

## SUMMARY OF CHANGES IN CURRENT UPDATE

Sections of the Financial Reporting Manual have been updated as of December 31, 2022. These sections have been marked with the date tag, “*Last updated: 12/31/2022,*” to identify the changes. Previous updates are marked using the same convention and represent the last revision to that section. We include a date tag when the change is significant. Changes that are administrative in nature (for example, section reference updates or grammatical improvements) are not marked with a date tag.

Below is a summary of significant changes included in this update. Clicking the linked section number will direct you to the location of the change in the document. You may click on the embedded link in the document to return to this page.

This update does not include changes for the following rulemakings, [\*Amendments to Financial Disclosures about Acquired and Disposed Businesses, Qualifications of Accountants, and Management’s Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information\*](#). For questions related to these amendments, please contact the individual(s) listed on the related rulemaking.

Topic/Section	Comment
<a href="#"><u>Communications with CF-OCA</u></a>	Updated the phone number for contacting CF-OCA staff and provided a link to the new online submission for financial statement waiver or substitution requests.
<a href="#"><u>1430, 2500, 2600, 4110.5, 4110.7, 5310.1, 6220.4, 6230.2, 6340.2, 6350.1, 6410.1, 6410.2, 6410.12, 6500, and 9820</u></a>	Revisions for March, 2, 2020 amendments to Rules 3-10 and 3-16 of Regulation S-X in SEC Release No. 33-10763, <i>Financial Disclosures about Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Colateralize a Registrant’s Securities</i> , (the “March 2020 Amendments”).
<a href="#"><u>11400</u></a>	Revisions to add guidance related to the implementation of Accounting Standards Update No. 2018-12, <i>Financial Services – Insurance (Topic 944): Targeted Improvements to the Accounting for Long-Duration Contracts</i> .
<a href="#"><u>6120.4, 6120.5, and 11100</u></a>	Removed information that is no longer applicable due to the passage of time, such as the adoption of ASC 606.

## **COMMUNICATIONS WITH THE DIVISION OF CORPORATION FINANCE'S OFFICE OF CHIEF ACCOUNTANT (CF-OCA)**

*(~~Last updated: 10/30/2020~~ Last updated: 12/31/2022)*

CF-OCA performs the following functions that may result in communications with companies and their advisors:

- Acts on behalf of the Commission to grant relief under Rule 3-13 of Regulation S-X. The staff has authority, where consistent with investor protection, to permit registrants to omit, or substitute for, required financial statements. Requests for this relief should be submitted ~~by~~ via the [email](#) [online form](#). Call (202) ~~551-3111~~ 551-3400 and ask for the appropriate person listed below to discuss questions about potential relief:

**Rules 3-05 and 8-04**– Jaime John

**Article 11 and Rule 8-05** – Todd Hardiman

**Rules 3-09 and 4-08(g)** – Jarrett Torno

**Rules 3-10 and 3-16** – Jarrett Torno

**Rules 3-14 and 8-06** – Jessica Barberich

- Answers interpretive request letters and provides informal interpretive advice about the form and content of financial statements and other financial information required to be included in Commission filings. Requests for interpretive letters should be submitted by [email](#). Requests for informal interpretive advice should be submitted by [online form](#) or by calling (202) 551-3400. While the statements made by the staff on the telephone are intended to be helpful to the persons making the inquiries, they are not binding due to their informal nature.
- Helps identify and explain the applicable rules, regulations, forms, and guidance that affect the form and content of financial statements and other financial information required to be included in Commission filings. Requests for this assistance should be submitted by [online form](#) or by calling (202) 551-3400.

## 1410.5 **Emerging Growth Companies**

An EGC is not required to comply with new or revised financial accounting standards until a company that is not an issuer (as defined under section 2(a) of the Sarbanes-Oxley Act of 2002) is required to comply with such standards, if such standards apply to companies that are not issuers. An EGC that chooses not to take advantage of the extended transition provision must make such choice at the time the company is first required to file a registration statement, periodic report or other report, and must notify the Commission of such choice. Note that the decision to forego the extended transition period is irrevocable. See Topic 10 for additional information. *(Last updated: 6/30/2013)*

## 1420 **[Reserved]**

## 1430 **Guaranteed Securities**

*(Last updated: 12/31/2022)*

A guarantee of a security is a [separate](#) security, and the ~~guarantor~~[issuer](#) of a ~~registered security~~[guarantee](#) is subject to the reporting and registration requirements applicable to other issuers. Relief from separate reporting and financial statement requirements is available for [subsidiary issuers and guarantors of guaranteed securities](#) in certain circumstances. See Section 2500.

## 1440 **[Reserved]**

*(Last updated: 10/30/2020)*

## 1450 **Fiscal Year Presentation**

*(Last updated: 3/31/2009)*

### 1450.1 **Fiscal Year-End**

Fiscal year-end is presumed to be calendar year-end if no closing date has been adopted. [S-X 1-02(k)]

### 1450.2 **Ordering of Fiscal Year Data**

Consistent chronological order generally should be followed in presentation of financial data throughout the filing to avoid confusion. [SAB Topic 11E]

### 1450.3 **Length of Fiscal Year**

Fiscal years may not exceed 12 months. Under S-X 3-06, nine to twelve months of audited financial statements will meet the requirement for one year of audited financial statements:

## 2500 GUARANTORS AND ISSUERS OF GUARANTEED SECURITIES

[S-X 3-10, S-X 13-01 and S-X 8-01-~~Note 3(c)~~]

*(~~Last updated: 6/30/2011~~)Last updated: 12/31/2022*

Section	Description
<del>2500</del>	<del>Guarantors of Securities</del>
2510	<del>Exceptions to the General Rule</del> <u>Background</u>
<u>2515</u>	<u>Eligibility Conditions and Disclosure Requirements</u>
<del>2515</del>	<del>Condensed Consolidating Financial Information</del>
2520	Implementation <del>Issues</del> <u>Matters</u>
<u>2530</u>	<u>Recently-Acquired Subsidiary Issuers and Guarantors</u>
<del>2530</del>	<del>Recently Acquired Guarantor Subsidiaries</del>
2540	Periodic Reporting by Subsidiary Issuers and Guarantors

~~2500.1—Re quire me nt for Full and Comple te Disclosure—~~Debt or preferred stock

### 2510 Background

2510.1 Financial Statements of Guarantors and Issuers of Guaranteed Securities -  
A debt or debt-like security (e.g., preferred stock that meets the requirements of Rule 3-10(b)(2)) that is registered or being registered ~~under the Securities Act~~ may be guaranteed by one or more affiliates of the issuer. ~~As described in Section 2500.2, S-X 3-10 and S-X 8-01 Note 3 require~~ (e.g., a parent company may issue debt securities that are guaranteed by one or more of its subsidiaries). A guarantee of a debt or debt-like security is a separate security ~~under the Securities Act~~ and, as a result, offers and sales of these guarantees, which are typically purchased together with the related debt security and are held together while outstanding, must be either registered or exempt from registration. Each issuer of a registered security that is guaranteed and each guarantor of a registered security must file the financial statements ~~of guarantors of registered securities to be included~~ required by Regulation S-X in registration statements and Exchange Act reports. ~~In, as applicable. However, in certain circumstances, as described in Section 2510.1~~ 2510.2, S-X 3-10 and S-X 8-01 Note 3 provide (a) ~~provides~~ relief from the requirement to ~~provide full financial statements for each guarantor.~~  
~~Qualification for such relief does not relieve the issuer of its responsibility to provide full and complete disclosure of:~~

- ~~a.—the legal aspects of the guarantee arrangement that would be material for an investor to evaluate the sufficiency of the guarantee,~~

- ~~b.—financial information in sufficient detail to allow investors to determine the nature of the assets held by, and the operations and cash flows of, each of the guarantors, including the investors' priority position in the event of a default by the issuer, and~~
- ~~e.—any significant restrictions on the issuer's ability to obtain funds from its guarantors by dividend, loan, or other means.~~

### ~~2500.2 General Rule~~

~~Unless an exception applies (see Section 2510.1), each issuer of a guaranteed security and each guarantor of that security must file the separate financial statements specified by Regulation S-X for a registrant. [S-X 3-10(a)]~~

#### **NOTES to SECTION 2500.2**

~~1. The exceptions involve, in lieu of a subsidiary issuer's or subsidiary guarantor's full financial statements, financial and/or narrative disclosures about the subsidiary issuer or guarantor in the financial statements of the parent company that issued or guaranteed the registered security.  
(Last updated: 6/30/2010)~~

~~2. The financial statements of an entity that is not an issuer or guarantor may not be substituted for the financial statements of the parent company even if the financial statements would be virtually identical to those of the parent company. [Note to S-X 3-10(a)(2)]~~

## **2510—Exceptions to the General Rule**

*(Last updated: 6/30/2010)*

~~2510.1—The exceptions in the table below relate to the structure of the guaranteed transaction. The exceptions apply only when:~~ • for each subsidiary issuer/guarantor is 100% owned and

- ~~• each guarantee of the security being registered is full, unconditional, and joint and several with all other subsidiary guarantees.~~

~~These terms are defined in S-X 3-10(h) and are included below in Sections 2510.3 and 2510.4.~~

~~Also, the exceptions are available only for guaranteed securities that are “debt or debt-like.” The characteristics that identify a security as debt or debt-like are~~

- ~~• the issuer has a contractual obligation to pay a fixed sum at a fixed time; and~~
- ~~• where the obligation to make such payments is cumulative, a set amount of interest must be paid.~~

### **NOTE TO SECTION 2510.1**

~~Further discussion of the meaning of debt or debt-like is provided in Release No. 33-7878.~~

~~If an exception applies, the parent company may provide the disclosure specified in the following table instead of full financial statements of the subsidiary issuer or guarantor. Relief from providing full financial statements of the subsidiary issuer or guarantor does not relieve the parent company of its obligation to provide the disclosure described in Section 2500.1. In certain exceptions described in the table below, the disclosure required for relief includes condensed consolidating financial information. See Section 2515 for a description of condensed consolidating financial information. guarantor.~~

### **2510.2 Conditions for Omission of Subsidiary Issuer and Subsidiary Guarantor Financial Statements**

S-X 3-10(a) permits the omission of separate financial statements of subsidiary issuers and guarantors of guaranteed “debt or debt-like”, as defined in S-X 3-10(b)(2), securities when certain conditions are met, including that the “parent

company”, as defined in S-X 3-10(b)(1), provides supplemental financial and non-financial disclosures about the subsidiary issuers and/or guarantors and the guarantees. S-X 3-10 specifies the conditions that must be met in order to omit separate subsidiary issuer or guarantor financial statements, these are summarized in Section 2515.2. S-X 13-01 specifies the accompanying financial and non-financial disclosure requirements, as summarized in Section 2515.3. If any of the conditions in S-X 3-10 are not met, or the disclosures in S-X 13-01 are not provided by the parent company, separate financial statements of each subsidiary issuer and guarantor may not be omitted. The requirements of S-X

<b>Exec ptions</b>	<b>Diselosure Require d for Re lie f</b>
<del>Finance subsidiary issues securities guaranteed by its parent company; no other subsidiary guarantees</del>	<del>Narrative diselosure about the guarantee in a note to the parent company’s financial statements [S-X 3-10(b)]</del>
<del>Operating subsidiary issues securities guaranteed by its parent company; no other subsidiary guarantees</del>	<del>Condensed consolidating financial information in a note to the parent company’s financial statements [S-X 3-10(e)]</del>
<del>Finance or operating subsidiary issues securities guaranteed by its parent company; one or more other subsidiary guarantees</del>	<del>Condensed consolidating financial information in a note to the parent company’s financial statements [S-X 3-10(d)]</del>
<del>One finance or operating subsidiary guarantees securities issued by its parent company</del>	<del>Condensed consolidating financial information in a note to the parent company’s financial statements [S-X 3-10(e)]</del>
<del>More than one finance or operating subsidiary guarantees securities issued by its parent company</del>	<del>Condensed consolidating financial information in a note to the parent company’s financial statements [S-X 3-10(f)]</del>
<del>All subsidiaries guarantee securities issued by their parent company and the parent company has no independent assets or operations. This condition is also met when any non-guarantor subsidiaries are minor (their total assets, stockholders’ equity, revenues, income from continuing operations, and cash flows from operating activities, Individually and in the aggregate, are less than 3% of the parent company’s consolidated</del>	<del>Narrative diselosure about the guarantee in a note to the parent company’s financial statements [S-X 3-10(e),(e),(f)]</del>

totals).

[3-10 and 3-16](#) were amended on March 2, 2020 in SEC Release No. 33-10762 (the “[March 2020 Amendments](#)”), which includes an appendix that summarizes the main features of these rules, including the eligibility conditions and required disclosures.

#### **NOTE to SECTION 2510.2**

The requirements of S-X 3-10 and S-X 13-01 also apply to entities that qualify as smaller reporting companies under S-X 8-01(c) and S-X 8-03(b)(6), and to entities offering or that have offered guaranteed securities pursuant to Regulation A through the requirements of Forms 1-A, 1-K, and 1-SA.

## **2515 Eligibility Conditions and Disclosure Requirements**

**2515.1 Summarized Eligibility Conditions and Disclosure Requirements - Set forth below are tables summarizing the main features of S-X 3-10 and S-X 13-01.**

[These tables](#) are only a summary of certain requirements contained in the rules and regulations; they are not a substitute for the rules and regulations. Refer to the rules for the full requirements and to the description of those requirements in the [March 2020 Amendments](#).

