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(4) Registration statements and shareholder reports under the Investment Company Act of 1940 (part 274 of this chapter), except as otherwise specifically provided in the forms which are to be used for registration under this Act.

(b) The term financial statements as used in this part shall be deemed to include all notes to the statements and all related schedules.

(c) In addition to filings pursuant to the Federal securities laws, § 210.4–10 applies to the preparation of accounts by persons engaged, in whole or in part, in the production of crude oil or natural gas in the United States pursuant to section 503 of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6383) (EPCA) and section 1(c) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796), as amended by section 505 of EPCA.

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

Unless the context otherwise requires, terms defined in the general rules and regulations or in the instructions to the applicable form, when used in Regulation S-X (this part 210), shall have the respective meanings given in such instructions or rules. In addition, the following terms shall have the meanings indicated in this section unless the context otherwise requires.

(a)(1) Accountant's report. The term accountant's report, when used in regard to financial statements, means a document in which an independent public or certified public accountant indicates the scope of the audit (or examination) which he has made and sets forth his opinion regarding the financial statements taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

(2) Attestation report on internal control over financial reporting. The term attestation report on internal control over financial reporting means a report in which a registered public accounting firm expresses an opinion, either unqualified or adverse, as to whether the registrant maintained, in all material respects, effective internal control over financial reporting (as defined in §240.13a–15(f) or §240.15d–15(f) of this chapter), except in the rare circumstance of a scope limitation that cannot be overcome by the registrant or the registered public accounting firm which would result in the accounting firm disclaiming an opinion.

(3) Attestation report on assessment of compliance with servicing criteria for asset-backed securities. The term attestation report on assessment of compliance with servicing criteria for asset-backed securities means a report in which a registered public accounting firm, as required by §240.13a–18(c) or §240.15d–18(c) of this chapter, expresses an opinion, or states that an opinion cannot be expressed, concerning an asserting party's assessment of compliance with servicing criteria, as required by §240.13a–18(b) or §240.15d–18(b) of this chapter, in accordance with standards on attestation engagements. When an overall opinion cannot be expressed, the registered public accounting firm must state why it is unable to express such an opinion.

(a) Material weakness means a deficiency, or a combination of deficiencies, in internal control over financial reporting (as defined in §240.13a–15(f) or §240.15d–15(f) of this chapter) such that there is a reasonable possibility that a material misstatement of the registrant’s annual or interim financial statements will not be prevented or detected on a timely basis.

Significant deficiency means a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of the registrant’s financial reporting.

(b) Affiliate. An affiliate of, or a person affiliated with, a specific person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
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(c) Amount. The term amount, when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(d) Audit (or examination). The term audit (or examination), when used in regard to financial statements, means an examination of the financial statements by an independent accountant in accordance with generally accepted auditing standards, as may be modified or supplemented by the Commission, for the purpose of expressing an opinion thereon.

(e) Bank holding company. The term bank holding company means a person which is engaged, either directly or indirectly, primarily in the business of owning securities of one or more banks for the purpose, and with the effect, of exercising control.

(f) Certified. The term certified, when used in regard to financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant.

(g) Control. The term control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(h) Development stage company. A company shall be considered to be in the development stage if it is devoting substantially all of its efforts to establishing a new business and either of the following conditions exists: (1) Planned principal operations have not commenced. (2) Planned principal operations have commenced, but there has been no significant revenue therefrom.

(i) Equity security. The term equity security means any stock or similar security; or any security convertible, with or without consideration, into such a security; or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right.

(j) Fifty-percent-owned person. The term fifty-percent-owned person, in relation to a specified person, means a person approximately 50 percent of whose outstanding voting shares is owned by the specified person either directly, or indirectly through one or more intermediaries.

(k) Fiscal year. The term fiscal year means the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

(l) Foreign business. A business that is majority owned by persons who are not citizens or residents of the United States and is not organized under the laws of the United States or any state thereof, and either:

1. More than 50 percent of its assets are located outside the United States; or
2. The majority of its executive officers and directors are not United States citizens or residents.

(m) Insurance holding company. The term insurance holding company means a person which is engaged, either directly or indirectly, primarily in the business of owning securities of one or more insurance companies for the purpose, and with the effect, of exercising control.

(n) Majority-owned subsidiary. The term majority-owned subsidiary means a subsidiary more than 50 percent of whose outstanding voting shares is owned by its parent and/or the parent’s other majority-owned subsidiaries.

(o) Material. The term material, when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters about which an average prudent investor ought reasonably to be informed.

(p) Parent. A parent of a specified person is an affiliate controlling such person directly, or indirectly through one or more intermediaries.

(q) Person. The term person means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.

(r) Principal holder of equity securities. The term principal holder of equity securities, used in respect of a registrant or other person named in a particular statement or report, means a holder of record or a known beneficial owner of more than 10 percent of any class of equity securities of the registrant or
other person, respectively, as of the
date of the related balance sheet filed.

(s) Promoter. The term promoter in-
cludes:

(1) Any person who, acting alone or
in conjunction with one or more other
persons, directly or indirectly takes
initiative in founding and organizing
the business or enterprise of an issuer;

(2) Any person who, in connection
with the founding and organizing of the
business or enterprise of an issuer, di-
rectly or indirectly receives in consid-
eration of services or property, or both
services and property, 10 percent or
more of any class of securities of the
issuer or 10 percent or more of the pro-
ceeds from the sale of any class of secu-
rities. However, a person who receives
such securities or proceeds either sole-
ly as underwriting commissions or
solely in consideration of property
shall not be deemed a promoter within
the meaning of this paragraph if such
person does not otherwise take part in
founding and organizing the enterprise.

