

§210.3-14

person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

§210.3-14 Special instructions for real estate operations to be acquired.

(a) If, during the period for which income statements are required, the registrant has acquired one or more properties which in the aggregate are significant, or since the date of the latest balance sheet required has acquired or proposes to acquire one or more properties which in the aggregate are significant, the following shall be furnished with respect to such properties:

(1) Audited income statements (not including earnings per unit) for the three most recent fiscal years, which shall exclude items not comparable to the proposed future operations of the property such as mortgage interest, leasehold rental, depreciation, corporate expenses and Federal and state income taxes: *Provided, however,* That such audited statements need be presented for only the most recent fiscal year if

(i) The property is not acquired from a related party;

(ii) Material factors considered by the registrant in assessing the property are described with specificity in the filing with regard to the property, including sources of revenue (including, but not limited to, competition in the rental market, comparative rents, occupancy rates) and expense (including, but not limited to, utility rates, ad valorem tax rates, maintenance expenses, capital improvements anticipated); and

(iii) The registrant indicates in the appropriate filing that, after reasonable inquiry, the registrant is not aware of any material factors relating to that specific property other than those discussed in response to paragraph (a)(1)(ii) of this section that would cause the reported financial information not to be necessarily indicative of future operating results.

NOTE: The discussion of material factors considered should be combined with that required by Item 15 of Form S-11.

(2) If the property is to be operated by the registrant, there shall be furnished a statement showing the estimated taxable operating results of the

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registrant based on the most recent twelve month period including such adjustments as can be factually supported. If the property is to be acquired subject to a net lease the estimated taxable operating results shall be based on the rent to be paid for the first year of the lease. In either case, the estimated amount of cash to be made available by operations shall be shown. There shall be stated in an introductory paragraph the principal assumptions which have been made in preparing the statements of estimated taxable operating results and cash to be made available by operations.

(3) If appropriate under the circumstances, there shall be given in tabular form for a limited number of years the estimated cash distribution per unit showing the portion thereof reportable as taxable income and the portion representing a return of capital together with an explanation of annual variations, if any. If taxable net income per unit will become greater than the cash available for distribution per unit, that fact and approximate year of occurrence shall be stated, if significant.

(b) Information required by this section is not required to be included in a filing on Form 10-K.

[45 FR 63687, Sept. 25, 1980, as amended at 47 FR 25122, June 10, 1982; 73 FR 953, Jan. 4, 2008]

§210.3-15 Special provisions as to real estate investment trusts.

(a)(1) The income statement prepared pursuant to §210.5-03 shall include the following additional captions between those required by §210.5-03.15 and 16: (i) Income or loss before gain or loss on sale of properties, extraordinary items and cumulative effects of accounting changes, and (ii) gain or loss on sale of properties, less applicable income tax.

(2) The balance sheet required by §210.5-02 shall set forth in lieu of the captions required by §210.5-02.31(a)(3): (i) The balance of undistributed income from other than gain or loss on sale of properties and (ii) accumulated undistributed net realized gain or loss on sale of properties. The information specified in §210.3-04 shall be modified similarly.