs (b)(1), (2), (3), (6), (7) and (8);
- c. Removing and reserving paragraphs (b)(4) and (5); and
- d. 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 part 210 of this chapter (Regulation S-X). 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.

(6) \* \* \*

(7) Provide the information required by §210.3-04 for the current and comparative year-to-date periods, with subtotals for each interim period.

(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.

(4) [Reserved]

(5) [Reserved]

(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 17 CFR 229.601 (Item 601 of Regulation S-K)) 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.

(7) Any material retroactive prior period adjustment made during any period covered by the interim financial statements shall be disclosed, together with the effect thereof upon net income—total and per share—of any prior period included and upon the balance of retained earnings. If results of operations for any period presented have been adjusted retroactively by such an item subsequent to the initial reporting of such period, similar disclosure of the effect of the change shall be made.

(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.

(3) \* \* \*

(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 (c)(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.

\* \* \* \* \*

45. 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.

(2) \* \* \*

(3) The pro forma condensed financial information need only include major captions (i.e., the numbered captions) prescribed by the applicable sections of part 210 of this chapter (Regulation S-X). 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.

(4) \* \* \*

(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 (i) directly attributable to the transaction, (ii) expected to have a continuing impact on the registrant, and (iii) 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.

46. Amend § 210.11-03 by revising paragraphs (a) introductory text and (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).

(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).

\* \* \* \* \*

47. 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.

48. 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).

\* \* \* \* \*

49. 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.

\* \* \* \* \*

50. Amend § 210.12-21 by revising footnote 4 to read as follows:

**§210.12-21 Investments in securities of unaffiliated issuers.**

\* \* \* \* \*

<sup>4</sup>If any investments have been written down or reserved against by such companies pursuant to §210.6-03(d), indicate each such item by means of an appropriate symbol and explain in a footnote.

\* \* \* \* \*

51. Amend § 210.12-22 by revising footnotes 1(a), 4(b) and 6 to read as follows:

**§210.12-22 Investments in and advances to affiliates and income thereon.**

\* \* \* \* \*

<sup>1</sup> \* \* \*

(a) The required information is to be given as to all investments in affiliates as of the close of the period. See §§210.6-06(1), 210.6-06(5)(b), 210.6-06(8)(a)(2) and 210.6-06(8)(a)(3). List each issue and group separately (1) investments in majority-owned subsidiaries, segregating subsidiaries consolidated; (2) other controlled companies; and (3) other affiliates. Give totals for each group. If operations of any controlled companies are different in character from those of the registrant, group such affiliates within divisions (1) and (2) by type of activities.

\* \* \* \* \*

<sup>4</sup> \* \* \*

(a) \* \* \*

(b) If any investments have been written down or reserved against by such companies pursuant to §210.6-03(d), indicate each such item by means of an appropriate symbol and explain in a footnote.

\* \* \* \* \*

<sup>6</sup> Show in column E(1) as to each issue held at close of period, the dividends or interest included in caption 1 of the profit and loss or income statement. In addition, show as the final item in column E(1) the aggregate dividends and interest included in the profit and loss or income statement in respect of investments in affiliates not held at the close of the period. The total of this column should agree with the amounts shown under such caption. Include in column E(2) all other dividends and interest. Explain briefly in an appropriate footnote the treatment accorded each item. Identify by an appropriate symbol all non-cash dividends and explain the circumstances in a footnote. See §§210.6-06(3)(a)(2), 210.6-03(g) and 210.6-07(1).

\* \* \* \* \*

52. Amend § 210.12-23 by revising footnotes 9 and 12 to read as follows:

**§210.12-23 Mortgage loans on real estate and interest earned on mortgages.<sup>1</sup>**

\* \* \* \* \*

<sup>9</sup>If any item of mortgage loans on real estate investments has been written down or reserved against pursuant to §210.6-03 describe the item and explain the basis for the write-down or reserve.

\* \* \* \* \*

<sup>12</sup>Summarize the aggregate amounts for each column applicable to §210.6-06(1) and 6-06(5)(a).

53. Amend § 210.12-24 by removing from the heading in Column B of the first table the text “Amount of incombrances” and adding in its place “Amount of incumbrances” and by revising footnotes 5 and 8 to read as follows:

**§210.12-24 Real estate owned and rental income.<sup>1</sup>**

\* \* \* \* \*

Part 1—Real estate owned at end of period					Part 2—Rental income				
Column A—List classification of property as indicated below <sup>2 3</sup>	Column B—Amount of incumbrances	Column C—Initial cost to company	Column D—Cost of improvements, etc.	Column E—Amount at which carried at close of period <sup>4 5 6 7</sup>	Column F—Reserve for depreciation	Column G—Rents due and accrued at end of period	Column H—Total rental income applicable to period	Column I—Expended for interest, taxes, repairs and expenses	Column J—Net income applicable to period
***	***	***	***	***	***	***	***	***	***

\* \* \* \* \*

<sup>5</sup>If any item of real estate investments has been written down or reserved against pursuant to §210.6-03(d), describe the item and explain the basis for the write-down or reserve.