**2515.2 Eligibility Conditions - The following table summarizes the eligibility conditions in S-X 3-10 that, if all have been satisfied, permit the omission of the separate financial statements of a subsidiary issuer or guarantor:**

<b><u>Eligibility Condition</u></b>	<b><u>Description</u></b>	<b><u>Rule Reference</u></b>
<b><u>Parent Company Financial Statements</u></b>	<a href="#">Consolidated financial statements of the “parent company,” as defined at S-X 3-10(b)(1), have been filed.</a>	<a href="#">S-X 3-10(a)</a>
<b><u>Consolidated Subsidiary</u></b>	<a href="#">The subsidiary issuer or guarantor is a consolidated subsidiary of the parent company.</a>	<a href="#">S-X 3-10(a)</a>
<b><u>Debt or Debt-Like</u></b>	<a href="#">The guaranteed security is “debt or debt-like,” as defined at S-X 3-10(b)(2).</a>	<a href="#">S-X 3-10(a)(1)</a>

	<p style="text-align: center;"><b>NOTE to SECTION 2510.1</b></p> <p>If one or more of the guarantor subsidiaries is <b>not</b> 100% owned, or if one or more of the guarantees is not full and unconditional, the issuer must file full audited financial statements of those guarantor subsidiaries pursuant to S-X 3-10(a). Unaudited interim financial statements of those guarantor subsidiaries would also be required in a registration statement or Form 10-Q. MD&amp;A and selected financial data for any guarantor subsidiary that is <b>not</b> 100% owned should also be provided if required for the parent. If full audited financial statements are required for a 100% owned guarantor (e.g., because one or more of the guarantees is not full and unconditional), provide management's narrative analysis of the material changes between the most recent fiscal year presented and the fiscal year immediately preceding it. See General Instruction I of Form 10-K. (Last updated: 3/31/2009)</p>	<p><a href="#">reference</a></p>
<p><b><u>Eligibility Condition</u></b></p>		
<p><b><u>Eligible Issuer and Guarantor Structure</u></b></p>	<p>The issuer and guarantor structure must match one of the eligible issuer and guarantor structures. See Sections 2515.4 and .5 below for additional information.</p>	<p><a href="#">S-X 3-10(a)(1)(i)</a> or <a href="#">(ii)</a></p>
<p><b><u>Supplemental Financial and Non-Financial Disclosures</u></b></p>	<p>Parent company provides the supplemental financial and non-financial disclosures specified in S-X 13-01.</p>	<p><a href="#">S-X 3-10(a)(2)</a></p>

~~2510.2—Applicability to Co-Issuers—The exceptions in Section 2510.1 also apply to subsidiaries that co-issue, rather than guarantee, securities issued by their parent company.~~

~~2510.3—De finition—100% owne d—A subsidiary is 100% owned if all of its outstanding voting shares are owned, either directly or indirectly, by the parent company [S-X 3-10(h)]. For a non-corporate subsidiary, all interests must be owned by the parent company. Registrants with questions about these definitions should contact CF-OCC.~~

~~2510.4—Definition—Full and Unconditional—~~

2515.3 Non-Financial and Financial Disclosures - The following tables summarize the supplemental non-financial and financial disclosures that, to the extent material, must be provided by the parent company. Refer to Section 2520 below for additional information on the application of these requirements.

The parent company may provide the disclosures in its consolidated financial statements and related footnotes or, alternatively, in MD&A. If a parent company elects to provide the disclosures in its audited financial statements, the disclosures must be audited. If not otherwise included in the consolidated

financial statements or in MD&A, the parent company must include the disclosures in its prospectus immediately following “Risk Factors,” if any, or otherwise, immediately following pricing information described in Item 105 of Regulation S-K [S-X 13-01(b)].

<u>Non-Financial Disclosure Requirement</u>	<u>Description</u>	<u>Rule Reference</u>
<u>Non-Financial Disclosures</u>	<p><u>Disclosures about the following:</u></p> <ul style="list-style-type: none"> <li>• <u>the issuers and guarantors;</u></li> <li>• <u>the terms and conditions of the guarantees; and</u></li> <li>• <u>how the issuer and guarantor structure and other factors may affect payments to holders of the guaranteed securities.</u></li> </ul> <p><u>Disclosure of facts and circumstances specific to particular issuers and guarantors that are beyond what is specifically required in S-X 13-01(a)(1) through (3) may be necessary (see “Additional Information Required to be Disclosed” section below).</u></p>	<u>S-X 13-01(a)(1) through (3)</u>
<u>Non-Financial Disclosure Requirement</u>	<u>Description</u>	<u>Rule Reference</u>
<u>Exhibit Listing Each Subsidiary Guarantor, Issuer, or Co-Issuer</u>	<u>List of each of the parent company’s subsidiaries that is a guarantor, issuer, or co-issuer of guaranteed securities registered or being registered that the parent company issues, co-issues, or guarantees.</u>	<u>Exhibit 22 (Item 601(b)(22) of Regulation S-K)</u>

<u>Financial Disclosure Requirement</u>	<u>Description</u>	<u>Rule Reference</u>
<u>Summarized Financial Information</u>	<p><u>Summarized financial information, as specified in S-X 1-02(bb)(1), which includes select balance sheet and income statement line items, for each issuer and guarantor.</u></p> <p><u>Disclosure of additional line items of financial information beyond what is specified in S-X 13-01(a)(4) may be necessary (see “Additional Information</u></p>	<u>S-X 13-01(a)(4)</u>

	Required to be Disclosed” section below).	
<b><u>Basis of Presentation Note</u></b>	<u>An accompanying note that briefly describes the basis of presentation.</u>	<u>S-X 13-01(a)(4)</u>
<b><u>Transactions with and Balances Due To / From Related Parties and Non-Obligated Subsidiaries</u></b>	<u>An issuer’s or guarantor’s amounts due from, amounts due to, and transactions with non-obligated subsidiaries and related parties must be presented in separate line items.</u>	<u>S-X 13-01(a)(4)(iii)</u>
<b><u>Combined Basis Presentation</u></b>	<u>The summarized financial information of each issuer and guarantor consolidated in the parent company’s consolidated financial statements is permitted to be presented on a combined basis with the summarized financial information of the parent company.</u> <u>However, if information provided in response to disclosures specified in S-X 13-01 (e.g., one of the non-financial disclosures) is applicable to one or more, but not all, issuers and guarantors, separate disclosure of summarized financial information for the</u>	<u>S-X 13-01(a)(4)(i) and 13-01(a)(4)(iv)</u>
<b><u>Financial Disclosure Requirement</u></b>	<b><u>Description</u></b>	<b><u>Rule Reference</u></b>
	<u>issuers and guarantors to which the information applies is required.</u> <u>In limited circumstances (i.e., where the separate financial information applicable to those issuers and/or guarantors can be easily understood), narrative disclosure may be provided in lieu of such separate summarized financial information.</u>	
<b><u>Elimination of Certain Intercompany Balances and Transactions</u></b>	<u>Intercompany balances and transactions between issuers and guarantors whose information is presented on a combined basis must be eliminated in the financial disclosures.</u>	<u>S-X 13-01(a)(4)(ii)</u>
<b><u>Exclusion of Non-</u></b>	<u>The summarized financial information of issuers and guarantors must exclude subsidiaries that are not issuers or guarantors, even if an issuer or guarantor</u>	

<p><b><u>Obligated Subsidiary Information</u></b></p>	<p><u>would otherwise consolidate such non-issuer and non-guarantor subsidiaries. An issuer's or guarantor's investment in a subsidiary that is not an issuer or guarantor shall not be presented.</u></p>	<p><u>S-X 13-01(a)(4)(iii)</u></p>
<p><b><u>Periods to Present</u></b></p>	<p><u>The summarized financial information must be provided as of and for the most recently ended fiscal year and year-to-date interim period, if applicable, included in the parent company's consolidated financial statements.</u></p>	<p><u>S-X 13-01(a)(4)(v)</u></p>

<u>Financial Disclosure Requirement</u>	<u>Description</u>	<u>Rule Reference</u>
<u>Non-Exclusive Scenarios Permitting Omission of Summarized Financial Information</u>	The summarized financial information may be omitted on the basis that it is not material if one of the four non-exclusive scenarios in S-X 13-01(a)(4)(vi) is applicable and the related scenario is disclosed. See Section 2520.3 for a discussion of the second non-exclusive scenario.	<u>S-X 13-01(a)(4)(vi)</u>
<u>Additional Information Required to be Disclosed</u>	Disclose any financial and narrative information about each guarantor if the information would be material for investors to evaluate the sufficiency of the guarantee, and disclose sufficient information so as to make the financial and non-financial information presented not misleading.	<u>S-X 13-01(a)(6) and (7)</u>
<u>Recently-Acquired Subsidiary Issuers and Guarantors</u>	Disclose pre-acquisition summarized financial information specified in S-X 13-01(a)(4) for recently-acquired subsidiary issuers and guarantors in a Securities Act registration statement filed in connection with the offer and sale of the guaranteed security if the parent company has acquired a significant “business” after the date of its most recent balance sheet included in its consolidated financial statements and that acquired business and/or one or more of its subsidiaries are obligated as issuers and/or guarantors. See Section 2530 below for additional information.	<u>S-X 13-01(a)(5)</u>

2515.4 Eligible Issuer and Guarantor Structures Condition – Parent Company Obligation is Full and Unconditional – The ability to provide supplemental financial and non-financial disclosures in lieu of separate subsidiary issuer and guarantor financial statements is only available when the parent company’s

obligation is full and unconditional. The parent company's role as issuer, co-issuer, or full and unconditional guarantor with respect to the guaranteed security determines whether the issuer and guarantor structure is eligible. See eligible structures at S-X 3-10(a)(1)(i) and (ii).

A guarantee is “full and unconditional,” if, when an issuer of a guaranteed security has failed to make a scheduled payment, the guarantor is obligated to make the scheduled payment immediately and, if it ~~doesn't~~does not, any holder of the guaranteed security may immediately bring suit directly against the guarantor for payment of all amounts due and payable. [S-X 3-10(~~hb~~)(3)]. ~~Registrants with questions about this definition should contact CF-OCC.~~

~~An arrangement that permits a guarantor to opt out of its obligation prior to or during the term of the debt is not a full and unconditional guarantee. (Last updated: 12/31/2010)~~

~~See discussion at Section 2510.5 regarding the availability of S-X 3-10 notwithstanding the existence of arrangements that provide for~~

2515.5 **Subsidiary Guarantors** – The categories of eligible issuer and guarantor structures at S-X 3-10(a)(1)(i) and (ii) do not refer to subsidiary guarantors. Although one or more other subsidiaries of the parent company may guarantee the security, the eligibility of an issuer and guarantor structure depends on the role of the parent company as issuer, co-issuer, or full and unconditional guarantor with respect to the guaranteed security. Separate financial statements of consolidated subsidiary guarantors may be omitted for each issuer and guarantor structure that is eligible if the other conditions of S-X 3-10 are met.

~~Despite not affecting whether the issuer and guarantor structure is eligible, the releaserole of subsidiary guarantors and nature of their guarantees. (Last updated: 6/30/2011)~~

~~2510.5 **Subsidiary Guarantee Release Provisions**—A subsidiary that guarantees its parent's debt securities pursuant to an indenture that provides for the subsidiary's guarantee to be released automatically under customary circumstances may rely on S-X 3-10, provided the other requirements of S-X 3-10 are met. These customary circumstances include, for example, when: affect what disclosure is required. For example, subsidiary guarantors are required to be identified pursuant to S-X 13-01(a)(1), and disclosure of the terms and conditions of the guarantees is required by S-X 13-01(a)(2), which includes but is not limited to any limitations and conditions of a subsidiary's guarantee, whether the guarantee is joint and several with other guarantees, and any guarantee release provisions. Further, separate disclosure of summarized financial information applicable to subsidiary guarantors to which such disclosures apply is required by S-X 13-01(a)(4)(iv).~~

## 2520 Implementation Matters

2520.1 Non-Issuer/Non-Guarantor Subsidiaries – The summarized financial information required by S-X 13-01(a)(4) must exclude non-issuer/non-guarantor subsidiaries, even if an issuer or guarantor would otherwise consolidate such non-issuer/non-guarantor subsidiaries. Further, an issuer's or guarantor's investment in a non-issuer/non-guarantor subsidiary shall not be presented [S-X 13-01(a)(4)(iii)]. Similarly, equity in earnings or losses of a non-issuer/non-guarantor subsidiary shall not be presented. However, dividends that are declared and receivable from a non-issuer/non-guarantor subsidiary should be included.

2520.2 Combined Basis Presentation – S-X 13-01(a)(4) requires disclosure of summarized financial information for each issuer and guarantor. S-X 13-

01(a)(4)(i) permits, but does not require, the summarized financial information of each issuer and guarantor consolidated by the parent company to be presented on a combined basis with the parent company's summarized financial information. Additionally, S-X 13-01(a)(4)(iv) requires separate disclosure of summarized financial information for certain issuers and guarantors in some circumstances. Where summarized financial information of issuers and guarantors is presented separately:

- ~~• the subsidiary is sold or sells all of its assets;~~
- ~~• the subsidiary is declared "unrestricted" for covenant purposes;~~
- ~~• the subsidiary's guarantee of other indebtedness is terminated or released;~~
- ~~• the requirements for legal defeasance or covenant defeasance or to discharge the indenture have been satisfied;~~
- ~~• the rating on the parent's debt securities is changed to investment grade; or~~
- ~~• the parent's debt securities are converted or exchanged into equity securities.~~

~~Registrants with questions about these and other types of customary circumstances in which S-X 3-10 may be available notwithstanding the existence of arrangements that provide for the release of subsidiary guarantees should contact CF OCC. Registrants should not characterize subsidiary guarantees as full and unconditional without disclosure describing any qualifications to the subsidiary guarantees (e.g., the circumstances in which they could be released). (Last updated: 9/30/2011)~~

## ~~2515—Condensed Consolidating Financial Information [S-X 3-10(i)] (Last updated: 10/30/2020)~~

### ~~2515.1—Which Filings~~

~~Inclusion of the disclosure outlined below is a condition to relief from the full financial statement requirement. The disclosure must be provided in the registration statement that registers the guaranteed securities and in the parent company's subsequent annual reports on Form 10-K and quarterly reports on Form 10-Q.~~

### ~~2515.2—Form and Content—General~~

~~Condensed consolidating~~

- ~~• Intercompany balances and transactions between issuers and guarantors should not be eliminated. Such amounts should be presented in separate line items in the summarized financial information [S-X 13-01(a)(4)(iii)] and the accompanying basis of presentation note [S-X 13-01(a)(4)] should clearly explain their nature and the entities to which they relate; and~~
- ~~• To avoid duplicative financial information about the same issuers and~~

guarantors being presented, the summarized financial information of an issuer or guarantor should exclude its investment in a subsidiary issuer or guarantor whose summarized financial information is presented separately, as well as any related equity in earnings (e.g., a parent company issuer should not present its investment in a consolidated subsidiary guarantor whose summarized financial information ~~should follow the general guidance in S-X 10-01 concerning form and content. However, the condensed consolidating is presented separately).~~

### 2520.3 Omission of Summarized Financial Information: Non-Exclusive Scenarios

– S-X 13-01(a)(4)(vi) sets forth four non-exclusive scenarios in which the required summarized financial information ~~should~~ may be ~~in sufficient detail to allow investors to determine the nature of the~~ omitted on the basis that it is not material, provided the scenario is applicable and disclosed. The second scenario is that “[t]he combined issuers and guarantors, excluding investments in subsidiaries that are not issuers or guarantors, have no material assets ~~held by, and the~~ liabilities or results of operations ~~and cash flows of, each of the consolidating groups and include a discussion of any significant restrictions on the parent's and the guarantors' ability to obtain funds from their~~”. [S-X 13-01(a)(4)(vi)(B)]. If this scenario is not applicable to a combined issuer and guarantor solely because the guaranteed debt or debt-like securities and/or related expenses (e.g., interest expense) are material, the staff will not object if, in lieu of summarized financial information, the parent company, discloses that the combined issuers and guarantors, excluding investments in subsidiaries ~~by dividend or loan. Additional financial and narrative information about individual guarantors should be disclosed if the information would be material for an investor to evaluate~~ that are not issuers or guarantors, have no material assets, liabilities or results of operations except for the ~~sufficiency of the guarantee.~~ ~~In addition, condensed consolidating information presented in accordance with the general guidance on form and content in S-X 10-01 should include a total for comprehensive income presented in either a single continuous statement or in two separate but consecutive statements. See footnote 2 to Section 1110.1. (Last updated: 12/31/2011)~~ guaranteed debt or debt-like securities and/or related expenses, and also discloses the nature and amount(s) of guaranteed debt or debt-like securities and/or related expenses. This disclosure should clearly indicate whether amounts of debt or debt-like securities are current or non-current.

