

and stock exchange or NASDAQ listing requirements and antifraud prohibitions? If the requirements were rescinded, do commenters expect that registrants would discontinue delivery of annual reports if not subject to other requirements to do so? If the annual report rules were amended to allow use of abbreviated financial statements or summary annual reports or rescinded altogether, should the rules require registrants to provide a mechanism by which shareholders could make a standing request for the company to deliver annually a copy of the Form 10-K or 10-KSB report? If the annual report rules were rescinded, do commenters expect that those registrants delivering annual reports would include full financial statements, or would they provide summary financial data? Are there other alternatives to streamlining the annual report to shareholders?

## 2. Securities Act Disclosure Documents

Under the proposed amendments, the Part I item in each Securities Act registration form<sup>51</sup> requiring the registrant to include financial statements in the prospectus delivered to investors would be amended to provide eligible registrants with the option of including in the prospectus either full or abbreviated financial statements. Registrants choosing to include full financial statements in the prospectus would deliver to investors and file with the Commission the same information, in the same format, that they deliver and file under current requirements.

For registration statements on forms not permitting incorporation by reference of financial statements, registrants choosing to include abbreviated financial statements in the prospectus would put the information required by proposed Item 305 in Part I. The full financial statements would be filed in Part II of the registration statement,<sup>52</sup> but not delivered to investors except upon specific request. If requested, a copy of the full financial statements would have to be provided. Comment is requested as to whether, in order to avoid unnecessary duplication in filing, the proposal should permit a registrant either to file the full financial statements in their entirety in Part II, or to file only the remaining financial information—that is, the independent

accountant's report on the full financial statements plus the notes omitted from the disclosure document, which, taken together with the abbreviated financial statements, would constitute the full financial statements meeting the requirements of GAAP and Regulation S-X. This latter option would be feasible only if the omitted notes were grouped so the presentation would be clear when the abbreviated financial statements were considered together with the omitted notes. If the option to file only the remaining financial information in Part II were adopted, should delivery of the remaining financial information suffice in the event of a request from a potential investor? Comment is solicited on whether the option to file only the remaining financial information would be useful to registrants, whether the presentation would be clear to members of the financial community obtaining and using this information, and whether such a presentation would be permitted by existing auditing standards.

In addition, comment is solicited on whether, rather than requiring full financial statements to be physically filed, in whole or in part, in Part II of the registration statement, incorporation by reference should be permitted. If the registrant had previously filed full financial statements for the same period as required in the related disclosure document, for example in a report on Form 10-K, would it be acceptable to provide this information by incorporation by reference, which is currently not permitted for any of the "long form" registration statements?

Registrants eligible to use short form registration statements providing for the incorporation by reference of previously filed documents<sup>53</sup> also could elect to use abbreviated financial statements.<sup>54</sup> In general, full financial statements would not be required to be filed in Part II of these forms, since these would be incorporated by reference from the registrant's periodic Exchange Act filings. Where restated financial statements of the registrant, or financial statements of businesses acquired or to be acquired, are not incorporated by reference from a previously filed report and therefore required to be included in a prospectus, abbreviated financial statements of those entities could be included in the prospectus and

delivered to investors.<sup>55</sup> The full financial statements would be required to be filed with the Commission in Part II of the registration statement, and delivered to investors upon request.<sup>56</sup>

With respect to securities registered on Form S-4 or F-4, registrants and companies being acquired<sup>57</sup> would have the same options regarding delivery of abbreviated financial statements described above, depending on whether they furnish the Form S-1, S-2, or S-3 level of disclosure.<sup>58</sup> Comment is solicited on whether the use of abbreviated financial statements is appropriate in the context of a business combination. It appears that streamlining the financial information presented to investors would be particularly useful in this context, where the information for the registrant and other entities can grow quite voluminous. Comment also is solicited on whether the current requirement in Forms F-4 and S-4 that, if incorporation by reference is used, the prospectus must be sent to security holders no later than 20 business days prior to the meeting or the date on which action is to be taken should also

<sup>55</sup> Forms S-2, F-2, S-3, F-3, S-4 and F-4 require financial statements of the registrant to be restated if: (1) there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements; (2) where one or more business combinations accounted for by the pooling of interests method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11-01(b) [17 CFR 210.11-01(b)]; or (3) in certain situations involving a material disposition of assets not in the ordinary course of business.

<sup>56</sup> With respect to Form S-2, in addition to the options currently available, a registrant not choosing to deliver its Form 10-K could elect to include abbreviated financial statements in the prospectus, or instead choose to deliver with the prospectus its latest annual report to security holders that included abbreviated financial statements. With respect to Form S-8, documents required to be delivered upon request, such as the annual report to security holders, could contain abbreviated financial statements. No financial statements are required in the prospectus or registration statement other than those incorporated by reference. Accordingly, this form would not be amended, except for a technical provision in Part II to assure that the full financial statements are incorporated by reference (proposed revision to Item 3(a) of Form S-8).

<sup>57</sup> See Part II.C below for further discussion of Forms S-4 and F-4.

<sup>58</sup> Pursuant to Item 17(b) of Form S-4, if the company being acquired is not subject to the reporting requirements of either Section 13(a) [15 U.S.C. 78m(a)] or 15(d) of the Exchange Act, or, because of Section 12(i) [15 U.S.C. 78l(i)] of the Exchange Act, has not furnished an annual report to security holders pursuant to Exchange Act Rule 14a-3 or 14c-3 for its latest fiscal year, the registrant would furnish financial statements as would have been required to be included in a Rule 14a-3 or 14c-3 annual report except that the financial statements need not be audited in certain circumstances.

<sup>51</sup> Part I of Securities Act registration statements sets forth the information required in the prospectus.

<sup>52</sup> Part II of Securities Act registration statements sets forth the information not required in the prospectus. A new Part II Item would be added to each of the forms to require filing of the full financial statements with the Commission.

<sup>53</sup> Forms S-2, S-3, F-2, and F-3.

<sup>54</sup> Since Form S-3 and F-3 registrants generally incorporate their financial statements into the prospectus by reference from Exchange Act reports and are not required to deliver this information, they ordinarily would not use abbreviated financial statements, but the forms would be amended so this option would be available.