\* \* \* \* \*

<sup>8</sup>Summarize the aggregate amounts for each column applicable to §210.6-06(1) and 6-06(5)(a).

54. Amend § 210.12-27 by revising footnote 3 to read as follows:

**§210.12-27 Qualified assets on deposit.<sup>1</sup>**

\* \* \* \* \*

<sup>3</sup>Total of column F shall agree with note required by §210.6-06(4) as to total amount of qualified Assets on Deposit.

55. 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 between the tables 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: \* \* \*

\* \* \* \* \*

56. 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: \* \* \*

\* \* \* \* \*

**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**

57. 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 (2010); and sec. 102(c), Pub. L. 112-106, 126 Stat. 310 (2012).

58. 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

\* \* \* \* \*

59. Amend § 229.101 by:

- a. Removing and reserving paragraphs (b), (c)(1)(xi) and (d);
- b. Revising paragraphs (e) introductory text and (e)(2) and (3);
- c. Removing and reserving paragraph (h)(4)(x); and
- d. Revising paragraph (h)(5)(iii).

The revisions read as follows:

**§229.101 (Item 101) Description of business.**

\* \* \* \* \*

(b) [Reserved]

(c) \* \* \*

(1) \* \* \*

(xi) [Reserved]

\* \* \* \* \*

(d) [Reserved]

(e) Available information. Disclose the information in paragraphs (e)(1), (e)(2) and (e)(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):

(1) \* \* \*

(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) \* \* \*

(4) \* \* \*

(x) [Reserved]

\* \* \* \* \*

(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.

\* \* \* \* \*

60. Amend § 229.201 by:

- a. Revising paragraph (a)(1)(i);
- b. Removing paragraph (a)(1)(ii), redesignating paragraph (a)(1)(iii) as paragraph (a)(1)(ii), revising newly redesignated paragraph (a)(1)(ii) and adding new paragraph (a)(1)(iii);
- c. Removing paragraphs (a)(1)(iv) and (v);
- d. Removing and reserving paragraphs (a)(2)(i) and (c)(1) and Instruction 1 to the Instructions to Item 201;
- e. 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; 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(s) and the corresponding trading symbol(s) for each class of the registrant's common equity. In the case of foreign registrants, also identify the principal foreign public trading market(s), if any, and the corresponding 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 17 CFR 210.3-01 through 210.3-20 (Article 3 of Regulation S-X), 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.”

(2) \* \* \*

(i) [Reserved]

\* \* \* \* \*

(c) \* \* \*

(1) [Reserved]

\* \* \* \* \*

Instruction 1 to Item 201. [Reserved]

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.

\* \* \* \* \*

61. 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 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) from continuing operations, per share data based upon income (loss) from continuing operations, net income (loss), per share data based upon 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 17 CFR 210.3-01 through 210.3-20 (Article 3 of Regulation S-X).

(2) \* \* \*

(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 17 CFR 210.3-01 through 210.3-20 (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) is required.

\* \* \* \* \*

62. Amend § 229.303 by:

- a. Revising the paragraphs (a) introductory text and (b)(2);
- b. 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), consecutively.
- c. Removing and reserving newly redesignated Instruction 5 to paragraph (b);  
and
- d. 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 Item 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 information and/or of other subdivisions (e.g., geographic areas) of the registrant's business would be appropriate to an understanding of such business, the discussion shall focus on each relevant, reportable segment and/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 5 to paragraph (b). [Reserved]

\* \* \* \* \*

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.

\* \* \* \* \*

63. Amend § 229.406 by revising paragraph (d) to read as follows:

**§229.406 (Item 406) Code of ethics.**

\* \* \* \* \*

(d) If the registrant intends to satisfy the disclosure requirement under Item 5.05 of Form 8-K regarding an amendment to, or a waiver from, a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in paragraph (b) of this Item by posting such information on its Internet website, disclose the registrant's Internet address and such intention.

\* \* \* \* \*

64. Amend § 229.503 by:

- a. Revising the section heading;
- b. Removing paragraph (d) and the instructions to paragraph (d); and
- c. Removing paragraph (e).