2520.4 Trust Preferred Securities – An issuer of trust preferred securities that satisfied all conditions under S-X 3-10 and was therefore eligible to omit its separate financial statements prior to the March 2020 Amendments may not satisfy the eligibility condition in S-X 3-10(a) as currently in effect because it

~~2515.3—Form and Content—Columnar Presentation~~ requires a subsidiary issuer to be consolidated by its parent company. However, for issuers with this scenario, refer to the staff no-action letter dated November 10, 2020.

~~Condensed consolidating financial information must be provided in a note to the parent company’s consolidated financial statements. Where the parent company’s financial statements are audited, the condensed consolidating financial information must be audited. Separate columns should depict:~~

- ~~a. the parent company,~~
- ~~b. the subsidiary issuer(s),~~
- ~~c. the subsidiary guarantor(s), on a combined basis,~~
- ~~d. the non-guarantor subsidiar(ies), on a combined basis,~~
- ~~e. consolidating adjustments, and~~
- ~~f. total consolidated amounts.~~

~~Additional columns may be necessary for:~~

- ~~• each subsidiary issuer or guarantor not 100% owned, whose guarantee is not full and unconditional, or whose guarantee is not joint and several with the guarantees of other subsidiaries (inclusion of a separate column does not relieve that subsidiary of its separate requirement to file full financial statements)~~
- ~~• each subsidiary issuer or guarantor by legal jurisdiction if differences in domestic or foreign laws affect the enforceability of the guarantees.~~

#### **NOTE to SECTION 2515.3**

The non-guarantor column may be eliminated if the non-guarantor subsidiaries, individually and in the aggregate, are minor. S-X 3-10(h)(6) states that a subsidiary is *minor* if each of its total assets, stockholders’ equity, revenues, income from continuing operations before income taxes, and cash flows from operating activities is less than 3% of the parent company’s corresponding consolidated amount.

The “minor” definition applies to both direct and indirect subsidiaries of the parent. That is, non-guarantor subsidiaries that are more than minor prevent the use of the narrative approach, whether owned directly by the parent or indirectly through another subsidiary.

For a registration statement, “minor” subsidiary status is determined as of the end of the most recent annual period included in the financial statements. For periodic reporting, it is determined at the end of each annual and quarterly reporting period. Changes in columnar presentation as a result of changes in the “minor” status of subsidiaries should ordinarily be reflected prospectively beginning with the period of the change in status. (Last updated: 12/31/2010)

#### ~~2515.4—Reconciliation Requirement~~

~~Where the parent company’s consolidated financial statements are prepared on a comprehensive basis of accounting other than U.S. GAAP or IFRS as issued by the IASB, reconcile the information in each column of the condensed consolidating financial information to U.S. GAAP to the extent necessary to allow investors to evaluate the sufficiency of the guarantees. The reconciliation may be limited to the information required by Item 17 of Form 20-F. The reconciling information need not duplicate information elsewhere in the reconciliation of the consolidated financial statements.~~

~~2515.5—No Relief for Summarized Financial Information—Inclusion of summarized financial information of subsidiary issuers and guarantors does not provide relief from the full financial statement requirements of S-X 3-10(a).~~

#### **2520—Implementation Issues**

*(Last updated: 6/30/2010)*

~~**Subsidiaries That File Full Financial Statements Under S-X 3-10(a)**—Such subsidiaries must comply with all reporting obligations of an issuer. For example, they must provide all applicable S-K disclosures, ICFR assessments, reports and disclosures, financial statements of acquired businesses and equity method investees under S-X 3-05 and 3-09, etc.~~

#### **2530 Recently -Acquired Guarantor Subsidiaries Subsidiary Issuers and Guarantors [S-X ~~3-10~~(g)13- 01(a)(5)]**

2530.1 **General**—~~If historical operations for a significant~~**Pre-Acquisition Summarized Financial Information - S-X 13-01(a)(5)** requires pre-acquisition summarized financial information of recently -acquired subsidiary issuer or guarantor are not issuers and guarantors when a parent company has acquired a significant “business” after the date of its most recent balance sheet included in ~~the audited~~its consolidated financial statements ~~of the parent company for at least nine months, separate pre,~~ and that acquired business and/or one or more of its subsidiaries are obligated as issuers and/or guarantors. Pre- acquisition financial statements information of the recently acquired subsidiary ~~are~~issuers and/or guarantors is not required for acquisitions that occur before the date of the parent company’s most recent balance sheet included in the parent company’s financial statements. S-X 13-01(a)(5) only applies to a Securities Act registration statement filed in connection with the offer and sale of the guaranteed securities.

2530.2 **Significance Test - Whether a “business” has been acquired is determined in accordance with the guidance set forth in S-X 11-01(d), and acquisitions of “related” businesses are treated as a single business acquisition in a manner**

consistent with S-X 3-05(a)(3). An acquired business will be deemed significant using the significance tests in S-X 1-02(w), substituting 20% for 10% each place it appears therein, based on a comparison of the most recent annual financial statements of the acquired business and the parent company's most recent annual consolidated financial statements filed at or prior to the date of acquisition. These significance tests are the same tests used to determine whether pre-acquisition financial statements are required for an acquired business pursuant to S-X 3-05.

~~If the net book value or purchase price, whichever is greater, of the subsidiary is 20% or more of the principal amount of the securities being registered, financial statements are required. Acquisitions of a group of related subsidiary issuers or guarantors are aggregated for purposes of applying this test. "Related" has the same meaning as in S-X 3-05. "Purchase Price" should be determined in the same manner as the numerator of the investment test under S-X 3-05. See discussions at Section 2015.15 for "related" and Sections 2015.5 and 2015.6 for "purchase price."~~

2530.3 **Form and Content** - The pre-acquisition summarized financial information follows the form and content prescribed in S-X 13-01(a)(4) required for existing issuers and guarantors. Not all entities that compose an acquired business may be issuers and/or guarantors. Accordingly, the required summarized financial information is only for those entities acquired that are issuers or guarantors.

2530.4 **Timing Considerations** - Generally, a parent company is required to provide the pre-acquisition summarized financial information of a recently acquired issuer or guarantor in a Securities Act registration statement for those acquisitions where it will be required to provide pre-acquisition financial statements of the acquired business pursuant to S-X 3-05. However, there may be some circumstances where the pre-acquisition summarized financial information is required in advance of when pre-acquisition financial statements are required pursuant to S-X 3-05. For example, S-X 3-05(b)(4) in part permits,

~~2530.3—Periods to be Filed~~ in certain circumstances, pre-acquisition financial statements of an acquired business to be omitted from a registration statement if significance does not exceed 50% and the registration statement is declared effective no more than 74 calendar days after consummation of the acquisition, provided the pre-acquisition financial statements are subsequently filed on Form 8-K. In those circumstances, however, the pre-acquisition summarized financial information of a recently acquired issuer or guarantor would still be required by S-X 13- 01(a)(5).

*(Last updated: 3/31/2009)*

~~Audited financial statements for the most recent fiscal year preceding the acquisition and unaudited interim financial statements for the periods specified by S-X 3-01 and 3-02. If the subsidiary is a foreign business, the financial statements may be presented in conformity with Item 17 of Form 20-F and Item 8.A of Form 20-F.~~

#### **NOTES to SECTION 2530.3**

~~1. Pre-acquisition financial statements of a foreign business filed pursuant to S-X 3-10(g) may continue to be presented in conformity with Item 17 even after certain revisions to Form 20-F take effect in fiscal 2011. See Section 6500.~~

~~2. S-X 3-10(g) applies only to registration statements. S-X 3-10(g), Instruction 2 indicates that financial statements of recently acquired subsidiary issuers and guarantors are not required in periodic reports under the Exchange Act. However, the separate requirements of S-X 3-05 may apply in other filings such as a Form 8-K or a subsequent registration statement.~~

There may also be some circumstances where a parent company is required to provide this pre-acquisition summarized financial information of a recently acquired issuer or guarantor, but is not required to provide pre-acquisition financial statements of the acquired business pursuant to S-X 3-05. For example, a parent company that is a foreign private issuer that acquires a significant business after the date of the most recent balance sheet presented is required to provide pre-acquisition summarized financial information of a recently acquired issuer or guarantor pursuant to S-X 13-01(a)(5), but may be able to omit the pre-acquisition financial statements of a greater than 20% but less than 50% significant acquired business from its registration statement pursuant to S-X 3-05(b)(4) and from any subsequent Exchange Act filings.

## **2540 Periodic Reporting by Subsidiary Issuers and Guarantors**

*(Last updated: 6/30/2010)*

2540.1 **Exchange Act Reporting Exemption** - Subsidiary issuers and guarantors that are permitted by S-X 3-10 to omit separate financial statements are exempt from the periodic reporting requirements of Sections 13(a) and 15(d) of the Exchange Act. ~~Subsidiary~~

~~issuers and guarantors that file separate financial statements solely because they were recently acquired are also exempt. [Exchange Act Rule 12h-5]. If an issuer or~~

guarantor of a guaranteed security has a different class of securities that is registered under Section 12 of the Exchange Act, the issuer or guarantor cannot rely on Rule 12h-5 for reporting relief until it deregisters the other class of securities [See Division of Corporation Finance Exchange Act Rules CDI, 254.01].

The conditions in S-X 3-10(ba) ~~through (f), as applicable, for use of the Rule 12h-5 exemption~~ must be met at the end of each annual and quarterly reporting period for use of the Rule 12h-5 exemption.

**NOTE to SECTION 2540.1**

~~As a result of Rule 12h-5, subsidiary issuers or guarantors are no longer required to request the exemptive or no-action relief from their periodic reporting obligations under the Exchange Act previously specified in SAB 53. Further, CF OCC does not intend to process no-action requests regarding subsidiary issuers or guarantors except those that involve novel facts or interpretive issues.~~

2540.2 ~~As a condition to the use of the Rule 12h-5 exemption by the subsidiary issuers and guarantors, condensed consolidating financial information is required in the parent's financial statements~~ **When Disclosure is Required** – In addition to the registration statement that registers the offer and sale of the guaranteed securities, a parent company must continue providing the financial and non-financial disclosures in its subsequent annual reports on Form 10-K and quarterly reports on Form 10-Q for as so long as the registered security is outstanding. [Release No. 33-7878] — This is true even if a subsidiary issuer or guarantor properly suspends its has a Section 12(b) or 15(d) reporting obligation with respect to the guarantee or guaranteed security and/or the guarantees under Section 15(d) of the Exchange Act. By contrast, subsidiary guarantors that fully report under S-X 3-10(a) may discontinue filing financial statements if their, in order to continue to be eligible to omit the financial statements of a subsidiary issuer or guarantor. A parent company is permitted to cease providing the disclosures if the corresponding subsidiary issuer's or guarantor's Section 15(d) reporting obligation is properly suspended automatically by operation of Section 15(d)(1) of the Exchange Act or through compliance with Exchange Act Rule 12h-3.

- 2540.3 [Acquisition of Issuer or Guarantor of a Registered Guaranteed Debt Security](#) - S-X 3-10 applies to a registrant that acquires the issuer or guarantor of a registered debt security and assumes or guarantees the obligation.  
Assuming the conditions in S-X 3-10(~~ba~~) ~~through (f), as applicable,~~ are met, ~~condensed consolidating financial information is~~ [the disclosures specified in S-X 13-01](#) are required in order for any pre-existing subsidiary issuers and guarantors as well as any newly added subsidiary issuers and guarantors to qualify for the Rule 12h-5 exemption.
- 2540.4 ~~Condensed consolidating~~ [The supplemental](#) financial ~~information of the new parent (acquirer) is~~ [disclosures](#) are required for ~~all the~~ periods ~~for which financial statements are required by Regulations specified in~~ S-X [13-01](#), based on the status of the subsidiaries as issuers, guarantors, or non-guarantors as of the end of the most recent period presented. Amounts related to the acquiree and its subsidiaries are included in the ~~new parent's condensed consolidating financial information~~ [disclosures](#) only for periods for which they are consolidated by the new parent (i.e., subsequent to the date of acquisition).
- 2540.5 A parent company that files annual reports on Form 20-F is not required to provide quarterly ~~condensed consolidating~~ [supplemental](#) financial ~~information~~ [disclosures](#) about its subsidiary issuers and guarantors, even if those subsidiaries are incorporated in the U.S. However, in a registration statement under the Securities Act, a parent company that is a foreign private issuer is required to include ~~condensed consolidating~~ [the supplemental](#) financial ~~information~~ [disclosures](#) about ~~its subsidiary~~ issuers and guarantors for all required annual and interim periods. ~~The periods to be presented are determined by reference to Item 8.A of Form 20-F specified in S-X 13-01(a)(4)(v).~~  
*(Last updated: 9/30/2009)*

## 2600 ~~COLLATERALIZATIONS~~AFFILIATE SECURITIES PLEDGED AS COLLATERAL

*(Last updated: 6/30/2010)*

~~2600.1 **Background** – S-X 3-16 and S-X 8-01 Note 4 require registrants to file financial statements of each affiliate whose securities constitute a substantial portion of the collateral for any class of security that is registered or being registered. S-X 3-16 and S-X 8-01 view guarantees and collateralizations as two~~

