

apply when abbreviated financial statements are being used.⁵⁹

The proposals would apply to filings relating to roll-up transactions, whether or not involving a Form F-4 or S-4.⁶⁰ Comment is solicited on whether abbreviated financial statements should be permissible in the roll-up context. Since roll-ups are subject to a 60 day solicitation period, investors desiring full financial statements would have the opportunity to send for them and consider them before making a voting or tendering decision.

Under the proposed amendments, abbreviated financial statements could be included by eligible issuers in offering statements on Form 1-A under Regulation A and furnished to purchasers of securities offered pursuant to Regulation D. Comment is solicited on whether it is appropriate to provide issuers conducting exempt offerings pursuant to Regulation A or D with the option to distribute abbreviated financial statements to investors, and whether such issuers would find this to be a useful option.

Since, under current requirements, Regulation D issuers are required to furnish financial statement information to purchasers, but are not required to file this information with the Commission, issuers opting to furnish abbreviated financial statements to purchasers would not be required to file the full financial statements with the Commission. They would, however, have to deliver the full financial statements to requesting purchasers. Comment is solicited as to whether Regulation D issuers choosing to distribute abbreviated financial statements to purchasers should have to file the full financial statements with the Commission, and if so, the method by which they should be filed. Specific consideration should be given to whether the fact that Regulation D issuers would not have to file the full financial statements with the Commission would impair the objectives of the proposed amendments.

3. Proxy and Information Statements

Registrants could use abbreviated financial statements in proxy and information statements requiring financial statements. The full financial statements would be appended to the proxy or information statement filed with the Commission and delivered to security holders only upon request.⁶¹ It

would not, however, be necessary to append the information if the full financial statements for the same period had previously been filed in the registrant's Form 10-K or 10-KSB and any Forms 10-Q or 10-QSB⁶² necessary to provide interim financial disclosure. Proxy or information statements for mergers or other business combinations,⁶³ which permit incorporation by reference in a manner comparable to that in Form S-4 registration statements, could include abbreviated financial statements in the same manner as Form S-4.

4. Tender Offers and Going Private Transactions

Currently, the rules governing tender offers and going private transactions permit the delivery to investors of summary financial information, with full financial statements being filed with the Commission in the associated Schedule.⁶⁴ As proposed, abbreviated financial statements could be used for these transactions as well, whether financial statements are required in the disclosure document or included voluntarily. Comment is solicited on whether the eligibility requirements should vary depending on whether the financial statements involved are those of the bidder, the affiliate engaging in the transaction, or the subject company.

C. Eligibility to Use Abbreviated Financial Statements

As proposed, both reporting and non-reporting registrants would be permitted to include abbreviated financial statements in the specified disclosure documents delivered to investors, in lieu of full financial statements required by the applicable form, provided that two conditions are met. First, the report of the independent accountant on the full financial statements of the registrant must express an opinion that is unqualified as to scope of the audit and as to accounting principles used, and must not contain a disclaimer of opinion.⁶⁵ Second, a reporting registrant would have to be current in filing all of its Exchange Act reports at the time the abbreviated financial statements are delivered.⁶⁶ Comment is requested as to whether a further condition should be that an issuer filing reports under the Exchange Act must have timely filed all

required reports during the most recent 12 months, or since becoming subject to the Exchange Act, whichever is shorter.

Comment also is requested as to whether use of the proposed rule should be limited to companies that are subject to Section 13(a) or 15(d) of the Exchange Act, precluding the use of abbreviated financial statements in initial public offerings. If so, should the rule contain a reporting history requirement, e.g., 12 or 18 months? Comment also is requested as to whether other eligibility criteria should be established, such as size of the issuer or other condition. Comment is further requested on whether eligibility should be limited based on certain financial statement attributes.

In addition to financial statements of the registrant, disclosure documents may be required to include financial statements of other entities, such as a business acquired or to be acquired, 50 percent or less owned entity accounted for by the equity method, or guarantor.⁶⁷ The proposed rules would base eligibility for the use of abbreviated financial statements of such entities on a combination of: (1) the registrant's eligibility, i.e., the registrant would have to have filed with its full financial statements an acceptable independent accountant's report and be current in its filing of Exchange Act reports;⁶⁸ and (2) the acceptability of the independent accountant's report on the other entity's full financial statements.⁶⁹ Whether the other entity had filed all required Exchange Act reports would not affect the registrant's ability to include abbreviated financial statements of that entity. The same criteria would apply to the use of abbreviated financial statements of the company being acquired in a registration statement on Form S-4 or F-4 or a merger proxy or information statement.

Comment is requested as to whether this eligibility standard is appropriate regarding financial statements of a company other than the registrant. Comment also is requested concerning

⁶⁷ Rules 3-05, 3-09 and 3-10 of Regulation S-X [17 CFR 210.3-05, 3-09 and 3-10] and Item 310(c) of Regulation S-B [17 CFR 228.310(c)] require the financial statements of a business acquired or to be acquired, 50 percent or less owned entity accounted for by the equity method, or guarantor to be included in registrants' disclosure documents in certain circumstances.

⁶⁸ Proposed Item 305(a) of Regulation S-K.

⁶⁹ Proposed Item 305(d) of Regulation S-K. Financial statements of other entities may be included in Commission filings in certain circumstances other than those specified by Rules 3-05, 3-09 and 3-10 of Regulation S-X. The proposed rules also would permit the use of abbreviated financial statements of those entities, provided that all conditions for their use are otherwise met.

⁵⁹ General Instruction A.2 to both Forms F-4 and S-4.

⁶⁰ Item 901(c) of Regulation S-K [17 CFR 229.901(c)].

⁶¹ This appended information would be publicly available unless the related proxy or information

statement was the subject of a confidential treatment request.

⁶² 17 CFR 249.308a, 249.308b.

⁶³ Item 14 of Schedule 14A.

⁶⁴ See Rules 13e-3, 13e-4, and 14d-6; Schedules 13E-3 [17 CFR 240.13e-100], 13E-4 [17 CFR 240.13e-101], and 14D-1 [17 CFR 240.14d-100].

⁶⁵ Proposed Item 305(a)(1) of Regulation S-K.

⁶⁶ Proposed Item 305(a)(2) of Regulation S-K.