The revision reads as follows:

**§229.503 (Item 503) Prospectus summary and risk factors.**

\* \* \* \* \*

65. Amend § 229.504 by revising Instruction 3 to the Instructions to Item 504 to read as follows:

**§229.504 (Item 504) Use of proceeds.**

\* \* \* \* \*

Instructions to Item 504: \* \* \*

3. If any material amounts of other funds are necessary to accomplish the specified purposes for which the proceeds are to be obtained, state the amounts of such other funds needed for each such specified purpose and the sources thereof.

\* \* \* \* \*

66. Amend § 229.508 by revising paragraph (e) to read as follows:

**§229.508 (Item 508) Plan of distribution.**

\* \* \* \* \*

(e) Underwriter's compensation. Provide a table that sets out the nature of the compensation and the amount of discounts and commissions to be paid to the underwriter for each security and in total. The table must show the separate amounts to be paid by the company and the selling shareholders. In addition, include in the table all other items considered by the Financial Industry Regulatory Authority (“FINRA”) to be underwriting compensation for purposes of FINRA rules.

\* \* \* \* \*

67. 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.

\* \* \* \* \*

68. 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), (22) and (26);
- e. Revising paragraph (b)(14); and
- f. Removing paragraph (c).

The revisions read as follows:

**§229.601 (Item 601) Exhibits.**

\* \* \* \* \*

(b) \* \* \*

(11) [Reserved]

(12) [Reserved]

\* \* \* \* \*

(14) Code of ethics. Any code of ethics, or amendment thereto, that is the subject of the disclosure required by §229.406 (Item 406 of Regulation S-K) or Item 5.05 of Form 8-K (§249.308 of this chapter), to the extent that the registrant intends to satisfy the Item 406 or Item 10 requirements through filing of an exhibit.

\* \* \* \* \*

(19) [Reserved]

\* \* \* \* \*

(22) [Reserved]

\* \* \* \* \*

(26) [Reserved]

\* \* \* \* \*

(106) \* \* \*

69. 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

(3) [Reserved]

\* \* \* \* \*

(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

\* \* \* \* \*

(c) \* \* \*

(4) [Reserved]

\* \* \* \* \*

70. 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**

71. 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.

\* \* \* \* \*

72. Amend § 230.158 by:

- a. Revising paragraph (a)(1) introductory text;
- b. Designating as Note 1 to paragraph (a) the undesignated text between paragraphs (a)(2)(ii) and (b); and
- c. Revising newly designated Note 1 to paragraph (a).

The revisions read as follows:

**§230.158 Definitions of certain terms in the last paragraph of section 11(a).**

(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 1 to paragraph (a). A subsidiary issuing debt securities guaranteed by its parent will be deemed to have met the requirements of this paragraph (a) if the parent's statements of comprehensive income (as defined in §210.1-02 of Regulation S-X) 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 this paragraph (a) may otherwise be sufficient for purposes of the last paragraph of section 11(a) of the Act.

\* \* \* \* \*

73. Amend § 230.405 by:

- a. Revising paragraphs (1) and (3) of the definition of Significant subsidiary;
- b. Adding a NOTE 1 following paragraph (3) before the COMPUTATIONAL NOTE;
- c. Redesignating the COMPUTATIONAL NOTE as COMPUTATIONAL NOTE 1 TO PARAGRAPH (3); and
- d. Revising the newly designated COMPUTATIONAL NOTE 1 TO PARAGRAPH (3).

The revisions and additions 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 of the subsidiary 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.

NOTE 1: A registrant that files its financial statements in accordance with or provides a reconciliation to U.S. Generally Accepted Accounting Principles shall make the prescribed tests using amounts determined under U.S. Generally Accepted Accounting Principles. A foreign private issuer that files its financial statements in accordance with IFRS as issued by the IASB shall make the prescribed tests using amounts determined under IFRS as issued by the IASB.

COMPUTATIONAL NOTE 1 TO PARAGRAPH (3): For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss exclusive of amounts attributable to any noncontrolling interests has been incurred by either the parent and its subsidiaries consolidated or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary exclusive of amounts attributable to any noncontrolling interests should be excluded from such income of the registrant and its subsidiaries consolidated for purposes of the computation.

2. If income of the registrant and its subsidiaries consolidated exclusive of amounts attributable to any noncontrolling interests for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

\* \* \* \* \*

74. 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**

75. 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, and 80a-37; and sec. 107, Pub. L. 112-106, 126 Stat. 312, unless otherwise noted.

\* \* \* \* \*

76. Amend Form S-1 (referenced in § 239.11) by:

- a. Revising the heading of Item 3; and
- b. Revising Item 12.(c)(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.**

\* \* \* \* \*

(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>).