[S-X 3-16, S-X 13-02 and S-X 8-01(d)]

*(Last updated: 12/31/2022)*

<u>Section</u>	<u>Description</u>
<u>2610</u>	<u>Background and Disclosure Requirements</u>
<u>2620</u>	<u>Implementation Matters</u>
<u>2630</u>	<u>Recently-Acquired Affiliates Whose Securities are Pledged as Collateral</u>
<u>2640</u>	<u>When Disclosure is Required</u>
<u>2650</u>	<u>Collateral Release Provisions</u>

### 2610 Background and Disclosure Requirements

2610.1 Background – Securities that are registered or being registered may be collateralized by the securities of one or more of the registrant’s affiliate(s). In general, such affiliates are consolidated subsidiaries of the registrant, and the pledge of collateral is a residual equity interest that could potentially be

foreclosed upon in the event of default. If securities ~~registered or being registered~~ include a pledge of affiliate securities as collateral, S-X 13-02 requires a registrant to provide supplemental financial and non-financial disclosures about the affiliate and collateral arrangement. The requirements of S-X 13-02, 3-10 and 3-16 were amended on March 2, 2020 in SEC Release No. 33-10762 (the “March 2020 Amendments”). This release includes an appendix that summarizes the main features of these rules, including the required disclosures. As a result of these amendments, separate ~~financial statements of such affiliates usually are not required (see Section 2620.3 - Unconsolidated Pledged Affiliates).~~

While a given security may have guarantees as well as pledges of collateral, the requirements of S-X 13-02 are separate from financial statement and disclosure ~~matters~~ requirements related to guarantees. S-X 3-10 ~~applies only to guarantors~~ and S-X 13-01 apply to guaranteed securities (see Section 2500) and ~~does do~~ not apply to pledges of affiliate securities as collateral ~~situations, as~~ the concepts of full, ~~unconditiona~~ unconditional, and joint and several obligation do not apply to collateralizations. ~~Unlike guarantees, enforcement of collateral provisions would result in the debt holder becoming an equity security holder of the affiliate. Therefore, full audited financial statements of each affiliate whose securities constitute a substantial portion of the collateral of a security that is registered or being registered are required by S-X 3-16. (Last updated 12/31/2009)~~

~~2600.2— **Financial Statements** required for the affiliate whose securities constitute a substantial portion of collateral for any class of securities that is registered or being registered are generally the same as those that would be required if such an affiliate were a registrant as described in Topic 1.~~

~~Generally, the staff will not require ASC 280 segment information in S-X 3-16 financial statements. Such affiliates are typically subsidiaries of the registrant and the affiliates’ assets and operations are included in the registrant’s segment reporting. (Last updated: 9/30/2010)~~

~~2600.3— Unusual situations regarding the financial statements that should be filed under S-X 3-16 may be discussed with CF-OCA. (Last updated: 9/30/2010)~~

## ~~2610— **Measuring “Substantial Portion of the Collateral”**~~ ~~(Last updated: 6/30/2010)~~

~~2610.1— Securities constitute a substantial portion of collateral if the greatest of the aggregate principal amount, par value, book value, or market value of the securities equals 20% or more of the principal amount of the secured class of securities.~~

#### **NOTE to SECTION 2610.1**

~~The term “market value” should be read as “fair value.” This is true even if the securities that serve as collateral for a class of registered securities are not traded on an exchange or in an over-the-counter market. From an investor’s perspective the fact that the affiliate’s securities are not traded on an exchange or in an over-the-counter market does not change the fact that the affiliate may constitute a substantial portion of the collateral because of its significant market value.~~

The requirements of S-X 13-02 also apply to entities that qualify as smaller reporting companies under S-X 8-01(d) and S-X 8-03(b)(7), and to entities offering or that have offered collateralized securities pursuant to Regulation A through the requirements of Forms 1-A, 1-K, and 1-SA.

2610.2 **Summarized Disclosure Requirements** - Set forth below are tables summarizing the non-financial and financial disclosures specified in S-X 13-02 that must be provided, to the extent material. These tables are only a summary of certain requirements contained in the rules and regulations; they are not a substitute for the rules and regulations. Refer to the rules for the full requirements and to the description of those requirements the March 2020 Amendments. Section 2620 includes additional information on the application of these requirements.

The registrant may provide the disclosures in its consolidated financial statements and related footnotes or, alternatively, in MD&A. If a registrant elects to provide the disclosures in its audited financial statements, the disclosures must be audited. If not otherwise included in the consolidated financial statements or in MD&A, the registrant must include the disclosures in its prospectus immediately following “Risk Factors,” if any, or otherwise, immediately following pricing information described in Item 105 of Regulation S-K [S-X 13-02(b)].

~~2610.2 The “substantial portion of the collateral” test described in 2610.1 above should be performed using information as of the end of the most recent fiscal year for which audited financial statements would be required in the filing.~~

<u><b>Non-Financial Disclosure Requirement</b></u>	<u><b>Description</b></u>	<u><b>Rule Reference</b></u>
<u><b>Non-Financial Disclosures</b></u>	<p><u>Disclosures about the following:</u></p> <ul style="list-style-type: none"> <li>• <u>The securities pledged as collateral;</u></li> <li>• <u>the affiliates whose securities are pledged;</u></li> <li>• <u>the terms and conditions of the collateral arrangement;</u> and</li> <li>• <u>whether a trading market exists for the pledged securities.</u></li> </ul> <p><u>Disclosure of facts and circumstances specific to particular affiliates or the collateral arrangement that are beyond what is specifically required in S-X 13-02(a)(1) through (3) may be necessary (see “Additional Information Required to be Disclosed” section below).</u></p>	<u>S-X 13-02(a)(1) through (3)</u>
<u><b>Exhibit Listing Each Affiliate Whose Securities Are Pledged &amp; the Securities Pledged as Collateral</b></u>	<u>List of each of the registrant’s affiliates whose securities are pledged as collateral for securities registered or being registered that also identifies the securities pledged as collateral.</u>	<u>Exhibit 22 (Item 601(b)(22) of Regulation S-K)</u>

~~2610.3 The “substantial portion of the collateral” test described in 2610.1 above should be performed at the time of effectiveness of a registration statement, and subsequently as of the end of each fiscal year for which an annual report on Form 10-K or 20-F is required.~~

~~2610.4 The denominator of the test should be based on the outstanding principal balance of the registered debt as of the date being tested, as described in 2610.2 and 2610.3 above. In circumstances where the principal balance is being reduced over time, the tested significance of affiliates will tend to increase over time. Registrants who believe that the test produces an anomalous result may request relief from CF-OCA.~~

~~2610.5 A registrant may issue multiple series of debt instruments under the same indenture. If all terms of the securities are identical, including interest rates,~~

repayment terms, maturity dates and collateral arrangements, the series may be tested as one class of securities. If all terms are not identical, each series should be tested as a separate class.

<u>Financial Disclosure Requirement</u>	<u>Description</u>	<u>Rule Reference</u>
<u>Summarized Financial Information</u>	<p><u>Summarized financial information, as specified in S-X 1-02(bb)(1), which includes select balance sheet and income statement line items, for each affiliate whose securities are pledged as collateral.</u></p> <p><u>Disclosure of additional line items of summarized financial information beyond what is specified in S-X 13-02(a)(4) may be necessary (see “Additional Information Required to be Disclosed” section below).</u></p>	<u>S-X 13-02(a)(4)</u>
<u>Basis of Presentation Note</u>	<u>An accompanying note that briefly describes the basis of presentation.</u>	<u>S-X 13-02(a)(4)</u>
<u>Financial Disclosure Requirement</u>	<u>Description</u>	<u>Rule Reference</u>
<u>Transactions with and Balances Due To / From the Registrant, Certain Subsidiaries, and Related Parties</u>	<u>An affiliate’s amounts due from, amounts due to, and transactions with the registrant, any of the registrant’s subsidiaries not included in the Summarized Financial Information of the affiliate(s), and related parties must be presented in separate line items.</u>	<u>S-X 13-02(a)(4)(iii)</u>
<u>Combined Basis Presentation</u>	<p><u>The summarized financial information of each affiliate consolidated in the registrant’s financial statements is permitted to be presented on a combined basis.</u></p> <p><u>However, if information provided in response to disclosures specified in S-X 13-02 (e.g., one of the non-financial disclosures) is applicable to one or more, but not all, affiliates, separate disclosure of summarized financial information for the affiliates to which the information applies is required.</u></p> <p><u>In limited circumstances (i.e., where the separate financial information applicable to</u></p>	<u>S-X 13-02(a)(4)(i) and 13-02(a)(4)(iv)</u>

	<u>those affiliates can be easily understood), narrative disclosure may be provided in lieu of such separate summarized financial information.</u>	
<b><u>Elimination of Certain Intercompany Balances and Transactions</u></b>	<u>Intercompany balances and transactions between affiliates whose information is presented on a combined basis must be eliminated in the financial disclosures.</u>	<u>S-X 13-02(a)(4)(ii)</u>
<b><u>Periods to Present</u></b>	<u>The summarized financial information must be provided as of and for the most recently ended fiscal year and year-to-date interim period, if applicable, included in the registrant’s consolidated financial statements.</u>	<u>S-X 13-02(a)(4)(v)</u>
<b><u>Non-Exclusive Scenarios</u></b>	<u>The summarized financial information may be omitted on the basis that it is not material</u>	<u>S-X 13-02(a)(4)(vi)</u>
<b><u>Financial Disclosure Requirement</u></b>	<b><u>Description</u></b>	<b><u>Rule Reference</u></b>
<b><u>Permitting Omission of Summarized Financial Information</u></b>	<u>if one of the two non-exclusive scenarios in S-X 13-02(a)(4)(vi) is applicable and the related scenario is disclosed.</u>	
<b><u>Additional Information Required to be Disclosed</u></b>	<u>Disclose any financial and narrative information about each affiliate if the information would be material for investors to evaluate the pledge of the affiliate’s securities as collateral, and disclose sufficient information so as to make the financial and nonfinancial information presented not misleading.</u>	<u>S-X 13-02(a)(6) and (7)</u>
<b><u>Recently-Acquired Affiliates Whose Securities are Pledged as Collateral</u></b>	<u>Disclose pre-acquisition summarized financial information specified in S-X 13-02(a)(4) for recently-acquired affiliates whose securities are pledged as collateral in a Securities Act registration statement filed in connection with the offer and sale of the collateralized security if the registrant has acquired a significant “business” after the date of its most recent balance sheet included in its consolidated financial statements and that acquired business and/or</u>	<u>S-X 13-02(a)(5)</u>

	<a href="#">one or more of its subsidiaries are affiliates whose securities are pledged as collateral. See Section 2630 below for additional information.</a>	
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## 2620 ~~When Financial Statements are Required~~ [Implementation Matters](#)

### ~~2620.1~~ [1933 and 1934 Act Registration Statements](#)

~~S-X 3-16 financial statements are only required in 1933 Act registration statements that register securities for which the affiliate's securities represent a substantial portion of the collateral for the registered securities. S-X 3-16 financial statements are not required in registration statements that register securities that are not collateralized by an affiliate's shares, even if another collateralized registered security of the registrant is outstanding~~

[2620.1](#) [Subsidiaries of Affiliates whose Securities are Pledged – S-X 13-02\(a\)\(4\)](#) requires disclosure of summarized financial information for each affiliate whose securities are pledged as collateral. Because the securities pledged as collateral are an equity interest in a given pledgor affiliate, the financial information of all subsidiaries that would be consolidated by that affiliate must be included in that affiliate's summarized financial information presented pursuant to S-X 13-02(a)(4), even if the securities of those subsidiaries are not pledged as collateral. This presentation is different from the disclosures applicable to issuers and guarantors of guaranteed securities, which require non-issuer and non-guarantor subsidiaries of issuers and guarantors to be excluded from the financial

information of issuers and guarantors in order to distinguish the financial information of entities that are legally obligated to pay from those that are not [S-X 13-01(a)(4)(iii)].

2620.2 **Periodic Reports** **Guaranteed & Collateralized Securities** – A registrant may register the offer and sale of its debt securities that are: (1) guaranteed by one or more of its subsidiaries; and (2) collateralized by the securities of the same guarantor subsidiaries. In these circumstances, each are separate credit enhancements for which separate and different financial and non-financial disclosures are required by each of S-X 13-01 (see Section 2500) and 13-02. In this regard, under S-X 13-01, the summarized financial information of the registrant, as the “parent company,” is required to be disclosed under S-X 13-01(a)(4). Dissimilarly, that same parent company’s summarized financial information is not required to be disclosed under S-X 13-02(a)(4), because it is not an affiliate whose securities collateralize securities registered or being registered. Disclosures provided pursuant to each of these rules in a registrant’s filing should be clearly distinguished from one another.

~~Financial statements are required under S-X 3-16 in Form 10-K, but not in Form 10-Q.~~

**NOTE to SECTION 2620.2**

~~Interim financial statements of an affiliate that meets S-X 3-16 significance are required in both 1933 Act and 1934 Act registration statements, including Form 10, even though interim financial statements of an affiliate that meets S-X 3-16 are not required in Form 10-Q.~~

2620.3 **Unconsolidated Pledged Affiliates** – In the rare circumstances where the securities of an affiliate that is not a consolidated subsidiary of a registrant collateralize the registered securities of that registrant, S-X 13-02(a)(6) and (7) require the registrant to provide any financial and narrative information about each such affiliate if the information would be material for investors to evaluate the pledge of the affiliate’s securities as collateral and sufficient information so as to make the financial and non-financial information presented not misleading. Because the unconsolidated affiliate’s financial information is not included in the registrant’s consolidated financial statements, disclosure beyond what is specified in S-X 13-02(a)(1) through (4) may be necessary. In this regard, separate financial statements of the unconsolidated affiliate may be necessary to satisfy the requirements of S-X 13-02(a)(6) and (7).

2620.4 **Less than 100% of Affiliate Shares Pledged as Collateral** – Generally, a pledge of an affiliate’s securities as collateral includes all of the outstanding ownership interests in that affiliate, which are held directly or indirectly by the entity issuing the debt securities. There may be circumstances where either the pledge of collateral does not include all of the outstanding ownership interests in the affiliate held by the issuing entity, or certain ownership interests in the

affiliate are held by a third party and therefore unpledged. In such cases, disclosure of these facts and circumstances are required by S-X 13-02(a)(6) and (7) if material for investors to evaluate the pledge of the affiliate's securities as collateral, or so as to make the financial and non-financial information presented not misleading. If such circumstances are applicable to one or more, but not all, affiliates, S-X 13-02(a)(4)(iv) requires separate disclosure of Summarized Financial Information for the affiliates to which it is applicable.