(t) Registrant. The term registrant
means the issuer of the securities for
which an application, a registration
statement, or a report is filed.

(u) Related parties. The term related
parties is used as that term is defined in
the Glossary to Statement of Financial
Accounting Standards No. 57, “Related
Party Disclosures.”

(v) Share. The term share means a
share of stock in a corporation; the unit
of interest in an unincorporated per-
son.

(w) Significant subsidiary. The term
significant subsidiary means a sub-
sidiary, including its subsidiaries,
which meets any of the following con-
ditions:

(1) The registrant’s and its other sub-
sidiaries’ 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 fis-
cal year (for a proposed combination
between entities under common con-
trol, this condition is also met when
the number of common shares ex-
changed or to be exchanged by the reg-
istrant exceeds 10 percent of its total
common shares outstanding at the date
the combination is initiated); or

(2) The registrant’s and its other sub-
sidiaries’ proportionate share of the
total assets (after intercompany elim-
nations) of the subsidiary exceeds 10
percent of the total assets of the reg-
istrants and its subsidiaries consoli-
dated as of the end of the most re-
cently completed fiscal year; or

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

NOTE TO PARAGRAPH (w): A registrant that
files its financial statements in accordance
with or provides a reconciliation to U.S.
Generally Accepted Accounting Principles
shall make the prescribed tests using
amounts determined under U.S. Generally
Accepted Accounting Principles. A foreign
private issuer that files its financial state-
ments in accordance with IFRS as issued by
the IASB shall make the prescribed tests
using amounts determined under IFRS as
issued by the IASB.

COMPUTATIONAL NOTE: For purposes of
making the prescribed income test the fol-
lowing guidance should be applied:

1. When a loss exclusive of amounts attrib-
utable to any noncontrolling interests has
been incurred by either the parent and its
subsidiaries consolidated or the tested sub-
sidiary, but not both, the equity in the in-
come or loss of the tested subsidiary exclu-
sive of amounts attributable to any non-
controlling 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 sub-
sidiaries 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 in-
come should be submitted for purposes of the
computation. Any loss years should be omit-
ted for purposes of computing average in-
come.

3. Where the test involves combined enti-
ties, as in the case of determining whether
summarized financial data should be pre-
sented, entities reporting losses shall not be
aggregated with entities reporting income.

(x) Subsidiary. A subsidiary of a speci-
"
such person directly, or indirectly through one or more intermediaries.

(y) Totally held subsidiary. The term totally held subsidiary means a subsidiary (1) substantially all of whose outstanding equity securities are owned by its parent and/or the parent’s other totally held subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent’s other totally held subsidiaries, in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within 1 year from the date of its creation, whether evidenced by securities or not. Indebtedness of a subsidiary which is secured by its parent by guarantee, pledge, assignment, or otherwise is to be excluded for purposes of paragraph (x)(2) of this section.

(z) Voting shares. The term voting shares means the sum of all rights, other than as affected by events of default, to vote for election of directors and/or the sum of all interests in an unincorporated person.

(aa) Wholly owned subsidiary. The term wholly owned subsidiary means a subsidiary substantially all of whose outstanding voting shares are owned by its parent and/or the parent’s other wholly owned subsidiaries.

(bb) Summarized financial information. (1) Except as provided in paragraph (aa)(2), summarized financial information referred to in this regulation shall mean the presentation of summarized information as to the assets, liabilities and results of operations of the entity for which the information is required. Summarized financial information shall include the following disclosures:

(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

(2) Summarized financial information for unconsolidated subsidiaries and 50 percent or less owned persons referred to in and required by §210.10–01(b) for interim periods shall include the information required by paragraph (aa)(1)(ii) of this section.

[37 FR 14593, July 21, 1972]

EDITORIAL NOTE: For Federal Register citations affecting §210.1–02, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

QUALIFICATIONS AND REPORTS OF ACCOUNTANTS

SOURCE: Sections 210.2–01 through 210.2–05 appear at 37 FR 14594, July 21, 1972, unless otherwise noted.

§210.2–01 Qualifications of accountants.

Preliminary Note to §210.2–01

1. Section 210.2–01 is designed to ensure that auditors are qualified and independent of their audit clients both in fact and in appearance. Accordingly, the rule sets forth restrictions on financial, employment, and business relationships between an accountant and an audit client and restrictions on an accountant providing certain non-audit services to an audit client.

2. Section 210.2–01(b) sets forth the general standard of auditor independence. Paragraphs (c)(1) to (c)(5) reflect the application of the general standard to particular circumstances. The rule does not purport to, and the Commission could not, consider all circumstances that raise independence concerns, and these are subject to the general standard in §210.2–01(b). In considering this standard, the Commission looks in the first instance to whether a relationship or the provision of a service: creates a mutual or conflicting interest between the accountant and the audit client; places the accountant in the position of auditing his or her own work; results in the accountant acting as management or an employee of the audit client; or places the accountant in a position of being an advocate for the audit client.