\* \* \* \* \*

77. Amend Form S-3 (referenced in § 239.13) by:

- a. Revising General Instruction I.B.2;
- b. Revising General Instruction I.C.2 and I.D.1.(c)(iv) to remove the text, “(Primary Offerings of Non-Convertible Investment Grade Securities)” and add, in its place, the words “(Primary Offerings of Non-Convertible Securities Other than Common Equity)”;
- c. Revising the heading of Item 3;
- d. Revising Item 12.(c)(2)(ii); and
- e. Removing Instruction 3 to the Instructions to Signatures.

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).

\* \* \* \* \*

### C. Majority-Owned Subsidiaries. \* \* \*

2. the parent of the registrant-subsiary meets the Registrant Requirements and the conditions of Transaction Requirements B.2. (Primary Offerings of Non-Convertible Securities Other than Common Equity) are met;

\* \* \* \* \*

**D. Automatic Shelf Offerings by Well-Known Seasoned Issuers.** \* \* \*

1. \* \* \*

(c) \* \* \*

(iv) Securities of a majority-owned subsidiary that meet the conditions of Transaction Requirement I.B.2. of this Form (Primary Offerings of Non-Convertible Securities Other than Common Equity).

\* \* \* \* \*

\* \* \* \* \*

**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.

\* \* \* \* \*

78. 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>).

\* \* \* \* \*

79. 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.

\* \* \* \* \*

80. 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>).

\* \* \* \* \*

81. 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.

\* \* \* \* \*

82. 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.

\* \* \* \* \*

83. 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.

\* \* \* \* \*

84. 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.

\* \* \* \* \*

85. 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.

\* \* \* \* \*

86. 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.

\* \* \* \* \*

87. 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.

\* \* \* \* \*

88. 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.

\* \* \* \* \*

89. 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.

\* \* \* \* \*

90. 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.

\* \* \* \* \*

91. 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.

\* \* \* \* \*

92. 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**

93. 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, 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. 1887 (2010); and secs. 503 and 602, Pub. L. 112-106, 126 Stat. 326 (2012), unless otherwise noted.

\* \* \* \* \*

94. 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;

\* \* \* \* \*

95. 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 (b)(2) of this section shall not replace, or otherwise satisfy the need for, the newly engaged and former accountants' letters under §§229.304(a)(2)(D) and 229.304(a)(3) of this chapter (Items 304(a)(2)(D) and 304(a)(3) of Regulation S-K, 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 (United States) ("PCAOB") and the rules or interpretations of the Commission that modify or supplement those auditing standards.

\* \* \* \* \*

96. Amend § 240.12b-2 by:

- a. Revising paragraph (3) of the definition of Significant subsidiary;
- b. Adding a NOTE 1 following paragraph (3) before the COMPUTATIONAL NOTE; and
- c. Redesignating the COMPUTATIONAL NOTE as COMPUTATIONAL NOTE 1 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 of the subsidiary 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.

NOTE 1: A registrant that files its financial statements in accordance with or provides a reconciliation to U.S. Generally Accepted Accounting Principles shall make the prescribed tests using amounts determined under U.S. Generally Accepted Accounting Principles. A foreign private issuer that files its financial statements in accordance with IFRS as issued by the IASB shall make the prescribed tests using amounts determined under IFRS as issued by the IASB.

\* \* \* \* \*

97. Amend § 240.12g-3 by revising paragraphs (a)(2), (b)(2) and (c)(2) to read as follows:

**§240.12g-3 Registration of securities of successor issuers under section 12(b) or 12(g).**

(a) \* \* \*

(2) All securities of such class are held of record by fewer than 300 persons, or 1,200 persons in the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); or

\* \* \* \* \*

(b) \* \* \*

(2) All securities of such class are held of record by fewer than 300 persons, or 1,200 persons in the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); or

\* \* \* \* \*

(c) \* \* \*

(2) All securities of such class are held of record by fewer than 300 persons, or 1,200 persons in the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); or

\* \* \* \* \*

98. 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.

\* \* \* \* \*

99. 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 PCAOB, or other professional or regulatory standards);

(ii) Not to perform audit, review or other procedures required by the standards of the PCAOB or other professional standards;

\* \* \* \* \*

§240.14a-101 [Amended]

100. Amend § 240.14a-101 by:

- a. Removing Item 10.(c) and the Instructions to paragraph (c); and
- b. Redesignating the Instructions following the Instructions to paragraph (c) as

Instructions to Item 10.

101. Amend § 240.15c3-1g by revising paragraphs (b)(1)(i)(A), (b)(1)(ii)(A) and (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 appendix G, 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) 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) 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)).