**Rationale** : S-X 3-16 states that the financial statement requirements for an affiliate that meet S-X 3-16 significance are those financial statements that would be required if the affiliate were a registrant and required to file financial statements. As a result of this requirement, both annual and interim financial statements of an affiliate that meets S-X 3-16 significance would be required in a registration statement, notwithstanding the fact that interim financial statements of that affiliate are not required in Forms 10-Q. The exclusion of S-X 3-16 financial statements from Form 10-Q is primarily a consequence of (A) Form 10-Q only requires financial information specified in S-X Article 10 and (B) S-X 10-01(a)(1), which states in part “*Interim financial statements required by this rule need only be provided as to the registrant and its subsidiaries consolidated ...*”; only requires interim financial statements for registrants. The staff believes the requirement to provide interim financial statements of an affiliate that meets S-X 3-16 significance also applies to a smaller reporting company notwithstanding the fact that S-X 8-01, Note 4 only references S-X 8-02—Annual Financial Statements.

## 2630 Recently-Acquired Affiliates Whose Securities are Pledged as Collateral [S-X 13-02(a)(5)]

2630.1 Pre-Acquisition Summarized Financial Information - In certain circumstances, disclosure of pre-acquisition summarized financial information is required for recently-acquired affiliates whose securities are pledged as collateral if their historical financial information is not yet included in the consolidated financial statements of the registrant. S-X 13-02(a)(5) requires pre-acquisition summarized financial information of recently-acquired affiliates whose securities are pledged as collateral when a registrant has acquired a significant “business” after the date of its most recent balance sheet included in its consolidated financial statements, and that acquired business and/or one or more of its subsidiaries are affiliates whose securities are pledged as collateral. Pre-acquisition financial information of recently acquired affiliates is not required for acquisitions that occur before the date of the registrant’s most recent balance sheet included in the registrant’s financial statements. S-X 13-02(a)(5) only applies to a Securities Act registration statement filed in connection with the offer and sale of the collateralized securities.

The requirements of S-X 13-02(a)(5) are similar to the requirement to provide pre-acquisition summarized financial information of recently-acquired subsidiary issuers and guarantors specified in S-X 13-01(a)(5). See related guidance at Section 2530.2 - Significance Test and Section 2530.4 – Timing Considerations.

2630.2 Form and Content - The pre-acquisition summarized financial information follows the form and content prescribed in S-X 13-02(a)(4) required for existing affiliates whose securities are pledged as collateral. Not all entities that compose an acquired business may be affiliates whose securities collateralize securities registered or being registered. Accordingly, the required summarized

financial information is only for those entities acquired that are pledged affiliates.

## **2640 When Disclosure is Required**

2640.1 **Registration Statements** - S-X 13-02 disclosures are required in registration statements that register the offer and sale of securities that are collateralized by securities of the registrant's affiliate(s). S-X 13-02 disclosures are not required in registration statements that register the offer and sale of securities that are not collateralized by an affiliate's securities, even if another collateralized security of the registrant offered and sold on a registered basis is outstanding.

2640.2 [Reserved]

**2630—Implementation Issues** 2640.3 Periodic Reporting – S-X 13-02  
financial and non-financial disclosures are required in its annual reports on  
Form 10-K, and quarterly reports on Form 10-Q for so long as the registrant  
has a Section 15(d) reporting obligation with respect to the collateralized  
securities offered and sold on a registered basis.

*(Last updated: 6/30/2010)*

~~2630.1—**She If Registration Statements**—An issuer of registered debt may determine whether financial statements are required under S-X 3-16 at the time a takedown is contemplated, rather than when the original registration statement is filed. Any financial statements required by S-X 3-16 at the time of takedown may be filed via inclusion in a post-effective amendment to the registration statement, in an Exchange Act report that is incorporated by reference into the registration statement, or in a prospectus supplement.~~

~~2630.2—**Multiple Affiliates**—The significance of a particular affiliate may change over time. In some cases, affiliates whose financial statements were not required at the time of the registration statement may be required in subsequent annual reports, and in other cases affiliates whose financial statements were required at the time of the registration statement may no longer be required in subsequent annual reports. When an affiliate subsequently becomes significant, its financial statements must be presented for all periods for which a registrant's financial statements are required. When an affiliate subsequently ceases to be significant, its financial statements are not required for any periods.~~

~~2630.3—[Reserved]~~

~~2630.4 **Financial Statements of Other Entities**—S-X 3-16 requires the same financial statements of an affiliate that would be filed if the affiliate was a registrant. Accordingly, financial statements of other entities such as acquired businesses under S-X 3-05 (for registration statements only) and equity method investees under S-X 3-09 must be filed with respect to the affiliate. The reporting for~~

~~these entities is limited to these financial statement requirements and other filing and disclosure obligations do not apply (e.g., S-K disclosures, filing of periodic reports, etc.).~~

~~2630.5 **Suspension of Reporting Obligation**—A registrant that properly suspends its reporting obligation with respect to registered collateralized debt under Section 15(d) of the Exchange Act is no longer required to file financial statements under S-X 3-16. Unlike condensed consolidating information with respect to subsidiary issuers and guarantors that are exempt from periodic reporting under Rule 12h-5, there is no requirement to file S-X 3-16 financial statements “for as long as the debt is outstanding.”~~

~~2630.6 **Termination of Collateral Arrangement**—If the pledged securities cease to be pledged as collateral (either by operation of the underlying indenture or by consent of the debt holders) prior to the end of the most recent period for which S-X 3-16 financial statements would be required, S-X 3-16 financial statements are not required. Ordinarily, this will also be the case if pledged securities cease to be pledged as collateral after the end of the most recent reporting period, but before the corresponding annual report is due. However, there may be situations involving adverse credit events occurring after the end of the most recent period that warrant presentation of S-X 3-16 financial statements with full disclosure of the circumstances and current status of the collateral.~~

## 2650 Collateral Release Provisions

2650.1 **Collateral Release Provisions** – Prior to the March 2020 Amendments, registrants often structured debt agreements to release affiliate securities pledged as collateral if the separate financial statement requirements of S-X 3-16 would be triggered. As a transitional matter, so as not to change the amount of collateral available to investors in previously issued debt securities that include collateral release provisions, the March 2020 Amendments did not eliminate existing S-X 3-16, which continues to apply to collateralized securities offered and sold on a registered basis with collateral release provisions issued and outstanding as of January 4, 2021, the effective date of the amendments.

Accordingly, S-X 13-02 applies to collateralized debt securities issued on or after January 4, 2021, and to each security offered and sold on a registered basis issued and outstanding before January 4, 2021 for which the registrant has previously been required to provide the financial statements required by prior S-X 3-16. S-X 3-16, and not S-X 13-02, applies to each security offered and sold on a registered basis issued and outstanding before January 4, 2021 for which the registrant has not previously been required to provide financial statements pursuant to S-X 3-16.

## TOPIC 4

### INDEPENDENT ACCOUNTANTS' INVOLVEMENT

#### 4100 QUALIFICATIONS OF ACCOUNTANTS

*(Last updated: 6/30/2009)*

##### 4110 PCAOB Registration

4110.1 PCAOB Rule 2100 requires each firm (domestic or foreign) to register with the PCAOB that:

- a. prepares or issues any audit report with respect to any issuer; or
- b. plays a substantial role in the preparation or furnishing of an audit report with respect to any issuer.

4110.2 A public accounting firm not registered with the PCAOB may be able to perform some audit services for an issuer if the firm does not play a substantial role in the preparation or furnishing of the audit report as defined by PCAOB Rule 1001(p)(ii).

4110.3 In accordance with PCAOB Rule 2107(b)(1), a firm that was once registered and then later withdrew may reissue or give consent to the use of a prior report that it issued while registered. However, the firm cannot update or dual-date a previously issued report after the firm is no longer registered, as that involves additional audit work.

4110.4 Issuer financial statements audited by a nonregistered firm are considered to be “not audited,” and any 10-K, proxy statement, or registration statement containing or incorporating by reference such financial statements is deemed substantially deficient. In addition, the 10-K is deemed not timely filed. The 10-K or filing should be amended immediately to remove the nonregistered auditor’s report and label the columns of the financial statements as “not audited.” The issuer would then need to file another amendment to file financial statements audited by a registered firm.

4110.5 The following chart outlines the application of certain PCAOB requirements in various filings with the SEC. ~~*(Last updated: 10/30/2020)*~~[\*\(Last updated: 12/31/2022\)\*](#)

	<b>Entities for which an audit report on the financial statements is included in the document filed with SEC :</b>	<b>Auditor’s report on financial statements in current filing must be issued by a public accounting firm <del>Registered</del><u>register</u> <del>ed</del> with the PCAOB?</b>	<b>Auditor’s report on financial statements must refer to PCAOB standards?</b>
<b>1</b>	Issuer <sup>2</sup> and its predecessor	Yes	Yes
<b>2</b>	Entity that has filed an initial registration statement	Yes	Yes
<b>3a</b>	Operating company (predecessor) whose financial statements are filed by a special purpose acquisition company (“SPAC”)	Yes	Yes
<b>3b</b>	Operating company (predecessor) whose pre-acquisition financial statements are filed by an issuer that at the time the reverse merger is consummated is a public “shell company” (See Section 12250.1)	Yes	Yes
<b>3c</b>	Operating company (predecessor) whose pre-acquisition financial statements are filed by an issuer that at the time the reverse merger is consummated is not a public “shell company” (See Section 12250.2)	No, but see Section 12250.2	No, but see Section 12250.2
<b>3d</b>	Operating company (predecessor) whose post-acquisition audited financial statements are filed by the issuer after consummation of a reverse merger	Yes	Yes
<b>4</b>	Non-issuer subsidiary, division, branch, component or investment for which an audit report is filed under S-X 2-05	See footnote 3	Yes <sup>4</sup>
<b>5</b>	Non-issuer entity whose financial statements are filed to satisfy S-X 3-05 or 3-14	No	No
<b>6</b>	Non-issuer entity whose financial statements are included in proxy statement or Form S-4/F-4 as target (except for the target of a SPAC in Form S-4/F-4, then follow 3a above)	No	No
<b>7</b>	Non-issuer entity whose financial statements are filed to satisfy S-X 3-09 <del>or 3-16</del>	See footnote 3	See footnote 5
<b>8</b>	Subsidiary <del>– issuer or</del> guarantor <u>of guaranteed debt or debt-like securities</u> whose separate financial statements are filed <del>to satisfy</del> <u>because it does not qualify for relief under</u> S-X 3-10 <del>(a) or 3-10</del> <u>(g)</u> <del>(see Section 2500)</del>	Yes <sup>6</sup>	Yes
<b>9</b>	Employee benefit plan filing Form 11-K	Yes <sup>6</sup>	Yes

<sup>1</sup> This table describes the staff's application of PCAOB registration requirements for an auditor whose report is included in a filing with the SEC. There are instances, not included in the table, when a principal auditor will use the work of another auditor and take responsibility for the other auditor's work. In these instances, the other auditor's report is not included in the filing with the SEC. The determination of whether the other auditor must be registered with the PCAOB is made by reference to the Sarbanes-Oxley Act and the PCAOB's rules. In all such instances the principal auditor is responsible for performing the audit in accordance with PCAOB standards.

<sup>2</sup> The term 'issuer' means an issuer (as defined in Section 3 of the 1934 Act), the securities of which are registered under Section 12 of that Act, or that is required to file reports under Section 15(d) of that Act, or that files or has filed a registration statement that has not yet become effective under the 1933 Act, and that it has not withdrawn. See Section 2(a)(7) of the Sarbanes Oxley Act and PCAOB Rule 1001.

<sup>3</sup> The auditor of the financial statements of the non-issuer entity must be registered if, in performing the audit, the auditor played a "substantial role" in the audit of the issuer, as that term is defined in PCAOB Rule 1001(p)(ii). If the "substantial role" test is not met, the firm is not required to be registered. The inclusion or exclusion of such a report under S-X 2-05 does not affect this determination.

<sup>4</sup> S-X 2-02 requires that the auditor's report state the applicable professional standards under which the audit was conducted. Under S-X 1-02 an audit of the financial statements of an issuer means an examination by an independent accountant in accordance with the standards of the PCAOB. In the situation identified in the chart above, the view of the SEC staff is that the applicable professional standards in S-X 2-02, as applied to the other auditor's report, relates to an issuer and, therefore, the other auditor's report must refer to the standards of the PCAOB.

<sup>5</sup> If a principal auditor is making reference to another auditor's report on the financial statements of the non-issuer entity, the other auditor's report must refer to the standards of the PCAOB. See footnote 4 above. If a principal auditor does not make reference to another auditor's report on the financial statements of the non-issuer entity, the other auditor's report need not refer to the standards of the PCAOB.

<sup>6</sup> The entity is itself an issuer and so must comply with the rules applicable to issuers.

4110.6 For purposes of Item 5 of the table above, a non-issuer entity could also be a bidder in a Schedule TO or an acquirer in a proxy statement.

4110.7 ~~As noted in the table above, subsidiary guarantors are considered issuers whose financial statements filed under S-X 3-10 must be audited by a PCAOB-registered firm using PCAOB standards. However, relief from these requirements may be available for recently-acquired subsidiary guarantors in certain circumstances. Registrants should consult with CF-OCA prior to filing any S-X 3-10(g) financial statements that are not audited by a PCAOB-registered firm. (Last updated: 3/31/2011 [Reserved] (Last updated: 12/31/2022))~~

4110.8 The audited balance sheet of a non-issuer general partner that is included in a transactional filing or registration statement of a limited partnership issuer is not required to be audited by a PCAOB registered firm. The audit report also is not required to refer to PCAOB standards.

