

Heads Up

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SEC Issues Financial Reporting Manual.

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Updated April 3, 2009: This *Heads Up* summarizes the Financial Reporting Manual (FRM) that the SEC's Division of Corporation Finance staff (the "SEC staff") posted to its Web site on December 9, 2008. The SEC staff posted an update to the FRM on April 2, 2009. The April 2, 2009, updated FRM includes new information as well as updates to some of the additions and changes we have summarized in the Appendix of this *Heads Up*. In addition, the SEC staff has indicated that it will update the FRM periodically. Readers should refer to the SEC's Web site for the most current version of the FRM.

The FRM contains roughly twice the information that was in the Staff Training Manual and is easier to read and more user-friendly.

Recently, the SEC's Division of Corporation Finance issued its new [Financial Reporting Manual](#) (FRM). The FRM replaces the *Division of Corporation Finance — Accounting Rules and Practices: An Overview* (the Staff Training Manual), which was last updated in 2000. It provides the SEC staff's interpretations of form requirements and portions of Regulations S-X and S-K, including guidance on topics such as the form and content of a registrant's financial statements, providing separate financial statements of businesses acquired or to be acquired ("acquirees") and investments in entities accounted for under the equity method ("equity method investees"), pro forma financial information, Management's Discussion and Analysis (MD&A), and non-GAAP financial measures.

The FRM contains roughly twice the information that was in the Staff Training Manual and is easier to read and more user-friendly. Although the FRM is specifically intended for the SEC staff, it contains useful information for registrants and therefore has been posted to the SEC's Web site. It updates the Staff Training Manual content for several new rules and interpretations that have been published since 2000, such as SEC final rule releases, SEC Regulations Committee meeting minutes, and new FASB standards. For example, the FRM updates the Staff Training Manual for items such as:

- The revised filing deadlines for large accelerated, accelerated, and nonaccelerated filers, and SEC reporting considerations for well-known seasoned issuers.
- The accelerated filing deadlines and other changes made in the revised Form 8-K disclosure requirements.¹
- The effects of Statements 141(R)² and 160³ on SEC reporting.
- Regulation S-X, Rule 3-10.⁴
- Regulation S-X, Rule 3-16.⁵

¹ SEC Final Rule Release No. 33-8400, *Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date*.

² FASB Statement No. 141(R), *Business Combinations*.

³ FASB Statement No. 160, *Noncontrolling Interests in Consolidated Financial Statements* — an amendment of ARB No. 51.

⁴ SEC Regulation S-X, Rule 3-10, "Financial Statements of Guarantors and Issuers of Guaranteed Securities Registered or Being Registered."

⁵ SEC Regulation S-X, Rule 3-16, "Financial Statements of Affiliates Whose Securities Collateralize an Issue Registered or Being Registered."

- The SEC final rule on non-GAAP financial measures.⁶
- SEC reporting considerations for:
 - Foreign private issuers and domestic companies that acquire or have investments in foreign businesses.
 - Smaller reporting companies.
 - Shell companies.

The Appendix of this *Heads Up* includes a table summarizing, by FRM topic number, certain more important additions or changes to the FRM. Note that several topics are marked as “reserved” in the FRM’s table of contents. Also note that Topic 6 has not yet been updated for the SEC’s final rule on foreign issuer reporting enhancements.⁷ The SEC staff intends to update the FRM periodically, will post changes in the “What’s New” section of the SEC’s Web site, and will indicate the date of the last update in each section of the FRM.

⁶ SEC Final Rule Release No. 33-8176, *Conditions for Use of Non-GAAP Financial Measures*.

⁷ SEC Final Rule Release No. 33-8959, *Foreign Issuer Reporting Enhancements*.

