

- Persons or classes of persons to whom the securities were sold.
- The exemption from registration claimed.

Comment is requested on investors' need for such information. Comment is also requested as to whether the information will be sufficiently timely, or instead, should be provided in a filing at an earlier date, such as a mandatory Current Report on Form 8-K, or a notice of sale similar to that used for Regulation D. Should notice be required prior to or at the time of the sale? Some have suggested that earlier reporting should be required unless the Regulation S restricted period is lengthened so that a report must be filed before the end of the restricted period. Comment also is requested as to the adequacy of the information required; is there additional information that would be helpful to investors; are there items that are not necessary?

The proposed requirement is limited to unregistered sales of common equity securities (and common equity equivalents) because of the significant market impact the issuance of such securities often has and the current lack of public information about such sales. Comment is requested as to whether a reporting requirement should be extended to other types of securities or registered offerings, e.g., takedowns off a shelf registration statement, and if so why?

IV. Cost-Benefit Analysis

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed changes to disclosure requirements contained in this release, commenters are requested to provide views and data relating to any costs and benefits associated with the proposals. It is expected that the proposals relating to financial statements of acquired businesses will decrease registrants' costs and compliance burdens. It is expected that the proposals to disclose sales of unregistered equity securities on a quarterly basis will modestly increase registrants' costs and compliance burdens. This requirement should not significantly increase the burden on company resources, since most registrants are required to gather such information in connection with the preparation of audited and unaudited financial statements. To the extent this requirement results in any additional expense, it may be justified in view of

the material information that would be available to investors.

V. Request for Comments

Any interested person wishing to submit written comments on any aspect of the amendments to forms and rules that are subject to this release are requested to do so. Comments should be submitted in triplicate to Jonathan G. Katz, secretary, U.S. Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549 and should refer to file number S7-19-95.

VI. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis pursuant to the requirements of the Regulatory Flexibility Act,³⁸ regarding the proposed amendments to Rule 3-05 of Regulation S-X, Item 310 of Regulation S-B, Form S-4 and Form F-4 and Forms 10-Q, 10-QSB, 10-K and 10-KSB. The analysis notes that these proposed amendments relating to financial statement requirements for acquired businesses would provide issuers greater flexibility and efficiency in accessing the public securities markets. The proposed amendments with respect to disclosure of recent sales of unregistered securities are intended to provide investors with more information regarding changes in outstanding securities of public companies.

As discussed more fully in the analysis, the proposed changes would affect persons that are small entities, as defined by the Commission's rules. It is expected that the changes primarily would decrease reporting, recordkeeping and compliance burdens, although the requirement to report unregistered sales would modestly increase such burdens. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the revised disclosure provisions.

As stated in the analysis, several possible significant alternatives to the disclosure proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. As more fully discussed in the analysis, the alternatives were either addressed in the proposals, inconsistent with the purposes of the federal securities laws, or otherwise without justification.

Written comments are encouraged with respect to any aspect of the

analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed revisions are adopted. A copy of the analysis may be obtained by contacting Annemarie Tierney, Office of International Corporate Finance, Division of Corporation Finance at (202) 942-2990, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

VII. Statutory Bases

The amendments to the Commission's rules and forms are being proposed pursuant to sections 2, 3, 4 and 19 of the Securities Act of 1933 and 3(b), 4A, 12, 13, 14, 15, 16 and 23 of the Securities Exchange Act of 1934.

Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-X

1. The authority citation for Part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e(b), 79j(a), 79n, 79t(a), 80a-8, 80a-20, 80a-29, 80a-30, 80a-37a, unless otherwise noted.

2. Section 210.3-05 is amending by revising paragraph (b) to read as follows:

§ 210.3-05 Financial statements of businesses acquired or to be acquired.

(a) ***

(b) Periods to be presented. (1)(i) If securities are being registered to be offered to the security holders of the business to be acquired, the financial statements specified in §§ 210.3-01 and 210.3-02 shall be furnished for the business to be acquired, except as provided otherwise for filings on Form N-14, S-4 or F-4. In all other cases, financial statements of the business acquired or to be acquired shall be filed for the periods specified in this paragraph or such shorter period as the business has been in existence. The financial statements covering fiscal years shall be audited except as provided in Item 14 of Schedule 14A, (§ 240.14a-101 of this chapter) with respect to certain proxy statements or in

commissions. As to any securities sold otherwise than for cash, state the nature of the transactions and the nature and aggregate amount of consideration received by the registrant."

³⁸ 5 U.S.C. 603 (1988).