## **4115 Involuntary PCAOB Deregistration** *(Last updated: 9/30/2009)*

4115.1 If the PCAOB revokes the registration of an audit firm, audit reports issued by that firm may no longer be included in a registrant's filings made on or after the

## **5230 Reverse Acquisitions**

- 5230.1 In SEC Release No. 33-8587, the SEC determined that investors in operating businesses newly merged with shell companies should obtain the same level of information as provided for reporting companies that did not originate as shell companies. Therefore, they are required to include equivalent information as if they were registering under the Exchange Act. Accordingly, the staff looks to the accounting acquirer's eligibility as a smaller reporting company at the time of the reverse acquisition for purposes of the disclosures to be provided in the Form 8-K.
- 5230.2 If a reverse acquisition occurs in which a non-public operating company is the accounting acquirer of a smaller reporting operating company (registrant), the registrant (the legal acquirer) would continue to qualify as a smaller reporting company until the next determination date. *(Last updated: 6/30/2011)*
- 5230.3 In a reverse acquisition in which the registrant (legal acquirer) is a smaller reporting shell company, the registrant would continue to qualify as a smaller reporting company until the next determination date even if the Form 8-K disclosure was not scaled because the non-public accounting acquirer was not eligible at the time of the transaction as described in Section 5230.1. *(Last updated: 6/30/2011)*
- 5230.4 If the accounting acquirer is a public operating company that is not a smaller reporting company, the registrant will no longer be a smaller reporting company upon consummation of the transaction. Also, scaled disclosure is not permitted in the Form 8-K reporting the transaction because the accounting acquirer was not eligible at the time of the transaction. *(Last updated: 12/31/2011)*

## **5300 FORM AND CONTENT DISCLOSURE REQUIRED BY REGULATION S-X ARE NOT APPLICABLE**

*(Last updated: 9/30/2008)*

### **5310 General**

*(Last updated: 12/31/2022)*

- 5310.1 Smaller reporting companies typically need not comply with the disclosure requirements of Regulation S-X in its entirety, except as indicated under the Notes to S-X Article 8. The “Notes” require that:
- a. The report and qualifications of the independent accountant must comply with S-X Article 2.
  - b. The description of accounting policies must comply with S-X 4-08(n).

- c. Issuers engaged in oil and gas producing activities must follow the financial accounting and reporting standards of S-X 4-10.
- d. ~~Financial~~The requirements of S-X 3-10 are applicable to financial statements for a subsidiary of a smaller reporting company that issues securities guaranteed by the smaller reporting company or guarantees securities issued by the smaller reporting company. Additionally, disclosures about guarantors and issuers of guaranteed securities registered or being registered must be presented as required by S-X ~~3-10, except the periods presented are based on S-X 8-02~~13-01. (See Section 2500).

- e. ~~Financial statements for a smaller reporting company's affiliate whose securities constitute a substantial portion of the collateral for any class of securities registered must be presented as required by S-X 3-16, except the periods presented are based on S-X 8-02~~The requirements of S-X 13-02 are applicable if a smaller reporting company's securities registered or being registered are collateralized by securities of the smaller reporting company's affiliate. (See Section 2600). S-X 3-16 may be applicable in in certain circumstances involving collateral release provisions. (See Section 2650).

5310.2 Smaller reporting companies should provide all information required by the Industry Guides, and real estate companies should also refer to Item 13 [Investment Policies of Registrant], Item 14 [Description of Real Estate], and Item 15 [Operating Data] of Form S-11.

## **5320 Pro Forma Information**

*(Last updated: 3/31/2009)*

Pro forma financial statements are required in transactional filings whenever a significant business combination has occurred or is probable, and the transaction has not been reflected in the historical audited financial statements of the issuer for the most recent full fiscal year. In addition, pro forma financial information should be presented whenever consummation of an event or transaction has occurred or is probable for which disclosure of pro forma information would be material to investors. Smaller reporting companies should consider the guidance in S-X Article 11.

## **5330 Significant Equity Investees**

5330.1 The disclosure about significant equity investees cited under S-X 8-03(b)(3) is required in both interim and annual financial statements.

5330.2 There is no equivalent to S-X 3-09 in S-X Article 8 for the provision of separate financial statements for significant equity investees. However, when material to investors, equity method investee financial statements should be provided.

6110.3 Registrants may test for compliance with the foreign private issuer definition once per year. The test is required to be performed as of the last business day of the registrant's most recently completed second fiscal quarter. [~~Release No. 33-~~

~~8959~~[Regulation C, Rule 405 and Exchange Act Rule 3b-4](#)] Consequences of failing to meet the foreign private issuer definition are described in Section 6120.2. (*Last updated: 9/30/2011*)

- 6110.4 *Foreign Business* [S-X 1-02(1)]: A foreign business is not organized under the laws of the U.S. or any state thereof, is majority owned by persons who are not U.S. citizens or residents and:
- a. More than 50% of its assets are located outside the U.S. or
  - b. A majority of its executive officers and directors are not U.S. citizens or residents.

**NOTE:** In its determination of the majority ownership of a business, the staff will consider the ultimate parent entity that would consolidate the business under U.S. GAAP (IFRS for IFRS-IASB issuers) and that parent's controlling shareholders.

## **6120 Basic Rules**

(*Last updated: 3/31/2009*)

- 6120.1 Foreign private issuers are eligible to use Form 20-F and Forms F-1, F-3, and F-4 which provide certain financial statement and disclosure accommodations.

*Question:* Can a foreign private issuer elect to use the registration and reporting forms that domestic companies use?

*Answer:* Yes. However, if it elects to do so, it must comply with all of the requirements of the "domestic company" forms. [A foreign private issuer that voluntarily files on domestic forms is not required to prepare its financial statements in accordance with U.S. GAAP \(see section 6120.6\).](#)

- 6120.2 A foreign issuer - other than a foreign government - that does not meet the definition of a foreign private issuer must use the same registration and reporting forms as a domestic registrant. A foreign issuer that ceases to meet the foreign private issuer definition becomes subject to the reporting requirements for a domestic registrant. The test for compliance with the foreign private issuer definition is required to be performed as of the last business day of the registrant's most recently completed second fiscal quarter (the determination date). Reports filed or furnished during the remainder of the fiscal year in which the registrant ceased to meet the definition may continue to be made using forms and requirements applicable to foreign private issuers. Beginning on the first day of the fiscal year following the determination date,

the registrant must use the forms and follow the requirements prescribed for domestic registrants. [~~Release No. 33-8959~~[Regulation C, Rule 405 and Exchange Act Rule 3b-4](#)] For example, if a calendar fiscal year registrant determines on June 30, ~~2009~~[2022](#) that it is no longer a foreign private issuer, it would become subject to domestic reporting requirements on January 1, ~~2010~~[2023](#). It would not be required to file Forms 8-K or 10-Q during the period from June 30, ~~2009~~[2022](#) through December 31, ~~2009~~[2022](#). However, it would be required to file reports on Form 8-K for events occurring on or after January 1, ~~2010~~[2023](#), file

quarterly reports on Form 10-Q for quarters ended after January 1, ~~2010~~2023, and file its annual report for the year ended December 31, ~~2009~~2022 on Form 10-K rather than Form 20-F. The financial statements in the Forms 10-Q and 10-K would need to be presented in conformity with U.S. GAAP for all required periods. The due dates of the Forms 10-Q and 10-K would be based on the issuer's status as a large accelerated filer, accelerated filer, or non-accelerated filer, tested as of the determination date described above. See Section 1330 for the due dates applicable to each category of filer.

6120.3 [Reserved]

6120.4 If the registrant is no longer eligible to file as a foreign private issuer, the financial statements ~~and selected financial data~~ should be recast into U.S. GAAP for all periods presented in the financial statements. Consideration should be given as to the appropriate currency in which the registrant should report. These registrants must use the U.S. dollar as their reporting currency, unless another reporting currency is more appropriate (e.g., where substantially all of the registrant's operations are conducted in a single foreign currency). ~~(S-X 3-20(a)(2))~~. (Last updated: 12/31/2022)

6120.5 With respect to Canadian registrants, IFRS has been incorporated into Canadian GAAP for publicly accountable enterprises for fiscal years beginning on or after January 1, 2011. ~~(Last updated: 10/30/2020)~~

~~a. As with all~~ Financial statement requirements for Canadian registrants are the same as required for other registrants. If the Canadian registrant is a foreign private issuer, ~~Canadian foreign private issuers that~~ issuer, it may prepare ~~their~~ its financial statements in accordance with IFRS as issued by the IASB ~~need not reconcile to, or~~ U.S. GAAP. ~~Similarly, as with all foreign private issuers, compliance with IFRS as issued by the IASB must be unreservedly and explicitly stated in the notes to the financial statements and in the auditor's report. [Item 17(c) of Form 20-F] (Last updated: 9/30/2011)~~

~~b. [Reserved].~~ c. A Canadian company that is not a foreign private issuer must use U.S. GAAP in filings with the SEC. The financial statements and selected financial data should be recast into U.S. GAAP for all periods presented in the financial statements. (Last updated: 9/30/2009) Last updated: 12/31/2022

6120.6 Foreign private issuers that voluntarily file on domestic forms may file financial statements prepared under home-country GAAP and provide a reconciliation to U.S. GAAP under Item 18 of Form 20-F. Foreign private issuers that voluntarily file on domestic forms may file financial statements prepared under IFRS as issued by the IASB without reconciliation to U.S. GAAP. [S-X 4-01(a)(2)] In both cases the filings should prominently disclose that the

6220.4 The age requirements in Item 8 of Form 20-F also apply to financial statements of [\*\(Last updated: 12/31/2022\)\*](#):

- a. Foreign businesses acquired by both foreign and domestic registrants under S-X 3-05, including filings by domestic registrants under Items 2.01 and 9.01 of Form 8-K (see Sections 2045.14 and 2045.15);
- b. Foreign target businesses required in Form S-4 or Form F-4;
- c. Foreign equity investees of both foreign and domestic registrants under S-X 3-09; and
- d. Foreign businesses that are acquired real estate operations under S-X 3-14; ~~and~~
- e. ~~Financial statements of affiliates whose securities collateralize a security being registered as required by S-X 3-16.~~

6220.5 A foreign private issuer that has been in existence less than a year must include an audited balance sheet that is no more than nine months old. If the foreign private issuer has commenced operations, audited statements of comprehensive income, stockholders' equity and cash flows for the period from the date of inception to the date of the audited balance sheet also are required.

#### 6220.6 More Current Published Information

- a. If financial information reporting revenues and income for an annual or interim period more current than otherwise required by Item 8 of Form 20-F is made available to shareholders, exchanges, or others in any jurisdiction, that information should be included in the registration statement. The more current information is not required to be reconciled to U.S. GAAP. However, a narrative explanation of differences in accounting principles should be provided, and material new reconciling items should be quantified. Differences between foreign and U.S. GAAP can be identified by cross-reference to U.S. GAAP reconciliation footnotes elsewhere in the filing. Note that the reconciliation requirements do not apply to issuers filing audited financial statements prepared under IFRS as issued by the IASB. See Section 6300.
- b. Occasionally, the interim information that is publicly distributed in the issuer's home country will be prepared using accounting standards that are different from those used in the U.S. registration statement. For example, a foreign issuer may use U.S. GAAP in its primary financial statements in filings with the SEC, but reports in a foreign GAAP in its home country. The company releases more recent earnings information in its home country in foreign GAAP. Item 8.A.5 requires that information to be included in the prospectus. In this instance, the U.S. investor has not had the benefit of knowing the reconciling items between home-country GAAP and U.S. GAAP. Therefore, the information disclosed pursuant to Item 8.A.5 would need to be

## 6230 Updating of Financial Statements in Delayed or Continuous Offerings

- 6230.1 Foreign private issuers must file a post-effective amendment to registration statements to include any financial statements required by Item 8.A of Form 20-F at the start of a delayed offering or throughout a continuous offering under Regulation C, Rule 415. [S-K 512(a)(4)] For this purpose, delayed or continuous offerings include business combination transactions registered on Form F-4, and takedowns from effective shelf registration statements. For these types of offerings, Item 8.A. of Form 20-F ordinarily requires the annual audited financial statements to be not more than 15 months old, and the unaudited interim financial statements to be not more than nine months old. Takedowns from existing shelf registration statements may not be commenced, and continuous offerings must be suspended, during periods when the financial statements are not current. This means, for example, that the financial statements must remain current throughout the entire time that an exchange offer is outstanding. It also means that the financial statements must remain current in a merger or acquisition transaction until shareholder approval has occurred. However, this provision does not apply to a registration statement for a typical firm commitment underwritten offering priced under Regulation C, Rule 430A or for listing on an exchange.
- 6230.2 The requirement for current financial statements includes all required financial statements, including those required under S-X 3-05, 3-09, 3-10, [and 3-14](#) ~~and 3-16 as well as~~, target company financial statements on a Form F-4, [as well as disclosures required by S-X 13-01 and 13-02](#). However, the staff may consider requests for relief in circumstances where this would result in the need to provide financial statements of other entities more current than those that would be provided by a similarly-situated domestic registrant. [\(Last updated: 12/31/2022\)](#)
- 6230.3 S-K 512(a)(4) does not require in a post-effective amendment the inclusion of financial statements of entities that were not required in the original effective registration statement (for example, subsequently acquired businesses). However, the “fundamental change” provisions of S-K 512(a)(1) may require such financial statements.
- 6230.4 F-3 eligible issuers filing on Form F-3 or F-4 may incorporate by reference reports filed or furnished to the SEC that contain the updated financial statements rather than file a post-effective amendment. [S-K 512(a)(4)]

## 6340 First-time Adopters of IFRS

### 6340.1 One Time Accommodation:

In a foreign private issuer's first year of reporting in IFRS, the registrant may file two years rather than three years of statements of profit or loss and other comprehensive income, changes in shareholders equity and cash flows prepared in accordance with IFRS as issued by the IASB, with appropriate related disclosure. As a reminder, IFRS 1 requires an entity's first IFRS financial statements to include at least three statements of financial position. [General Instruction G(a) to Form 20-F] *(Last updated: 12/31/2010)*

6340.2 The one-time accommodation available for first-time IFRS implementers and the guidance found in Instruction G to Form 20-F apply not only to registrants, but also to foreign businesses whose financial statements are required under S-X 3-05, 3-09, 3-10, and 3-14 ~~and 3-16~~. *(Last updated: 12/31/2022)*

6340.3 All first-time adopters of IFRS are required to provide certain expanded disclosures about their use of elective transitional treatments under IFRS 1, as well as meet certain presentation requirements with respect to their transitional reconciliation from previous (home-country) GAAP to IFRS under the disclosure requirements of IFRS 1, *First-time Adoption of International Financial Reporting Standards*. [Instruction 4 to Item 5 of Form 20-F]

6340.4 During the period an issuer is changing the body of accounting standards used to prepare its financial statements from previous GAAP to IFRS, a situation may arise in which the most recent annual financial statements are prepared under previous GAAP and any interim financial statements might be prepared under IFRS. Because the most recent annual and interim periods may not be comparable, financial statements in transitional registration statements for first-time adopters may be prepared under one of three options:

- a. 3 years of previous GAAP annual financial statements, and previous GAAP interim statements for the current and comparable prior period, all with reconciliation to U.S. GAAP;
- b. 2 years of IFRS annual financial statements and IFRS interim statements for the current and comparable prior period; or
- c. 3 years of previous GAAP financial statements, including reconciliations to U.S. GAAP, IFRS interim statements for the current and comparable prior period, and U.S. GAAP condensed information for the most recent year, current interim period, and the comparable prior interim period.