\* \* \* \* \*

102. 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.

\* \* \* \* \*

103. 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.

\* \* \* \* \*

104. Amend § 240.17a-5 by adding Note 1 to paragraph (d)(2)(i) to read as follows:

**§240.17a-5 Reports to be made by certain brokers and dealers.**

\* \* \* \* \*

(d) Annual reports. \* \* \*

(2) \* \* \*

(i) \* \* \*

Note 1 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.

\* \* \* \* \*

105. Amend § 240.17a-12 by adding Note 1 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 1 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.

\* \* \* \* \*

106. 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;

\* \* \* \* \*

107. Amend § 240.17h-1T by adding Note 1 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 1 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**

108. 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; Sec. 102(a)(3), Pub. L. 112-106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112-106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114-94, 129 Stat. 1312 (2015), unless otherwise noted.

\* \* \* \* \*

109. Amend § 249.210 by revising the heading to read as follows:

**§229.210 Form 10, general form for registration of securities pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934.**

\* \* \* \* \*

110. 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. Revising Items 17(c)(2)(v) and (vi);
- q. Removing and reserving Instruction 3 to Item 17;
- r. Removing Special Instruction for Certain European Issuers to Item 17;
- s. Revising Instruction 1 to Instruction to Item 18;
- t. Removing Special Instruction for Certain European Issuers to Item 18; and
- u. 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 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 principal host market(s) and principal market(s) outside the principal host market and corresponding 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.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(v) Issuers that prepare financial statements on a basis of accounting other than U.S. generally accepted accounting principles that are furnished for a business acquired or to be acquired pursuant to §210.3-05 of this chapter may omit the disclosures specified by paragraphs (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) of this Item if the conditions specified in the definition of a significant subsidiary in §210.1-02(w) of this chapter do not exceed 30 percent. Issuers that prepare financial statements using IFRS as issued by the IASB that are furnished pursuant to §210.3-05 may omit the disclosures specified by paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this Item regardless of the size of the business acquired or to be acquired.

(vi) Issuers that prepare financial statements on a basis of accounting other than U.S. generally accepted accounting principles that are furnished for a less-than-majority-owned investee pursuant to §210.3-09 of this chapter may omit the disclosures specified by paragraphs (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) of this Item if the first and third conditions specified in the definition of a significant subsidiary in §210.1-02(w) of this chapter do not exceed 30 percent. Issuers that prepare financial statements using IFRS as issued by the IASB that are furnished pursuant to §210.3-09 may omit the disclosures specified by paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this Item regardless of the size of the investee.

\* \* \* \* \*

**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]

\* \* \* \* \*

111. 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.

\* \* \* \* \*

- 112. 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).

\* \* \* \* \*

113. 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).

\* \* \* \* \*

114. 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.**

115. 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 <sup>11</sup>**

\* \* \* \* \*

**STATEMENT OF FINANCIAL CONDITION**

\* \* \* \* \*

29. \* \* \*

E. Accumulated other comprehensive income	_____ <sup>99999</sup>
F. Total	_____ <sup>1795</sup>
G. Less capital stock in treasury	( _____ ) <sup>1796</sup>

\* \* \* \* \*

**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**

\* \* \* \* \*

32. [RESERVED]

    a. [RESERVED]

33. [RESERVED]

34. Net income (loss) after Federal income taxes \$ \_\_\_\_\_ 4230

35. Other comprehensive income (loss) \_\_\_\_\_ 99999

    a. After Federal income taxes of \_\_\_\_\_ 99999

36. Comprehensive income (loss) \$ \_\_\_\_\_ 99999

**MONTHLY INCOME**

37. Income (current month only) before provision for Federal income taxes \$ \_\_\_\_\_ 4211

116. 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.

\* \* \* \* \*

117. 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 12**

\* \* \* \* \*

**STATEMENT OF FINANCIAL CONDITION FOR NONCARRYING,  
NONCLEARING AND CERTAIN OTHER BROKERS OR DEALERS**

\* \* \* \* \*

23. \* \* \*

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	▼16	( _____ ) <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**

\* \* \* \* \*

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

118. 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.

\* \* \* \* \*

119. 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 11**

\* \* \* \* \*

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

120. 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**

121. 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.

\* \* \* \* \*

122. 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](mailto:publicinfo@sec.gov).

\* \* \* \* \*

123. 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.

\* \* \* \* \*

124. 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.

\* \* \* \* \*

125. 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;

\* \* \* \* \*

126. 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.

\* \* \* \* \*

127. 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.

\* \* \* \* \*

128. 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: August 17, 2018

Eduardo A. Aleman  
Assistant Secretary