Appendix — Summary of Certain Additions/Changes in the FRM

Paragraph/Section Number	Changes/Additions
Topic 1 — Registrant's Financial Statements	
Section 1100 — Financial Statements and Schedules in Registration and Proxy Statements	
1140.3	Significantly expands the table that addresses the financial statements required for a registrant and target company in proxy statements.
1140.6	Clarifies that a registrant must provide, in a proxy statement "soliciting authorization for the disposal of a significant business," the registrant's audited financial statements and the unaudited financial statements of the business to be disposed of for the most recent two years and any required interim periods.
1140.8	Indicates that Regulation S-X, Rule 3-06(b), ⁸ which permits, in certain circumstances, the filing of financial statements for a period of 9 to 12 months in satisfaction of the one-year financial statement requirement, does not apply to a target company's financial statements in a proxy statement.
Section 1200 — Age of Financial Statements in Registration or Proxy Statements	
1220.1(g)	Indicates that reporting and nonreporting target companies must comply with the "updating requirements" for registrants in proxy statements. ⁹ In addition, states that nonreporting target companies should follow the deadlines for nonaccelerated filers.
Section 1300 — Periodic Reporting Requirements (Exchange Act Filings)	
1320.1	Provides delinquent filers with guidance on requesting an accommodation to file a comprehensive Form 10-K.
Section 1340	Clarifies the different form and disclosure requirements for large accelerated, accelerated, and nonaccelerated filers.
Topic 2 — Other Financial Statements Required	
Section 2000 — Businesses Acquired or to Be Acquired (Excluding Target Companies in Form S-4)	
2005.6–7	New paragraphs clarifying that the requirement to provide financial statements of an acquiree under Rule 3-05 ¹⁰ does not apply to an entity that is the registrant's predecessor. Instead, the Regulation S-X requirements for a registrant's financial statements apply in such circumstances.
2015.5, 2020.2, 2020.4	Provide guidance on how a registrant should perform the significance tests for an acquiree if an acquisition is accounted for under Statement 141(R). For example, the consideration transferred is used as the numerator for the investment test and excludes transaction costs but includes the fair value of all contingent consideration, which is consistent with the requirements of Statement 141(R).
2020.1	Clarifies that (1) the SEC staff will not accept significance tests other than those specified in Rule 3-05 and (2) a registrant's request to waive one or more years of an acquiree's financial statements is only granted in "highly exceptional circumstances where income has been affected by an unusual and nonrecurring item and the . . . income test is significantly disproportionate to the asset and investment tests." Even in such circumstances, it is unlikely that the SEC staff will waive all audited periods.
2020.5	Provides examples of situations in which financial statements of an acquiree may be required when a registrant acquires an additional interest in a business that it already consolidated.
2025.1	Indicates that a registrant should measure significance by using financial statements that reflect retrospective adjustments for discontinued operations and changes in accounting principle for acquisitions occurring after the retrospectively adjusted financial statements have been filed. In addition, a new note indicates that for acquisitions completed on or before the date the retrospectively adjusted financial statements are filed, the registrant may use either the pre-adjustment or post-adjustment financial statements. Such an election should be consistently applied.
2025.2	A registrant may acquire a business after year-end and before it is required to file its Form 10-K for the most recently completed fiscal year. If the registrant files its Form 10-K before the financial statements of the acquiree must be filed on a Form 8-K, to evaluate the significance of the acquiree, the registrant may use either the financial statements in (1) the recently filed Form 10-K or (2) the Form 10-K for the previous year. This paragraph clarifies that if an acquiree is significant under one method, but not the other, the registrant should consider whether not filing the acquiree's financial statements represents a material omission.
2025.5–6 and 2025.8	Provide guidance on the financial statements a registrant must use to measure the significance of an acquiree when (1) either the registrant or the acquiree has been in existence for less than one year, (2) either the registrant or the acquiree has changed its fiscal year and the transition period is less than nine months, and (3) the registrant acquires a business after a reverse recapitalization of a legal target company.
2030.4	Indicates that in certain circumstances, a registrant filing an initial registration statement may use post-acquisition periods that are included in the registrant's audited income statement to reduce the number of periods of required pre-acquisition income statements of the acquiree.
2040.2	Clarifies how to determine whether an acquisition is "of major significance." This assessment helps registrants determine whether they may be required to continue to present previously filed financial statements of an acquiree in a registration statement or proxy statement.

⁸ SEC Regulation S-X, Rule 3-06, "Financial Statements Covering a Period of Nine to Twelve Months."

⁹ See SEC Regulation S-X, Rule 3-12, "Age of Financial Statements at Effective Date of Registration Statement or at Mailing Date of Proxy Statement."

¹⁰ SEC Regulation S-X, Rule 3-05, "Financial Statements of Businesses Acquired or to Be Acquired."