[General Instruction G. (f)(2) to Form 20-F] *(Last updated: 6/30/2011)*

determine that U.S. GAAP is the previous GAAP, their IFRS 1 reconciliation of previous GAAP to IFRS as issued by the IASB will be U.S. GAAP. If they determine that home-country GAAP is the previous GAAP, however, the staff does not believe the IFRS 1 reconciliation of previous GAAP (home-country GAAP) to IFRS as issued by the IASB is sufficient for SEC filings that have previously only presented U.S. GAAP information. In this instance, the staff believes an additional reconciliation from U.S. GAAP to IFRS as issued by the IASB should be provided to reasonably inform U.S. investors about the changes in the basis of presentation. This reconciliation could be presented directly from U.S. GAAP to IFRS as issued by the IASB in a note to the audited financial statements, or if impracticable in an audited financial statement schedule, for the same dates and periods that the IFRS 1 reconciliation is presented. The reconciliation would be presented in a level of detail consistent with Item 17 of Form 20-F. Alternatively, the reconciliation could be presented in the notes to the audited financial statements as part of a two-step reconciliation that includes the IFRS 1 reconciliation – from U.S. GAAP to previous GAAP, and then from previous GAAP to IFRS as issued by the IASB.

- 6345.2 Some registrants have adopted IFRS as issued by the IASB in the past in the financial statements presented in their local market, while continuing to present U.S. GAAP in their SEC filings. These registrants would have included the IFRS 1 reconciliation from previous GAAP (home-country GAAP) to IFRS as issued by the IASB in their local market financial statements in the past, but not in the U.S. GAAP financial statements included in SEC filings. If the registrant subsequently decides to present IFRS as issued by the IASB financial statements in its SEC filings, it is not required to present the reconciliation from previous GAAP specified by IFRS 1 because it is no longer a first-time adopter subject to IFRS 1. However, since the historical SEC filings have presented only U.S. GAAP information, bridging disclosures in the form of reconciliation from U.S. GAAP to IFRS as issued by the IASB are generally necessary to inform U.S. investors about the changes in the basis of presentation. This bridging can best be presented by providing a reconciliation directly from U.S. GAAP to IFRS as issued by the IASB in a note to the audited financial statements, or if impracticable, in an audited financial statement schedule, for the comparative balance sheet date and comparative income statement periods preceding the most recent fiscal year. Generally, this reconciliation would be presented in a level of detail consistent with Item 17 of Form 20-F and included as part of the audited financial statements.

## **6350 IFRS Filers - Financial Statements of Other Entities**

- 6350.1 S-X 3-05, 3-09, 3-10, and ~~3-16~~[3-14](#) permit the inclusion of financial statements of foreign businesses presented in accordance with IFRS as issued by the IASB without reconciliation to U.S. GAAP, regardless of significance. *[\(Last updated: 12/31/2022\)](#)*

## 6400 REQUIREMENT FOR RECONCILIATION TO U.S. GAAP

*(Last updated: 9/30/2008)*

**NOTE:** Foreign private issuers are allowed to prepare the primary financial statements filed with the SEC in accordance with a comprehensive body of GAAP other than U.S. GAAP. To assist U.S. investors in understanding the nature of the accounting differences and their effects on financial statements, foreign issuers that do not prepare statements in accordance with IFRS as issued by the IASB (see Section 6300) are required to provide a reconciliation to U.S.

### 6410 Requirement for Reconciliation

#### 6410.1 General

*(Last updated: 9/30/2011)*

- a. A reconciliation is required for each annual and interim period required to be included in a registration statement or annual report. [Item 17(c) of Form 20-F]
- b. Form 20-F provides two levels of reconciliation to U.S. GAAP - Item 17 and Item 18. Item 18 requires the same information as Item 17 plus all of the disclosures required by U.S. GAAP and Regulation S-X.
- c. Compliance with Item 18 rather than Item 17 is required for all issuer financial statements in all Securities Act registration statements, Exchange Act registration statements on Form 20-F, and annual reports on Form 20-F.
- d. Item 17 is permitted for pro forma information pursuant to S-X Article 11.
- e. Item 17 compliance is permitted for non-issuer financial statements such as those pursuant to S-X 3-05, 3-09, 3-14, and ~~3-10(i)8-04~~ for smaller reporting companies, as well as non- issuer target company financial statements included in Forms S-4, F-4 and proxy statements. [Release No. 33-8959] ~~The staff also permits Item 17 for acquired real estate operations under S-X 3-14 and S-X 8-04 for smaller reporting companies.~~ *(Last updated: 3/31/2009)* *(Last updated: 12/31/2022)*
- f. Non-issuers using Item 17 that are required to provide MD&A (e.g., target companies in Forms S-4, F-4, and proxy statements) should consider the need to provide certain additional information in the MD&A to assist the U.S. investor in understanding the financial statements. [SAB Topic 1D]

## 6410.2 First-time Entrants to U.S. Reporting System

- a. If a foreign registrant has not previously filed financial statements with the SEC on a reconciled basis, it is only required to provide reconciliations of the financial statements and selected financial data to U.S. GAAP for the two most recently completed fiscal years and for any interim periods required in the registration statement. In each subsequent year, on a prospective basis, an additional year of the reconciliation is required. This also applies to any other required financial statements where the entity is a foreign business such as those filed pursuant to S-X 3-05, 3-09, 3-10, and 3-14 ~~and 3-16~~, as well as target company financial statements in Forms F-4, Forms S-4, and proxy statements. Published financial information that is included because it is more current (see Section 6220.6) is ordinarily not required to be reconciled. (*Last updated: 12/31/2022*)
- b. The U.S. GAAP reconciliation (compliant with Item 17 of Form 20-F) must be included for non-reporting foreign target companies in Forms F-4, Forms S-4 and proxy statements unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. In these cases, a narrative description must be provided of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. [See Instruction 2 to Item 17 of Form S-4, Instruction to paragraphs (b)(5) and (b)(6) of Item 17 of Form F-4, Item 14 of Schedule 14A]

**NOTE:** While reconciliations to U.S. GAAP initially are required only for two years, the registrant's financial statements still need to be presented in the registration statement for all of the periods required by Item 8 of Form 20-F (see Section 10220.1 for EGCs). Similarly, non-EGCs must present selected financial data for five years, even though the oldest three years need not be reconciled to U.S. GAAP. (See Section 10220.2 for exception for EGCs.)

- c. First-time registrants that elect to prepare the financial statements in accordance with U.S. GAAP may provide statements of comprehensive income and statements of cash flows for only their two most recent fiscal years. However, selected financial data still needs to be presented for five years under home-country GAAP if U.S. GAAP financial data is not available for the oldest three years, unless the registrant qualifies as an EGC (see Section 10220.2). MD&A need only discuss the two years presented in the financial statements. [Item 8 of Form 20-F]

#### **NOTE to SECTION 6410.9**

For the financial statements referenced in the bullets above, the 30% test discussed in 6410.6(b) does not apply. See footnote 31 to Release No. 33-7118. *(Last updated: 12/31/2012)*

6410.10 A foreign or domestic registrant may apply SAB 80 in determining the periods for which audited financial statements of acquired foreign businesses are required in an IPO. Assuming that the businesses acquired are reporting in the U.S. for the first time, financial statements of foreign businesses required to be presented under the SAB for three years need only be reconciled to U.S. GAAP for the two most recent fiscal years. Financial statements required to be presented under the SAB for two years must be reconciled to U.S. GAAP for both years. Most recent interim period and corresponding prior year financial statements also would be reconciled to U.S. GAAP.

6410.11 If pro forma financial statements are required, they should be prepared in accordance with U.S. GAAP or reconciled to U.S. GAAP. [See Section 6360.1 and 6360.2.](#)

6410.12 ~~Financial Statements Required by S-X 3-16~~[\[Reserved\]](#). *(Last updated: 12/31/2022)*

~~When financial statements are required pursuant to S-X 3-16, the financial statements to be provided for the affiliate are based on the financial statements the affiliate would be required to provide if it were a registrant. Typically, the financial statements of an affiliate would be prepared using the same GAAP as the registrant (which is usually the parent). In certain limited circumstances, if the affiliate as a separate registrant would not qualify as a foreign private issuer, the affiliate could file home-country GAAP financial statements reconciled to U.S. GAAP in accordance with Item 18 of Form 20-F, based upon footnote 31 to Release No. 33-7118.~~

#### **6420 Selected Financial Data [Item 3A of Form 20-F]**

*(Last updated: 6/30/2013)*

6420.1 Selected financial data should also include amounts under U.S. GAAP, if the primary financial statements are presented using home-country GAAP. Non-EGCs should provide the selected data for 5 years. See Section 10220.2 for exception for EGCs.

6420.2 A non-EGC's selected data for the earliest two years of the five-year period may be omitted if the registrant represents that the information cannot be provided without unreasonable effort or expense, and states the reasons for the omission in the filing. [Item 3.A of Form 20-F and Instruction 2 to Item 3.A] See Section 10220.2 for guidance regarding selected financial data disclosure for EGCs.

## 6500 CONTENT OF RECONCILIATION TO U.S. GAAP

~~(Last updated: 9/30/2008)~~ Last updated: 12/31/2022

**NOTE:** Form 20-F provides two levels of reconciliation from a comprehensive basis of accounting other than U.S. GAAP to U.S. GAAP- Item 17 and Item 18. Item 17 requires quantification of the material differences in the principles, practices and methods of accounting. Item 18 requires satisfaction of the requirements of Item 17, as well as provision of all other information required by U.S. GAAP and Regulation S-X. *(Last updated: 9/30/2011)*

**NOTE:** Compliance with Item 18 rather than Item 17 is required for all issuer financial statements (including those for subsidiary issuers/guarantors that are not eligible for relief under S-X 3-10) in all Securities Act registration statements, Exchange Act registration statements on Form 20-F, and annual reports on Form 20-F.

Item 17 is permitted for pro forma information pursuant to S-X Article 11.

Item 17 compliance is permitted for non-issuer financial statements such as those pursuant to S-X 3-05, 3-09, and 3-10(i), as well as non-issuer target company financial statements included in Forms S-4, F-4 and proxy statements. [Release No. 33-8959]

Non-issuers using Item 17 that are required to provide MD&A (e.g., target companies in Forms S-4, F-4 and proxy statements) should consider the need to provide certain additional information in the MD&A to assist the U.S. investor in understanding the financial statements. [SAB Topic 1D]

*(Last updated: 9/30/2011)*

### 6510 Item 17(c) of Form 20-F - Basic Requirements

- 6510.1 A **discussion of material variations** in accounting principles, practices and methods used in preparing the financial statements between home-country GAAP and U.S. GAAP
- 6510.2 A quantified description of **balance sheet differences** under home-country GAAP in comparison to U.S. GAAP. Most companies elect to present this information in the form of a reconciliation of shareholders' equity, but they may also provide restated balances of individual balance sheet line items, or describe, in numerical terms, how balance sheet line items would specifically change under U.S. GAAP.

**NOTE:** The reconciliation of shareholders' equity should be in sufficient detail to allow an investor to determine the differences between a balance sheet prepared using home-country GAAP and one prepared using U.S. GAAP.

## 9700 FAIR VALUE MEASUREMENTS

*(Last updated: 9/30/2008)*

In March and September 2008, the Division of Corporation Finance sent illustrative letters to certain public companies that reported significant amounts of asset-backed securities, loans carried at fair value or the lower of cost or market, and derivative assets and liabilities in their recent 10-K filings. The letters highlight disclosure matters relating to ASC 820, and suggest disclosures that companies may consider in preparing their MD&A. The full letters are available at:

<http://www.sec.gov/divisions/corpfin/guidance/fairvalueltr0308.htm> and  
<http://www.sec.gov/divisions/corpfin/guidance/fairvalueltr0908.htm>.

## 9800 OTHER ITEMS

*(Last updated: 9/30/2008)*

### 9810 S-X 3-05 and 3-09

MD&A is not required for financial statements filed to comply with S-X 3-05 and 3-09. However, MD&A of companies being acquired may be required in registration and proxy statements under the Form requirements (for example, Items 15-17 of Form S-4 and F-4 and Item 14 of Schedule 14A).

### 9820 S-X 3-10 and ~~3-16~~13-01

*(Last updated: 12/31/2022)*

- 9820.1 S-X 3-10 (~~ea~~), (~~d~~), (~~e~~), and (~~f~~) ~~allows for~~ permits the ~~presentation of condensed consolidating financial information when certain criteria are met, rather than the omission of~~ separate financial statements of ~~each issuer or guarantor of a registered security~~ subsidiary issuers and guarantors of guaranteed debt or debt-like securities when certain conditions are met, including that the parent company provides supplemental financial and non-financial disclosures about the subsidiary issuers and/or guarantors and the guarantees (see Section 2500). There is no requirement for the results of operations as presented in ~~the condensed consolidating~~ these supplemental financial information disclosures to be discussed. ~~However, S-X 3-10(i)(9) and (10) require disclosure in the footnotes to the financial statements with respect to any parent liquidity issues~~ 13-01 requires certain information about the issuers, guarantors, and guarantees to be disclosed. If, for example, there are ~~material~~ factors that may affect payments to holders of the guaranteed security, such as contractual or statutory restrictions on ~~the parent's ability to obtain funds from its subsidiaries~~ dividends, or if the information presented in the ~~condensed consolidating supplemental~~ financial information disclosures indicates that trends for the ~~guarantor subsidiaries~~ issuers and guarantors are materially different than that of the consolidated entity, this should be discussed in the liquidity section of MD&A.

9820.2 If separate financial statements of an issuer or guarantor are filed ~~pursuant to~~because it does not qualify for relief under S- X 3-10(a), then MD&A is required.

9820.3 ~~A separate MD&A is not required for financial statements provided to comply with S-X 3-16~~[Reserved].

