

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 210, 211, 229, 239, 240, and 249

[Release Nos. 33-9026; 34-59775; FR-79]

#### Technical Amendments to Rules, Forms, Schedules, and Codification of Financial Reporting Policies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is adopting technical amendments to various rules, forms and schedules under the Securities Act of 1933 (“Securities Act”) and the Securities Exchange Act of 1934 (“Exchange Act”). The Commission also is making certain technical changes to the Codification of Financial Reporting Policies (“CFRP”). These revisions are necessary to conform those rules, forms, schedules and the CFRP to two recently issued Statements of Financial Accounting Standards (“SFAS”) issued by the Financial Accounting Standards Board (“FASB”). SFAS 141 (revised 2007), *Business Combinations*, and SFAS 160, *Noncontrolling Interests in Consolidated Financial Statements—an amendment of ARB No. 51* (collectively “Statements”) were both issued in December 2007. The technical amendments include revision of certain rules in Regulation S-X, certain items in Regulation S-K, certain sections in the CFRP and various forms and schedules prescribed under the Securities Act and Exchange Act.

**DATES:** *Effective Date:* April 23, 2009.

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**SUPPLEMENTARY INFORMATION:** We are adopting amendments to Regulation S-X,<sup>1</sup> Regulation S-K,<sup>2</sup> rules, forms and schedules under the Securities Act of 1933<sup>3</sup> and the Securities Exchange Act of 1934<sup>4</sup> and making technical changes to the CFRP. In Regulation S-X, we are adopting amendments to Rules 1-02, 3-01, 3-04, 3-05, 3-10, 3A-02, 4-08, 5-

02, 5-03, 5-04, 7-03, 7-04, 7-05, 8-03, 8-04, 8-08, 9-03, 9-04, 9-06, 10-01, 11-01, and 11-02.<sup>5</sup> In Regulation S-K, we are adopting amendments to Items 301, 302, 305, and 503.<sup>6</sup> We are making technical changes to CFRP sections 201.01, 201.02, 213.02(b), and 507.03. We are amending Exchange Act Rule 12b-2.<sup>7</sup> We are amending Securities Act Forms S-3, S-4, F-3, and 1-A.<sup>8</sup> We are amending Exchange Act Schedule 14A.<sup>9</sup> Finally, we are amending Exchange Act Form 20-F.<sup>10</sup>

#### I. Background and Summary

On April 25, 2003, the Commission issued a policy statement recognizing the FASB’s financial accounting and reporting standards as “generally accepted” for purposes of the Federal securities laws.<sup>11</sup> The Commission’s rules and regulations generally require compliance with U.S. generally accepted accounting principles (“GAAP”),<sup>12</sup> and the requirements of the Commission’s rules, forms and schedules generally are used to interpret, supplement, or expand upon GAAP requirements. The purpose of these technical amendments and revisions is to eliminate obsolete terminology and revise reporting and disclosure requirements as necessary to achieve consistency between the Commission’s compliance requirements and SFAS 141(R) and SFAS 160, both issued by the FASB in December 2007.

#### II. Business Combinations

The FASB issued SFAS 141(R), *Business Combinations*, in December 2007. SFAS 141(R) is effective at the beginning of the first annual reporting period beginning on or after December 15, 2008. SFAS 141(R) addresses the accounting for all transactions in which an enterprise obtains control of one or more other businesses. The new standard retains the fundamental requirement in SFAS 141 that the acquisition method of accounting (called the “purchase method” in SFAS 141) be used for all business combinations. The existing requirement that an acquirer be identified for each business combination also was not modified. SFAS 141(R) defines the

acquirer as the enterprise that obtains control of one or more businesses and establishes the acquisition date as the date control is achieved. The application of SFAS 141 was limited to business combinations in which control was obtained by transfer of consideration. SFAS 141(R) requires that the acquisition method of accounting be applied to all transactions and other events in which one entity obtains control over one or more businesses. In addition, SFAS 141(R) generally requires an acquirer to recognize assets acquired, liabilities assumed and any noncontrolling interest in the acquiree at their fair values as of the acquisition date (rather than the announcement date as required in SFAS 141). SFAS 141(R) also makes significant changes in accounting for contingencies, goodwill, bargain purchases and income taxes related to business combinations.

#### III. Noncontrolling Interests in Consolidated Financial Statements

The FASB issued SFAS 160, *Noncontrolling Interests in Consolidated Financial Statements—an amendment of ARB 51*, in December 2007. SFAS 160 is effective for fiscal years and interim periods within those fiscal years beginning on or after December 15, 2008. SFAS 160 amends ARB 51<sup>13</sup> to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. It specifies that a noncontrolling interest in a subsidiary is an ownership interest in the consolidated entity that should be reported as equity in the consolidated financial statements. Prior to the advent of SFAS 160, little guidance existed for reporting noncontrolling interests. As a result, there were widely divergent practices for reporting such outside interests.