2045.17	Provides an exception indicating that the age of an acquirer's financial statements in a Form 8-K "should be based on the effective date of the registration statement, not the Form 8-K filing date," when the effective date of a registration statement occurs after the initial Form 8-K filing to report the acquisition but before the financial statements must be filed in the Form 8-K.
Section 2050	New section that explains the implications of, and types of offerings that may or may not be permitted, when a registrant has not filed the required financial statements for an acquirer.
Section 2065	Provides guidance on preparing "carve-out" and abbreviated financial statements, and on calculating significance when abbreviated financial statements are presented.
Section 2070	Expands guidance on how an entity should perform the significance tests in an initial public offering (IPO) when applying SAB 80. ¹¹
Section 2100 — Disposition of a Business	
2100.1	New paragraph that clarifies the reporting requirements for the disposition of a business.
Section 2200 — Financial Statements of Target Companies in Form S-4	
Section 2200	Provides new and clarified guidance on how a registrant should report information about target companies in a Form S-4. Also, identifies the differences between the financial statement requirements for a target company in a Form S-4 and the financial statement requirements for a target company in a Form 8-K "reporting consummation of the business combination."
Section 2300 — Real Estate Acquisitions and Properties Securing Mortgages	
2310.1	Indicates that financial statements for real estate operations must be provided for, among other items, completed individually significant property acquisitions made during any of the years presented.
Section 2325	New section that describes the reporting requirements for real estate acquisitions in blind pool offerings subject to Industry Guide 5. ¹²
2330.8–10	Clarify the financial statement requirements for acquired real estate that has limited or no prior rental history.
2340.2	Clarifies that registrants should provide footnote disclosure of summarized lessee or lease guarantor financial information for properties subject to a net lease with a single tenant when the purchase price exceeds 10 percent but is less than 20 percent of the registrant's total assets, in a manner consistent with SAB Topic 1.1. ¹³
Section 2400 — Equity Method Investments, Including Fair Value Option	
2405.2–3	Indicate that the term "50 percent or less owned entity" refers to an equity method investee even if voting ownership exceeds 50 percent.
2405.7–10	Clarify the due dates for a registrant's filing of the financial statements of significant equity method investees.
2410.2(d)	Indicates that a registrant must only include in the significance test any gain or loss from a disposition of an interest in a tested equity method investee that is accounted for under the equity method both before and after the disposition. A registrant may exclude from the numerator any other gains or losses arising from dispositions of interests in the tested equity method investee.
2410.5	Indicates that if, after filing its Form 10-K, a registrant reports a discontinued operation and subsequently files a registration statement, the registrant should continue to use its financial statements that were included in the Form 10-K to measure the significance of equity method investees. However, when preparing its Form 10-K for the following year (the year when the discontinued operation was reported), the registrant must remeasure the significance of equity method investees by using the financial statements that have been retrospectively adjusted to reflect the discontinued operation for all periods.
2420.4	Clarifies that if summarized financial information of equity method investees is required for any period, comparative disclosure is required for all periods, even if the significance of the equity method investees did not exceed 10 percent in such periods.
2420.6–8	Provide guidance on the requirement for disclosure of summarized income statement information for equity method investees in a registrant's interim financial statements, including how to perform the significance tests and the periods for which disclosure is required.
2435.1–3	Provide guidance on complying with the SEC reporting requirements related to equity method investees for which the fair value option is elected under Statement 159. ¹⁴ For example, in the determination of significance, the change in fair value reflected in the registrant's income statement should be used in the numerator in lieu of the registrant's share of equity in earnings of the equity method investee.
Section 2500 — Guarantors of Securities	
Note to 2500.3	Specifies that, in addition to the full financial statements of the guarantor subsidiaries, MD&A and selected financial data are required when a guarantor subsidiary is not 100 percent owned (if required for the parent). In addition, if full financial statements of the guarantor subsidiaries are required for any subsidiary guarantor when one or more of the guarantees are not full and unconditional, management's narrative analysis of material changes is required.
Section 2700 — Credit — Third Party Financial Statements	
Section 2705	New section that clarifies the requirements of Regulation S-K for asset-backed securities.

¹¹ SEC Staff Accounting Bulletin Topic 1.J, "Application of Rule 3-05 in Initial Public Offerings" (SAB 80).

¹² SEC *Industry Guides*, Securities Act Industry Guide 5, "Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships."

¹³ SEC Staff Accounting Bulletin Topic 1.1, "Financial Statements of Properties Securing Mortgage Loans."

¹⁴ FASB Statement No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* — including an amendment of FASB Statement No. 115.