## TOPIC 10

### EMERGING GROWTH COMPANIES

*(Last updated: 6/30/2013)*

Title I of the JOBS Act, which was effective as of April 5, 2012, created a new category of issuers called “emerging growth companies, or EGCs” whose financial reporting and disclosure requirements in certain areas differ from other categories of issuers. The Fixing America’s Surface Transportation (FAST) Act, enacted on December 4, 2015, amended certain of the requirements that apply to EGCs.

Until the Commission amends the form requirements, Regulation S-X, and Regulation S-K to be consistent with the disclosure provisions for EGCs as set forth in Title I of the JOBS Act (as amended by the FAST Act), an EGC may comply with the disclosure provisions therein in its registration statements, periodic reports, and proxy statements, even if doing so would be inconsistent with existing rules and regulations. The disclosure provisions in Title I supersede, in relevant part, existing rules and regulations. On January 13, 2016, the Commission adopted interim final rules that revised Form S-1 and Form F-1 for certain provisions of the FAST Act.

Refer to the Division of Corporation Finance’s FAST Act guidance at <http://www.sec.gov/divisions/corpfin/guidance/fast-act-interps.htm> and revised JOBS Act guidance at <https://www.sec.gov/divisions/corpfin/guidance/cfjjobsactfaq-title-i-general.htm>.

#### 10100 ELIGIBILITY

##### 10110 Eligibility as an EGC

10110.1 An issuer is an EGC if it meets all of the following criteria:

- It had total annual gross revenues of less than ~~\$1.071~~[1.235](#) billion during its most recently completed fiscal year. See Section 10110.2.
- It has either (1) not yet had or (2) had after December 8, 2011, its first sale of common equity securities pursuant to an effective registration statement under the Securities Act of 1933. See Section 10110.3.
- It has not met any of the disqualifying provisions. See Section 10110.4.

*(Last updated ~~7/1/2019~~[12/31/22](#))*

recent annual period completed, regardless of whether the financial statements for the period are presented in the registration statement.

- Foreign private issuers

If the financial statements of a foreign private issuer are presented in a currency other than U.S. dollars, total annual gross revenues should be calculated in U.S. dollars using the exchange rate as of the last day of the most recently completed fiscal year.

- Banks and similar financial institutions

A bank must include all gross revenues from traditional banking activities. Banking activity revenues may include interest on loans and investments, dividends on investments, fees from loan origination, fees from trust and investment services, commissions, brokerage fees, mortgage servicing revenues, and any other fees or income from banking or related services. *(Last updated: 10/30/2020)*

- Predecessor

If the financial statements for the most recently completed fiscal year are those of the predecessor of the issuer, the predecessor's revenues should be used when determining if the issuer meets the definition of an EGC.

10110.3 *First sale of common equity securities:* This phrase is not limited to a company's initial primary offering of common equity securities for cash. It could also include registered offerings of common equity pursuant to an exchange offer, merger, employee benefit plan on a Form S-8, and selling shareholder's secondary offering on resale registration statements.

10110.4 Disqualifying Provisions

An issuer retains its status as an EGC until the earliest of:

- a. The last day of the fiscal year in which its total annual gross revenues are \$~~1.071.235~~1.235 billion or more. For example, a calendar year-end company whose total annual gross revenues exceed \$~~1.071.235~~1.235 billion on October 31, 2013 would cease to be an EGC on December 31, 2013. *(Last updated: ~~7/01/2019~~12/31/22)*
- b. The last day of the fiscal year following the fifth anniversary of the date of the first sale of common equity securities of the issuer under an effective Securities Act registration statement as an EGC.

- c. The date on which it has issued more than \$1 billion in non-convertible debt in the previous three years.
- “Non-convertible debt” means any non-convertible security that constitutes indebtedness, whether issued in a registered offering or not. Bank debt generally does not constitute a debt security.
  - For purposes of assessing the amount of non-convertible debt securities issued as of any date, an issuer should look at the immediately preceding rolling three-year period. An issuer does not look at non-convertible debt issued in relation to fiscal or calendar years.
  - All non-convertible debt securities issued over the prior three-year period, whether outstanding or not, are required to be counted against the \$1 billion debt limit. A company does not have to count debt securities issued in an A/B exchange offer. These debt securities are identical to (other than the fact that they are not restricted securities) and replace those issued in the non-public offering and the staff views the A/B exchange offer as, in effect, the completion of the capital-raising transaction.
- d. The date on which it becomes a large accelerated filer. Note: the determination of whether a company is a large accelerated filer is made on the last day of the company’s fiscal year. See Section 1340.2.

10110.5 **Losing Eligibility Prior to Effectiveness** – If a company was an EGC at the time it submitted a draft registration statement or publicly filed a registration statement, but ceases to qualify as an EGC while undergoing the confidential review of its draft registration statement or the review of its publicly filed registration statement – for example, since the initial submission or filing date, a fiscal year has been completed with revenues over \$~~1.071~~1.235 billion – the company will continue to be treated as an EGC for the purposes of disclosure requirement accommodations in its initial registration statement until the earlier of:

- (a) The date on which the issuer consummates its initial public offering, or
- (b) The end of the one-year period beginning on the date the company ceased to be an EGC. *(Last updated 7/1/2019)*

# TOPIC 11

## REPORTING ISSUES RELATED TO ADOPTION OF NEW ACCOUNTING STANDARDS

*(Last updated: 11/9/2016)*

### ~~11100 NEW REVENUE STANDARD (FASB ASC TOPIC~~

~~606 [RESERVED]~~ *(Last updated: 12/31/2022)*

*(Last updated: 7/1/2019)*

~~In May 2014, the FASB issued ASU No. 2014-09, *Revenue from Contracts with Customers* (Topic 606). In August 2015, the FASB issued ASU No. 2015-14, *Revenue from Contracts with Customers (Topic 606): Deferral of the Effective Date*.~~

~~Public entities<sup>13</sup> must apply Topic 606 to annual reporting periods beginning after December 15, 2017, including interim reporting periods within that reporting period.<sup>14</sup> Earlier application is permitted only as of annual reporting periods beginning after December 15, 2016, including interim reporting periods within that reporting period. For example, a calendar year-end company may adopt Topic 606 for annual and interim periods beginning on January 1, 2017 or 2018.~~

~~All other entities, including EGCs that have appropriately elected to defer compliance with new or revised financial accounting standards until a company that is not an issuer (as defined under section 2(a) of the Sarbanes-Oxley Act of 2002) is required to apply such standards, must apply Topic 606 to annual reporting periods beginning after December 15, 2018, and interim reporting periods within annual reporting periods beginning after December 15, 2019. Earlier application is permitted as of an annual reporting period beginning after December 15, 2016, including interim reporting periods within that reporting period. For example, a calendar year-end non-public business entity may adopt the ASU for annual periods beginning on January 1, 2017, 2018, or 2019, and for interim periods at the same time or one year later than annual adoption.~~

<sup>13</sup> Includes (1) public business entities as defined in the Accounting Standards Codification Master Glossary, (2) not for profit entities that have issued, or is a conduit bond obligor for, securities that

are traded, listed, or quoted on an exchange or an over-the-counter market, and (3) employee benefit plans that file or furnish financial statements to the SEC.

<sup>14</sup>~~A public business entity that otherwise would not meet the definition of a public business entity except for a requirement to include or inclusion of its financial statements or financial information in another entity's filing with the Commission may apply Topic 606 for annual reporting periods beginning after December 15, 2018, and interim reporting periods within annual reporting periods beginning after December 15, 2019. See [ASU No. 2017-13](#).~~

The IASB also issued IFRS 15, *Revenue from Contracts with Customers*, in May 2014. For calendar year-end companies, the effective date is the same as under U.S. GAAP except earlier application was permitted upon the standard's issuance in May 2014.

Companies may transition to Topic 606 and IFRS 15 (collectively, the “new revenue standard”) using one of two methods:

- Retrospectively to each prior period presented, subject to the election of certain practical expedients (“full retrospective method”). A calendar year-end company that adopts the new revenue standard using this method must begin recording revenue using the new standard on January 1, 2018. In its 2018 annual report, the company would revise its 2016 and 2017 financial statements and record the cumulative effect of the change recognized in opening retained earnings as of January 1, 2016.
- Retrospectively with the cumulative effect of initially applying the new revenue standard recognized at the date of adoption (“modified retrospective method”). A calendar year-end company that adopts the new revenue standard using this method must begin recording revenue using the new standard on January 1, 2018. At that time, the company must record the cumulative effect of the change recognized in opening retained earnings and financial statements for 2016 and 2017 would remain unchanged. The standard also sets forth additional disclosures required by companies that adopt the new standard using this method.

## **11110—Registrant Financial Information** *(Last updated: 10/30/2020)*

### **11110.1—[Reserved]**

### **11110.2—Supplementary Quarterly Financial**

#### **Data Question**

A calendar year-end EGC that has elected to follow accounting transition applicable to non-issuers elects to adopt Topic 606 for annual periods beginning on January 1, 2019 and for interim periods within annual beginning on January 1, 2020. Must the company reflect adoption of the new revenue standard in the supplementary quarterly financial data (S-K Item 302(a)) contained in its 2019 annual report?

~~No. The EGC need not accelerate application of the standard to interim periods for the sole purpose of reporting supplementary quarterly financial data.~~

~~1110.3 [Reserved]~~

## ~~11120—Financial Statements of Other Entities and Significance~~

~~(Last updated: 12/1/2017)~~

### ~~11120.1—Question~~

~~Will a registrant that adopts the new revenue standard using the full retrospective method be required to recompute the significance of equity method investees under Rules 3-09 and 4-08(g) of Regulation S-X?~~

#### ~~Answer:~~

~~No. See Section 2410.8.~~

### ~~11120.2—Question~~

~~A registrant adopts the new revenue standard as of a different date and/or under a different transition method than the other entity. For example, a calendar year-end registrant adopts the new revenue standard on January 1, 2018, but its equity method investee adopts it on January 1, 2017. Must the registrant conform the other entity's transition dates and methods to its own for purposes of performing the significance tests under Regulation S-X to determine whether financial statements (or financial information) of the other entity need to be included with the financial statements of the registrant?~~

#### ~~Answer~~

~~No. The registrant need not conform the transition dates and methods for significance testing under Regulation S-X.~~

## **11200 NEW LEASING STANDARD (FASB ASC TOPIC 842)**

*(Last updated: 10/30/2020)*

In February 2016, the FASB issued ASU No. 2016-02, *Leases* (Topic 842). Public entities must apply Topic 842 to annual reporting periods beginning after December 15, 2018, including interim reporting periods within that reporting period. <sup>15</sup>13 Earlier application is permitted.

All other entities, including EGCs that have appropriately elected to defer compliance with new or revised financial accounting standards until a company that is not an issuer (as defined under section 2(a) of the Sarbanes-Oxley Act of 2002) is required to apply such standards, must apply Topic 842 to annual

<sup>15</sup> ~~A public business entity that otherwise would not meet the definition of a public business entity except for a requirement to include or inclusion of its financial statements or financial information in another entity's filing with the Commission may apply Topic 842 for annual reporting periods~~

periods beginning after December 15, 2016, and interim reporting periods within annual periods beginning after December 15, 2017.

Companies will transition to the ASU retrospectively by providing comparative disclosures for each period presented, except for those requirements that apply only to the current period. Early application is permitted.

## **11310 Registrant Financial Information**

### **11310.1 Question**

A registrant adopts the ASU for the fiscal year ended December 31, 2016. The new guidance requires the presentation in the notes to the financial statements of disaggregated claims development tables, at a minimum for each reportable segment, depicting, in part, re-estimates of claims by accident year for up to ten years. Securities Act Industry Guide 6 and Exchange Act Industry Guide 4 (collectively, “Industry Guide 6”) identify a consolidated ten-year loss reserve development table to be provided by Property and Casualty insurers in either the Business or MD&A section. Must the registrant continue to present the Industry Guide 6 table in its filings?

### **Answer**

No. A registrant must provide the claims development tables required by the ASU. It does not have to separately provide the ten-year loss reserve development table identified in Industry Guide 6, but may opt to do so.

## **11400 TARGETED IMPROVEMENTS TO THE ACCOUNTING FOR LONG-DURATION CONTRACTS FOR INSURANCE ENTITIES (FASB ASC TOPIC 944)**

*(Last updated: 12/31/2022)*

On August 15, 2018, the FASB issued ASU No. 2018-12, *Financial Services — Insurance (Topic 944): Targeted Improvements to the Accounting for Long-Duration Contracts*. The ASU applies to insurance entities that issue long-duration contracts as defined in Topic 944, Financial Services – Insurance.

Public business entities that **meet the definition of a Securities and Exchange Commission (SEC) filer, excluding entities eligible to be smaller reporting companies, must apply the ASU to fiscal years beginning after December 15, 2022 and interim periods within those fiscal years. The one-time determination of whether an entity is eligible to be a smaller reporting company is based on an entity’s most recent determination as of November 15, 2019.**

All other entities, including smaller reporting companies and EGCs that have elected to defer [compliance with new or revised financial accounting standards until a company that is not an issuer \(as defined under Section 2\(a\) of the Sarbanes-Oxley Act of 2002\)](#), are required to apply the ASU to fiscal years beginning after December 15, 2024, and interim periods within fiscal years beginning after December 15, 2025.

Early application of the amendments is permitted. If early application is elected, the transition date shall be either the beginning of the prior period presented or the beginning of the earliest period presented. If early application is not elected, the transition date shall be the beginning of the earliest period presented.

## **11410 Registrant Financial Information**

### **11410.1 Date of Initial**

#### **Application Question**

A calendar year-end registrant adopts ASU No. 2018-12 on January 1, 2023, with a transition date of January 1, 2021. In May 2023, the registrant files its first quarter 10-Q, which reflects the adoption of the new standard. The next month, the registrant files a registration statement on Form S-3 that includes financial statements for the years ending December 31, 2022, 2021 and 2020, as well as the quarters ending March 31, 2023 and 2022.

Item 11(b)(ii) of Form S-3 requires “restated financial statements” of the pre-event audited financial statements that were incorporated by reference in the Form S-3 to reflect a subsequent change in accounting principle that requires a material retroactive application. Does the reissuance of the registrant’s financial statements in accordance with Item 11(b)(ii) change the transition date to January 1, 2020 because it is the beginning of the earliest period presented?

#### **Answer**

No. The reissuance of the financial statements in Form S-3 accelerates the requirement to provide the financial statements for the years ended December 31, 2022 and 2021 with retroactive application, but does not change the transition date of the accounting standard.