Most significantly, SFAS 160 changes the way the consolidated income statement is presented. It requires consolidated net income to be reported at amounts that include the amounts attributable to both the parent and the noncontrolling interest. In this regard, it requires disclosure on the face of the consolidated statement of income of the consolidated net income attributable to the parent and to the noncontrolling interest. Further, SFAS 160 establishes that all changes in a parent’s ownership interest in a subsidiary shall be accounted for as equity transactions as

<sup>5</sup> 17 CFR 210.1-02, 210.3-01, 210.3-04, 210.3-05, 210.3-10, 210.3A-02, 210.4-08, 210.5-02, 210.5-03, 210.5-04, 210.7-03, 210.7-04, 210.7-05, 210.8-03, 210.8-04, 210.8-08, 210.9-03, 210.9-04, 210.9-06, 210.10-01, 210.11-01, and 210.11-02.

<sup>6</sup> 17 CFR 229.301, 229.302, 229.305, and 229.503.

<sup>7</sup> 17 CFR 240.12b-2.

<sup>8</sup> 17 CFR 239.13, 239.25, 239.33, and 239.90.

<sup>9</sup> 17 CFR 240.14a-101.

<sup>10</sup> 17 CFR 249.220f.

<sup>11</sup> See Financial Reporting Release No. 70.

<sup>12</sup> See, e.g., Rule 4-01(a)(1) of Regulation S-X [17 CFR 210.4-01(a)(1)].

<sup>13</sup> ARB 51 is Accounting Research Bulletin No. 51, *Consolidated Financial Statements*, adopted in August 1959 by the Committee on Accounting Procedure of the Accounting Principles Board.

<sup>1</sup> 17 CFR 210.

<sup>2</sup> 17 CFR 229.

<sup>3</sup> 15 U.S.C. 77a et seq.

<sup>4</sup> 15 U.S.C. 78a et seq.

long as the parent retains a controlling financial interest in the subsidiary. In addition, SFAS 160 requires that a parent recognize a gain or loss when a subsidiary is deconsolidated. Finally, SFAS 160 significantly expands disclosures in the consolidated financial statements regarding the interests of the

parent's owners and the interests of noncontrolling owners.

#### IV. Summary of Amendments

The table which follows is presented as a guide to assist the reader in understanding the various changes being made by the technical

amendments that are described at the end of this release. The table presents a brief description of each category of the changes and an explanation of the rationale for each change. Conforming amendments are being made to update the CFRP.

| Amendment   | Rationale  |
|---|--|
| Amend various rules in Regulation S-X, items in Regulation S-K, and forms and schedules filed under the Securities Act and the Exchange Act to replace references to "minority interests" with "noncontrolling interests."  | These amendments will replace references to "minority interests" with "noncontrolling interests" in order to be consistent with SFAS 160.  |
| Under Regulation S-X, delete paragraphs 12 of Rule 5-03, 10 of Rule 7-04, and 14(e) of Rule 9-04.   | SFAS 160 requires that consolidated financial statements report the net income attributable to the parent (or controlling interest) and the net income attributable to the noncontrolling interest. These amendments will make the rules consistent with this requirement.   |
| Under Regulation S-X, delete paragraphs 27 of Rule 5-02, 20 of Rule 7-03, and 18 of Rule 9-03.  | SFAS 160 requires that noncontrolling interests be presented in the consolidated statement of financial position within the equity section separate from the parent's equity. These amendments will eliminate the Commission's current requirement to present equity attributable to the noncontrolling interest outside of the consolidated equity section. |
| Amend various rules in Regulation S-X, items in Regulation S-K, and forms and schedules filed under the Securities Act and the Exchange Act to rescind guidance related to business combinations accounted for as "pooling of interests" and update references to specify which rules apply to combinations of entities under common control. | These amendments will eliminate "pooling of interests" accounting by registrants in accordance with the requirements of SFAS 141(R).   |
| Amend various rules in Regulation S-X, items in Regulation S-K, and forms and schedules filed under the Securities Act and the Exchange Act to distinguish between income attributable to a noncontrolling interest and income attributable to a controlling interest.  | SFAS 160 requires net income or loss be attributed to the parent (or controlling interest) and the noncontrolling interest. These amendments will make the rules consistent with this requirement.   |
| Amend various rules in Regulation S-X, items in Regulation S-K, and forms and schedules filed under the Securities Act and the Exchange Act to remove the term "purchase method."   | Under SFAS 141(R), a business combination can occur in the absence of a purchase transaction. These amendments will update the terminology in order to achieve consistency with SFAS 141(R).   |
| Amend Rule 3-04 under Regulation S-X to require a separate schedule in the notes to the financial statements that shows the effects of any changes in the registrant's ownership interest in a subsidiary to the equity attributable to the registrant.   | This amendment will conform Rule 3-04 to the requirements of SFAS 160.   |