Note to 2705.3	Clarifies that the financial statements a registrant provides for significant obligors of pool assets ¹⁵ must meet all the requirements of Regulation S-X, Rules 1-01 through 12-29, even though certain proxy guidance might be interpreted as indicating that certain components (e.g., financial statement schedules) are not required.
Section 2800 — Other Financial Statements	
2810.3	Clarifies the interaction between the restricted net asset disclosures and parent-only financial statements.
Section 2815	Clarifies that a registrant may need to provide financial statements and other financial information of a significant customer to “reasonably inform investors about” the registrant’s financial position, results of operations, or cash flows.
Section 2820	Clarifies that financial and other information may be necessary when a registrant has “investment risk due to substantial asset concentration.”
Topic 3 — Pro Forma Financial Information	
Note to 3110.1	Clarifies that full pro forma financial information ¹⁶ is generally not required for the acquisition of an equity method investment if the registrant elects the fair value option under Statement 159, even though the acquisition of such an investment would meet the definition of a business. Registrants should instead provide narrative disclosures regarding the financial statement impact of applying Statement 159.
3110.3	Provides guidance on how a registrant that acquires individually insignificant businesses should prepare pro forma financial statements.
3330.3	Provides guidance regarding pro forma financial information in a business combination between a domestic registrant and a foreign acquiree that have different fiscal year-ends.
3620	Clarifies that pro forma basic earnings per share (EPS) reflecting a conversion of preferred stock into common stock in an IPO should not be presented after the IPO.
Topic 5 — Smaller Reporting Companies	
	An updated section on SEC reporting considerations for smaller reporting companies. In addition, guidance on smaller reporting companies has been embedded in other topics.
Topic 6 — Foreign Private Issuers and Foreign Businesses	
Section 6230	Clarifies the requirements for updating financial statements in a delayed or continuous offering.
Section 6300	New section that clarifies the filing requirements for foreign private issuers using International Financial Reporting Standards.
6410.4	Indicates that a foreign company that does a “backdoor” listing via a reverse recapitalization with a U.S. public shell must file, within four days of the acquisition, a Form 8-K that includes financial statements of the foreign company in U.S. GAAP for all periods presented. Financial statements in home-country GAAP reconciled to U.S. GAAP are not appropriate.
6510.8	Contains new guidance that allows foreign private issuers to use either their home-country GAAP or U.S. GAAP when preparing information required by supplemental schedules. A reconciliation from home-country GAAP to U.S. GAAP is not required.
Section 6900	New section that clarifies when foreign private issuers must comply with the internal control provisions of the Sarbanes-Oxley Act. ¹⁷
Topic 7 — Related Party Matters	
7210 and 7220.1(a)	Indicate that a registrant is not required to impute costs when preparing its financial statements as long as the costs were not incurred by its parent or others. In a manner consistent with Statement 57, ¹⁸ any significant compensation arrangements that are recorded below market level should be disclosed in the notes to the financial statements. In addition, the guidance in the Staff Training Manual stating that “contributed services ordinarily need not be reflected if the entity is in formation or earliest phases of development stage” has been deleted.
7330.4	Clarifies that for asset transactions with a related party before an IPO, gains on sales of assets “should be taken to capital” and losses on sales of assets “provide evidence of impairment and should be recognized in the income statement.”
7520.1	Provides factors that registrants should consider when evaluating the fair value of privately-held-company equity securities issued as compensation. Furthermore, if the estimated fair value is substantially below the IPO price, registrants should be able to reconcile and explain the difference.
7520.2(b)	Clarifies that registrants should include, in an IPO and subsequent filings, nominal issuances of common stock and potential common stock in the calculation of EPS for periods before issuance. This retroactive treatment is consistent with that required for stock splits and stock dividends.
Topic 8 — Non-GAAP Measures of Financial Performance, Liquidity, and Net Worth	
8120.2–3	Provide examples of measures that are considered non-GAAP and those that are not.

¹⁵ Under SEC Regulation AB, Item 1112, “Significant Obligor of Pool Assets.”

¹⁶ SEC Regulation S-X, Article 11, “Pro Forma Financial Information.”

¹⁷ Section 404 of the Sarbanes-Oxley Act of 2002.

¹⁸ FASB Statement No. 57, *Related Party Disclosures*.