#### V. Certain Findings

Under the Administrative Procedure Act, a notice of proposed rulemaking is not required when the agency, for good cause, finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.<sup>14</sup> These amendments are technical changes to eliminate obsolete terminology and revise reporting and disclosure requirements as necessary to achieve consistency between the Commission's compliance requirements and SFAS 141(R) and SFAS 160. Because no one is likely to want to comment on such non-substantive, technical amendments, the Commission finds that it is unnecessary to publish notice of these amendments.<sup>15</sup>

<sup>14</sup> 5 U.S.C. 553(b).

<sup>15</sup> For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analysis, the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking); and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency

The Administrative Procedure Act also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.<sup>16</sup> Due to the need to coordinate the effectiveness of the amendments with the effective dates of SFAS 141(R) and SFAS 160 and for the same reasons described with respect to opportunity for notice and comment, the Commission finds there is good cause for the amendments to take effect on April 23, 2009.

#### VI. Consideration of Competitive Effects of Amendments

Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or

rulemaking, the term "rule" does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

<sup>16</sup> See 5 U.S.C. 553(d)(3).

appropriate in furtherance of the purposes of the Exchange Act.<sup>17</sup> Because these amendments merely make technical changes to update references to applicable FASB pronouncements, we do not anticipate any competitive advantages or disadvantages will be created.

#### VII. Update to Codification of Financial Reporting Policies

The Commission amends the "Codification of Financial Reporting Policies" announced in Financial Reporting Release 1 (April 15, 1982) [47 FR 21028] as follows:

1. By removing and reserving Sections 201.01 and 201.02.

2. By revising Section 213.02(b) to replace the term "minority interest" in each place it appears with the term "noncontrolling interest".

3. By revising Section 507.03 to replace the term "minority interest" in each place it appears with the term "noncontrolling interest".

<sup>17</sup> 15 U.S.C. 78w(a)(2).

The CFRP is a separate publication issued by the Commission. It will not be published in the Federal Register or Code of Federal Regulations. For more information about the CFRP, contact the Commission's Public Reference Room at (202) 551-5850.

VIII. Statutory Basis and Text of Amendments

We are adopting these technical amendments pursuant to Sections 6, 7, 10 and 19(a) of the Securities Act, 18 and Sections 12, 13, 14(a), 15(d) and 23(a) of the Exchange Act. 19

List of Subjects in 17 CFR Parts 210, 211, 229, 239, 240, and 249

Accounting, Reporting and recordkeeping requirements, Securities.

Text of Amendments

■ For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is 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, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j-1, 78l, 78m, 78n, 78o(d), 78q, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-20, 80a-29, 80a-30, 80a-31, 80a-37(a), 80b-3, 80b-11, 7202 and 7262, unless otherwise noted.

■ 2. Amend § 210.1-02 by revising paragraphs (w)(1) and (w)(3), the Computational Notes 1 and 2 following the Note to paragraph (w), (bb)(1)(i) and (bb)(1)(ii) to read as follows:

§ 210.1-02 Definitions of terms used in Regulation S-X (17 CFR part 210).

\* \* \* \* \*

(w) \* \* \*

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed combination between entities under common control, this condition is also met when the number of common

shares exchanged or to be exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary exclusive of amounts attributable to any noncontrolling interests exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

Computational note: \* \* \*

1. When a loss exclusive of amounts attributable to any noncontrolling interests has been incurred by either the parent and its subsidiaries consolidated or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary exclusive of amounts attributable to any noncontrolling interests should be excluded from such income of the registrant and its subsidiaries consolidated for purposes of the computation.

2. If income of the registrant and its subsidiaries consolidated exclusive of amounts attributable to any noncontrolling interests for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be submitted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

\* \* \* \* \*

(bb) \* \* \*

(1) \* \* \*

(i) Current assets, noncurrent assets, current liabilities, noncurrent liabilities, and, when applicable, redeemable preferred stocks (see § 210.5-02.27) and noncontrolling interests (for specialized industries in which classified balance sheets are normally not presented, information shall be provided as to the nature and amount of the majority components of assets and liabilities);

(ii) Net sales or gross revenues, gross profit (or, alternatively, costs and expenses applicable to net sales or gross revenues), income or loss from continuing operations before extraordinary items and cumulative effect of a change in accounting principle, net income or loss, and net income or loss attributable to the entity (for specialized industries, other information may be substituted for sales and related costs and expenses if necessary for a more meaningful presentation); and

\* \* \* \* \*

■ 3. Amend § 210.3-01 by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 210.3-01 Consolidated balance sheets.