8120.4	Discusses when non-GAAP financial measures made in connection with proposed business combinations or pertaining to material contractual arrangements (e.g., debt covenants) are not subject to Regulation G ¹⁹ and Regulation S-K, Item 10(e). ²⁰ In addition, provides guidance regarding when non-GAAP per-share measures may be disclosed and when such disclosure would be prohibited.
Sections 8130 and 8140	Provide new tables that summarize the applicability, requirements, and prohibitions of Regulation G and Regulation S-K, Item 10(e), including their applicability to foreign private issuers.
Section 8160	Lists common disclosure problems with non-GAAP measures, such as (1) disclosures of why the non-GAAP measure is used; (2) the titles of non-GAAP measures; (3) the reconciliation to the most directly comparable GAAP measure; and (4) whether the non-GAAP measure is a performance measure, liquidity measure, or both.
Section 8170	Provides considerations regarding the presentation of certain non-GAAP measures, such as system-wide sales (typically used by registrants that earn revenues in multiple ways) and “managed basis” measures, which may be used, for example, by registrants with significant securitization activities.
Section 8200	Clarifies how to calculate the ratio of earnings to fixed charges. Among other items, provides guidance on the definition of earnings, whether fixed charges should include amounts for guarantees, and whether preferred dividend requirements should include any accretion in the carrying value of redeemable preferred stock.

Topic 9 — Management’s Discussion and Analysis of Financial Position and Results of Operations (MD&A)

New topic that gives an overview of the objectives and requirements of MD&A, including suggestions for how to improve MD&A disclosures. An important addition includes the circumstances in which supplemental MD&A disclosures based on pro forma information may be meaningful and related guidance.

Topic 12 — Reverse Acquisitions and Reverse Recapitalizations

12210.1	Indicates that in a reverse acquisition or reverse recapitalization, the significance of the accounting acquirer is irrelevant because the accounting acquirer is considered the registrant’s predecessor.
12220.2	Clarifies that the accounting acquirer/legal acquiree may not provide 9 to 12 months of financial statements to satisfy the one-year financial statement requirement.
12240.2	Indicates that a change in fiscal year-end cannot result in a lapse in reporting any periods of financial statements for either the registrant or the accounting acquirer/legal acquiree.
12260	Clarifies the financial statement reporting requirements for a reverse acquisition in a registration statement or proxy statement.

Topic 13 — Effects of Subsequent Events on Financial Statements Required in Filings

Section 13100	Clarifies that certain events (e.g., reporting a discontinued operation, a change in reportable segments, or a change in accounting principle) that occur after the end of a fiscal year will result in retroactive revision of the annual financial statements if they are reissued after financial statements covering the period during which the event occurred have been filed.
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Topic 14 — Tender Offers

14210.1	Sets forth the primary 1934 Act documents used to file tender offers ²¹ and when they must be filed.
14310.3	Clarifies that financial information in Schedule TO, “Tender Offer” (Schedule TO), does not need to be recast for discontinued operations or changes in segments, since the financial statements are not deemed to be reissued because of their inclusion in a Schedule TO. However, disclosure of the change should be provided.
14310.4	States that if a new Form 10-K or Form 10-Q is filed, there is no requirement to file an amendment to Schedule TO to update that information; however, the registrant should consider whether the information represents a “material change.”
14410.1–2	Provide guidance on when audited financial statements for the most recent fiscal year-end are required for nonregistrant bidders and foreign private issuers, as well as when foreign private issuers need to provide quarterly information.

Topic 15 — Employee Stock Benefit Plans

15120.3	Clarifies that audit reports included in a Form 11-K must be audited by a firm registered with the PCAOB.
15120.4(a)	Provides information about registrants’ eligibility to use Form S-8 to register new employee stock benefit plans.
15230	Indicates that employee benefit plans that elect to rely on Exchange Act Rule 15d-21 ²² when filing Form 11-K are not subject to any Form 8-K reporting requirements, including the Item 4.01 requirements regarding changes in the plan’s certifying accountant.

¹⁹ SEC Regulation G, “Disclosure of Non-GAAP Financial Measures.”

²⁰ Regulation S-K, Item 10(e), “Use of Non-GAAP Financial Measures in Commission Filings.”

²¹ Schedules TO-I, “Tender Offer/Issuer”; TO-T, “Tender Offer/Third Party”; and TO-C, “Tender Offer/Communications.”

²² Rule 15d-21 of the Securities Exchange Act of 1934, “Reports for Employee Stock Purchase, Savings and Similar Plans.”

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