\* \* \* \* \*

(c) \* \* \*

(2) For the most recent fiscal year for which audited financial statements are not yet available the registrant reasonably and in good faith expects to report income attributable to the registrant, after taxes but before extraordinary items and cumulative effect of a change in accounting principle; and

(3) For at least one of the two fiscal years immediately preceding the most recent fiscal year the registrant reported income attributable to the registrant, after taxes but before extraordinary items and cumulative effect of a change in accounting principle.

\* \* \* \* \*

■ 4. Revise § 210.3-04 to read as follows:

§ 210.3-04 Changes in stockholders' equity and noncontrolling interests.

An analysis of the changes in each caption of stockholders' equity and noncontrolling interests presented in the balance sheets shall be given in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which an income statement is required to be filed with all significant reconciling items described by appropriate captions with contributions from and distribution to owners shown separately. Also, state-separately the adjustments to the balance at the beginning of the earliest period presented for items which were retroactively applied to periods prior to that period. With respect to any dividends, state the amount per share and in the aggregate for each class of shares. Provide a separate schedule in the notes to the financial statements that shows the effects of any changes in the registrant's ownership interest in a subsidiary on the equity attributable to the registrant.

■ 5. In § 210.3-05, revise paragraphs (a)(1)(i) and (a)(1)(ii), and remove the authority citation at the end of the section to read as follows:

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

(a) \* \* \*

(1) \* \* \*

(i) A business combination has occurred or is probable (for purposes of this section, this encompasses the acquisition of an interest in a business accounted for by the equity method); or

18 15 U.S.C. 77f, 77g, 77j, and 77s(a).

19 15 U.S.C. 78l, 78m, 78n(a), 78o(d), and 78w(a).

(ii) Consummation of a combination between entities under common control is probable.

\* \* \* \* \*

■ 6. Amend § 210.3–10 by revising paragraph (i)(3) to read as follows:

**§ 210.3–10 Financial statements of guarantors and issuers of guaranteed securities registered or being registered.**

\* \* \* \* \*

(i) \* \* \*

(3) The parent company column should present investments in all subsidiaries based upon their proportionate share of the subsidiary's net assets;

\* \* \* \* \*

**§ 210.3A–02 [Amended]**

■ 7. Amend § 210.3A–02 by:

- a. Revising paragraph (a), third sentence, the phrase “or in bankruptcy, or when control is likely to be temporary.” to read “or in bankruptcy.”; and
- b. Revising paragraph (b)(2), first sentence, the reference “pooling of interests” to read “combination between entities under common control”.

**§ 210.4–08 [Amended]**

- 8. In § 210.4–08, in the last sentence of paragraph (e)(3) introductory text, remove the phrase “(§ 210.5–02.28) and minority interests” and add in its place the phrase “(§ 210.5–02.27) and noncontrolling interests”.
- 9. Amend § 210.5–02 by:
  - a. Removing the undesignated heading “Minority Interests” following paragraph 26;
  - b. Removing paragraph 27;
  - c. Redesignating paragraphs 28, 29, 30, and 31 as paragraphs 27, 28, 29, and 30;
  - d. Revising the reference “§ 210.5–02.29” in newly redesignated paragraph 27, last sentence, to read “§ 210.5–02.28”;
  - e. Adding an undesignated heading following newly redesignated paragraph 30 and a new paragraph 31; and
  - f. Revising paragraph 32.
  - g. Remove the authority citation at the end of the section.

The additions and revisions read as follows:

**§ 210.5–02 Balance sheets.**

\* \* \* \* \*

30. \* \* \*

*Noncontrolling Interests*

31. *Noncontrolling interests in consolidated subsidiaries.* State separately in a note the amounts represented by preferred stock and the applicable dividend requirements if the preferred stock is material in relation to the consolidated equity.

32. *Total liabilities and equity.*

- 10. Amend § 210.5–03 by:
    - a. Removing paragraph 12 and redesignating paragraphs 13, 14, 15, 16, 17, 18, and 19 as paragraphs 12, 13, 14, 15, 16, 17, and 18;
    - b. Redesignating paragraph 20 as paragraph 21; and
    - c. Adding new paragraphs 19 and 20.
- The additions read as follows:

**§ 210.5–03 Income statements.**

\* \* \* \* \*

19. *Net income attributable to the noncontrolling interest.*

20. *Net income attributable to the controlling interest.*

\* \* \* \* \*

**§ 210.5–04 [Amended]**

- 11. Amend § 210.5–04, Schedule I, last sentence, by revising the phrase “(§ 210.5–02.28) and minority interests” to read “(§ 210.5–02.27) and noncontrolling interests”.
- 12. Remove the authority citation for §§ 210.7–01 through 210.7–05 following the undesignated heading “Insurance Companies”.
- 13. Amend § 210.7–03 by:
  - a. Removing the undesignated heading “Minority Interests” preceding paragraph 20;
  - b. Removing paragraph 20;
  - c. Redesignating paragraphs 21, 22, 23, and 24 as paragraphs 20, 21, 22, and 23;
  - d. Revising newly redesignated paragraphs 20, 21, 22, and 23(b);
  - e. Adding an undesignated heading following newly redesignated paragraph 23(c) and a new paragraph 24; and
  - f. Revising paragraph 25.

The revisions and addition read as follows:

**§ 210.7–03 Balance sheets.**

\* \* \* \* \*

20. *Preferred stocks subject to mandatory redemption requirements or whose redemption is outside the control of the issuer.* The classification and disclosure requirements of § 210.5–02.27 shall be followed.

\* \* \* \* \*

21. *Preferred stocks which are not redeemable or are redeemable solely at the option of the issuer.* The classification and disclosure requirements of § 210.5–02.28 shall be followed.

\* \* \* \* \*

22. *Common stocks.* The classification and disclosure requirements of § 210.5–02.29 shall be followed.

\* \* \* \* \*

23. \* \* \*

(b) The classification and disclosure requirements of § 210.5–02.30(b) shall

be followed for dating and effect of a quasi-reorganization.

\* \* \* \* \*

*Noncontrolling Interests*

24. *Noncontrolling interests in consolidated subsidiaries.* The disclosure requirements of § 210.5–02.31 shall be followed.

25. *Total liabilities and equity.*

- 14. Amend § 210.7–04 by:
    - a. Removing paragraph 10;
    - b. Redesignating paragraphs 11, 12, 13, 14, 15, 16, and 17 as paragraphs 10, 11, 12, 13, 14, 15, and 16;
    - c. Redesignating paragraph 18 as paragraph 19; and
    - d. Adding new paragraphs 17 and 18.
- The additions read as follows:

**§ 210.7–04 Income statements.**

\* \* \* \* \*

17. *Net income attributable to the noncontrolling interest.*

18. *Net income attributable to the controlling interest.*

\* \* \* \* \*

**§ 210.7–05 [Amended]**

- 15. Amend § 210.7–05:
  - a. In Schedule II, in the last sentence, remove the reference “(§ 210.7–03.21) and minority interests” and add in its place the reference “(§ 210.7–03.20) and noncontrolling interests”.
  - b. Remove the authority citation at the end of the section.
- 16. In § 210.8–03, revise paragraphs (b)(3) and (b)(4) to read as follows:

**§ 210.8–03 Interim financial statements.**

\* \* \* \* \*

(b) \* \* \*

(3) *Significant equity investees.* Sales, gross profit, net income (loss) from continuing operations, net income, and net income attributable to the investee must be disclosed for equity investees that constitute 20 percent or more of a registrant's consolidated assets, equity or income from continuing operations attributable to the registrant.

(4) *Significant dispositions and business combinations.* If a significant disposition or business combination has occurred during the most recent interim period and the transaction required the filing of a Form 8–K (§ 249.308 of this chapter), pro forma data must be presented that reflects revenue, income from continuing operations, net income, net income attributable to the registrant and income per share for the current interim period and the corresponding interim period of the preceding fiscal year as though the transaction occurred at the beginning of the periods.

\* \* \* \* \*

§ 210.8-04 [Amended]

- 17. Amend § 210.8-04 by:
  - a. Revising paragraph (a), first sentence, the phrase “If a business combination accounted for as a ‘purchase’ has occurred or is probable,” to read “If a business combination has occurred or is probable,”;
  - b. Revising paragraph (a)(1) to read “This encompasses the purchase of an interest in a business accounted for by the equity method.”;
  - c. Revising paragraph (b)(3), the phrase “of the acquiree” to read “of the acquiree exclusive of amounts attributable to any noncontrolling interests”; and
  - d. Revising *Computational note to § 210.8-04(b)*, the first sentence, the phrase “its subsidiaries consolidated” to read “its subsidiaries consolidated exclusive of amounts attributable to any noncontrolling interests”.
- 18. Amend § 210.8-08 by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 210.8-08 Age of financial statements.

\* \* \* \* \*

(b) \* \* \*

(2) For the most recent fiscal year for which audited financial statements are not yet available, the smaller reporting company reasonably and in good faith expects to report income from continuing operations attributable to the registrant before taxes; and

(3) For at least one of the two fiscal years immediately preceding the most recent fiscal year the smaller reporting company reported income from continuing operations attributable to the registrant before taxes.

- 19. Amend § 210.9-03 by:
  - a. Removing paragraph 18;
  - b. Redesignating paragraphs 19, 20, 21, and 22 as paragraphs 18, 19, 20, and 21;
  - c. Revising redesignated paragraphs 18, 19, 20, and 21;
  - d. Adding an undesignated heading following redesignated paragraph 21;
  - e. Adding new paragraph 22; and
  - f. Revising paragraph 23.
  - g. Remove the authority citation at the end of the section.

The revisions and addition read as follows:

§ 210.9-03 Balance sheets.

- \* \* \* \* \*
18. *Preferred stocks subject to mandatory redemption requirements or whose redemption is outside the control of the issuer.* See § 210.5-02.27.
- \* \* \* \* \*
19. *Preferred stocks which are not redeemable or are redeemable solely at*

*the option of the issuer.* See § 210.5-02.28.

\* \* \* \* \*

20. *Common stocks.* See § 210.5-02.29.

\* \* \* \* \*

21. *Other stockholders’ equity.* See § 210.5-02.30.

*Noncontrolling Interests*

22. *Noncontrolling interests in consolidated subsidiaries.* The disclosure requirements of § 210.5-02.31 shall be followed.

23. *Total liabilities and equity.*

- 20. Amend § 210.9-04 by:
  - a. Removing paragraph 14(e);
  - b. Redesignating paragraph 21 as paragraph 23; and
  - c. Adding new paragraphs 21 and 22.

The additions read as follows:

§ 210.9-04 Income statements.

\* \* \* \* \*

21. *Net income attributable to the noncontrolling interest.*

22. *Net income attributable to the controlling interest.*

■ 21. Amend § 210.9-06 by revising the last sentence to read as follows:

§ 210.9-06 Condensed financial information of registrant.

\* \* \* Redeemable preferred stocks (§ 210.5-02.27) and noncontrolling interests shall be deducted in computing net assets for purposes of this test.

■ 22. Amend § 210.10-01 by revising paragraphs (b)(3) and (b)(4) to read as follows:

§ 210.10-01 Interim financial statements.

\* \* \* \* \*

(b) \* \* \*

(3) If, during the most recent interim period presented, the registrant or any of its consolidated subsidiaries entered into a combination between entities under common control, the interim financial statements for both the current year and the preceding year shall reflect the combined results of the combined businesses. Supplemental disclosure of the separate results of the combined entities for periods prior to the combination shall be given, with appropriate explanations.

(4) Where a material business combination has occurred during the current fiscal year, pro forma disclosure shall be made of the results of operations for the current year up to the date of the most recent interim balance sheet provided (and for the corresponding period in the preceding year) as though the companies had combined at the beginning of the period

being reported on. This pro forma information shall, at a minimum, show revenue, income before extraordinary items and the cumulative effect of accounting changes, including such income on a per share basis, net income, net income attributable to the registrant, and net income per share.

\* \* \* \* \*

§§ 210.11-01—210.11-03 [Amended]

- 23. Remove the authority citation for §§ 210.11-01 through 210.11-03 following the undesignated heading “Pro Forma Financial Information”.
- 24. Amend § 210.11-01 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 210.11-01 Presentation requirements.

(a) \* \* \*

(1) During the most recent fiscal year or subsequent interim period for which a balance sheet is required by § 210.3-01, a significant business combination has occurred (for purposes of these rules, this encompasses the acquisition of an interest in a business accounted for by the equity method);

(2) After the date of the most recent balance sheet filed pursuant to § 210.3-01, consummation of a significant business combination or a combination of entities under common control has occurred or is probable;

\* \* \* \* \*

■ 25. Amend § 210.11-02 by revising paragraph (b)(3) and the first sentence of Instruction 2 to read as follows:

§ 210.11-02 Preparation requirements.

\* \* \* \* \*

(b) \* \* \*

(3) The pro forma condensed financial information need only include major captions (*i.e.*, the numbered captions) prescribed by the applicable sections of this Regulation. Where any major balance sheet caption is less than 10 percent of total assets, the caption may be combined with others. When any major income statement caption is less than 15 percent of average net income attributable to the registrant for the most recent three fiscal years, the caption may be combined with others. In calculating average net income attributable to the registrant, loss years should be excluded unless losses were incurred in each of the most recent three years, in which case the average loss shall be used for purposes of this test. Notwithstanding these tests, *de minimis* amounts need not be shown separately.

\* \* \* \* \*

Instructions: \* \* \*

2. For a business combination, pro forma adjustments for the income

statement shall include amortization, depreciation and other adjustments based on the allocated purchase price of net assets acquired. \* \* \*

**PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS**

■ 26. Amend part 211, subpart A, by adding “Technical Amendments to Rules, Forms, Schedules and Codification of Financial Reporting Policies”, Release No. FR-79 and the release date of April 15, 2009 to the list of interpretive releases.

**PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K**

■ 27. The authority citation for part 229 continues to read in part as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11, and 7201 *et seq.*; 18 U.S.C. 1350, unless otherwise noted.

**§ 229.301 [Amended]**

■ 28. Amend § 229.301, Instruction 2 to the *Instructions to Item 301*, first sentence, by revising the reference “§ 210.5-02.28(a)” to read “§ 210.5-02.27(a)”.

■ 29. Amend § 229.302 by revising paragraphs (a)(1) and (a)(2) to read as follows:

**§ 229.302 (Item 302) Supplementary financial information.**

(a) \* \* \*

(1) Disclosure shall be made of net sales, gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered), income (loss) before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income (loss), net income (loss) and net income (loss) attributable to the registrant, for each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included or are required to be included by Article 3 of Regulation S-X (Part 210 of this chapter).

(2) When the data supplied pursuant to paragraph (a) of this section vary from the amounts previously reported on the

Form 10-Q (§ 249.308a of this chapter) filed for any quarter, such as would be the case when a combination between entities under common control occurs or where an error is corrected, reconcile the amounts given with those previously reported and describe the reason for the difference.

**§ 229.305 [Amended]**

■ 30. Amend § 229.305, Instruction 3.C.ii., *General Instructions to Paragraphs 305(a) and 305(b)*, first sentence, by revising the reference “minority interests” to read “noncontrolling interests”.

■ 31. Amend § 229.503 by revising Instruction 1.(C) to the *Instructions to paragraph 503(d)* to read as follows:

**§ 229.503 (Item 503) Prospectus summary, risk factors, and ratio of earnings to fixed charges.**

*Instructions to paragraph 503(d):*

1. *Definitions.* \* \* \*

(C) *Earnings.* The term “earnings” is the amount resulting from adding and subtracting the following items. Add the following: (a) pre-tax income from continuing operations before adjustment for income or loss from equity investees; (b) fixed charges; (c) amortization of capitalized interest; (d) distributed income of equity investees; and (e) your share of pre-tax losses of equity investees for which charges arising from guarantees are included in fixed charges. From the total of the added items, subtract the following: (a) interest capitalized; (b) preference security dividend requirements of consolidated subsidiaries; and (c) the noncontrolling interest in pre-tax income of subsidiaries that have not incurred fixed charges. Equity investees are investments that you account for using the equity method of accounting. Public utilities following SFAS 71 should not add amortization of capitalized interest in determining earnings, nor reduce fixed charges by any allowance for funds used during construction.

**PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

■ 32. The authority citation for part 239 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

■ 33. Amend Form S-3 (referenced in § 239.13) by revising Item 11(b)(iii) to read as follows:

[**Note:** The text of Form S-3 does not, and this amendment will not, appear in the Code of Federal Regulations.]

**Form S-3**

*Registration Statement Under the Securities Act of 1933*

Item 11. Material Changes.

(b) \* \* \* (iii) restated financial statements prepared in accordance with Regulation S-X where a combination of entities under common control has been consummated subsequent to the most recent fiscal year and the transferred businesses, considered in the aggregate, are significant pursuant to Rule 11-01(b), or \* \* \*

■ 34. Amend Form S-4 (referenced in § 239.25) by revising the Instruction to paragraphs (e) and (f) in Item 3 and Item 12(b)(2)(iv) to read as follows:

[**Note:** The text of Form S-4 does not, and this amendment will not, appear in the Code of Federal Regulations.]

**Form S-4**

*Registration Statement Under the Securities Act of 1933*

Item 3. Risk Factors, Ratio of Earnings to Fixed Charges and Other Information.

*Instruction to paragraphs (e) and (f).*

For a business combination, the financial information required by paragraphs (e) and (f) shall be presented only for the most recent fiscal year and interim period. For a combination between entities under common control, the financial information required by paragraphs (e) and (f) (except for information with regard to book value) shall be presented for the most recent three fiscal years and interim period. For a combination between entities under common control, information with regard to book value shall be presented as of the end of the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the registrant by the exchange ratio so that the per share amounts are equated to the respective

values for one share of the company being acquired.

\* \* \* \* \*

Item 12. Information with Respect to S-3 Registrants.

\* \* \* \* \*

- (b) \* \* \*
(2) \* \* \*

(iv) restated financial statements prepared in accordance with Regulation S-X where a combination under common control has been consummated subsequent to the most recent fiscal year and the businesses transferred, considered in the aggregate, are significant pursuant to Rule 11-01(b) of Regulation S-X; and

\* \* \* \* \*

■ 35. Amend Form F-3 (referenced in § 239.33) by revising Item 5(b)(1)(iii) to read as follows:

[Note: The text of Form F-3 does not, and this amendment will not, appear in the Code of Federal Regulations.]

Form F-3

Registration Statement Under the Securities Act of 1933

\* \* \* \* \*

Item 5. Material Changes.

\* \* \* \* \*

- (b)(1) \* \* \*

(iii) restated financial statements where a combination of entities under common control has been consummated subsequent to the most recent fiscal year and the transferred businesses, considered in the aggregate, are significant under Rule 11-01(b) of Regulation S-X; or

\* \* \* \* \*

■ 36. Amend Form 1-A (referenced in § 239.90), Part F/S, by revising paragraphs (3)(a)(i), (3)(a)(ii), and (4)(a) to read as follows:

[Note: The text of Form 1-A does not, and this amendment will not, appear in the Code of Federal Regulations.]

Form 1-A

Regulation A Offering Statement Under the Securities Act of 1933

\* \* \* \* \*

Part F/S

\* \* \* \* \*

(3) Financial Statements of Businesses Acquired or to be Acquired.

- (a) \* \* \*

(i) A significant business combination has occurred or is probable (for purposes of this rule, this encompasses the acquisition of an interest in a business accounted for by the equity method); or

(ii) Consummation of a combination between entities under common control.

\* \* \* \* \*

(4) Pro Forma Financial Information.

(a) Pro forma information shall be furnished if any of the following conditions exist (for purposes of this rule, "business combination" encompasses the acquisition of an interest in a business accounted for by the equity method):

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet of the registrant is required, a significant business combination has occurred.

(ii) After the date of the registrant's most recent balance sheet, consummation of a significant business combination or a combination between entities under common control has occurred or is probable.

\* \* \* \* \*

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 37. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

■ 38. Amend § 240.12b-2 to revise the definition of "Significant subsidiary" and Computational Note following it to read as follows:

§ 240.12b-2 Definitions.

\* \* \* \* \*

Significant subsidiary. The term significant subsidiary means a subsidiary, including its subsidiaries, which meets any of the following conditions:

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed combination between entities under common control, this condition is also met when the number of common shares exchanged or to be exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

(2) The registrant's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds

10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary exclusive of amounts attributable to any noncontrolling interests exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

Computational note: For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss exclusive of amounts attributable to any noncontrolling interests has been incurred by either the parent and its subsidiaries consolidated or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary exclusive of amounts attributable to any noncontrolling interests should be excluded from such income of the registrant and its subsidiaries consolidated for purposes of the computation.

2. If income of the registrant and its subsidiaries consolidated exclusive of amounts attributable to any noncontrolling interests for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

\* \* \* \* \*

■ 39. Amend § 240.14a-101, Item 14, by revising Instruction 1 to the Instructions to paragraphs (b)(8), (b)(9) and (b)(10) to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

\* \* \* \* \*

Item 14. \* \* \*
Instructions to paragraphs (b)(8), (b)(9) and (b)(10):

1. For a business combination, present the financial information required by paragraphs (b)(9) and (b)(10) only for the most recent fiscal year and interim period. For a combination between entities under common control, present the financial information required by paragraphs (b)(9) and (b)(10) (except for information with regard to book value) for the most recent three fiscal years and interim period. For purposes of these paragraphs, book value information need only be provided for the most recent balance sheet date.

\* \* \* \* \*

**PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934**

■ 40. The authority citation for part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

■ 41. Amend Form 20–F (referenced in § 249.220f) by, in Item 11, *General Instructions to Items 11(a) and 11(b)*, revising Instruction 3.C.ii to read as follows:

**[Note:**

The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.]

**Form 20–F**

\* \* \* \* \*

Item 11. Quantitative and Qualitative Disclosures About Market Risk.

\* \* \* \* \*

General Instructions to Items 11(a) and 11(b).

\* \* \* \* \*

3. \* \* \*

C.i. \* \* \*

ii. *Other financial instruments exclude employers and plans obligations for pension and other post-retirement benefits, substantively extinguished debt, insurance contracts, lease contracts, warranty obligations and rights, unconditional purchase obligations, investments accounted for under the equity method, noncontrolling*

*interests in consolidated enterprises, and equity instruments issued by the registrant and classified in stockholders' equity in the statement of financial position (see, e.g., FAS 107, paragraph 8 (December 1991)). For purposes of this item, trade accounts receivable and trade accounts payable need not be considered other financial instruments when their carrying amounts approximate fair value; and*

\* \* \* \* \*

By the Commission.

Dated: April 15, 2009.

**Elizabeth M. Murphy,**  
*Secretary.*

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