

November 24, 2015

Via E-mail: rule-comment@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Secretary

Re: Effectiveness of Financial Disclosures About Entities Other Than the Registrant – File No. S7-20-15

Dear Ladies and Gentlemen:

We appreciate the opportunity to submit this letter in response to the request by the Securities and Exchange Commission (the “Commission”) for comment on the effectiveness of financial disclosure requirements in Regulation S-X for certain entities other than the registrant. In particular, we are writing to suggest certain amendments to Rule 3-14 of Regulation S-X (“Rule 3-14”).

While we believe that Rule 3-14 serves an important purpose and supports the Commission’s goal of ensuring that investors have the information needed to make informed decisions, unnecessary inconsistencies between Rule 3-05 of Regulation S-X (“Rule 3-05”) and Rule 3-14 can result in inefficiencies and uncertainties and place undue burdens on registrants, without providing investors with meaningful information. We respectfully request the Commission consider the following suggestions to harmonize certain requirements of Rule 3-14 with those of Rule 3-05.

1. Rule 3-14 should be amended to align it with Rule 3-05(b)(4)(i), so that Rule 3-14 contains an exception for acquisitions that are less than or equal to 50% significant.

Rule 3-05(b)(4)(i) provides that if an acquisition or probable acquisition of a business is less than or equal to 50% significant, financial statements of such business need not be included in the acquiror’s registration statement or proxy statement unless the registration statement is declared effective, or the proxy statement is mailed, 75 days or more after the acquisition is consummated, and the financial statements have not previously been filed by the acquiror.¹ Rule 3-14 does not provide a similar exception, and Section 2310.2 of the Division of Corporation Finance’s *Financial Reporting Manual* specifically states that the exception in 3-05(b)(4)(i) does not apply to Rule 3-14 financial statements.

¹ See also Section 2040.1 of the Division of Corporation Finance’s *Financial Reporting Manual*.

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The inconsistency between Rule 3-14 and 3-05(b)(4)(i) does not have a compelling rationale. In *Streamlining Disclosure Requirements Relating to Significant Business Acquisitions*, Release No. 33-7355 (Oct. 10, 1996), the Commission amended Rule 3-05 to add Rule 3-05(b)(4)(i). In adopting such amendment, the Commission noted that appropriate policy strives “to remove obstacles to proceeding with registered offerings despite pending or recent acquisitions, but recognizes that an acquisition could be so large relative to an issuer that investors would need financial statements of the acquired business for a reasoned evaluation of any primary capital raising transaction by the issuer.”² It appears that the same reasoning for adding Rule 3-05(b)(4)(i) is also applicable to Rule 3-14. In Release No. 33-7355, the Commission specifically decided against applying the amendment to add Rule 3-05(b)(4)(i) to Rule 3-14, noting that “[b]ecause Rule 3-14 is intended to address unique features of [the real estate] industry, such as the ‘blind pool’ type of offering frequently used in the industry, the Commission has decided to consider revision of Rule 3-14 in the context of its evaluation of a more comprehensive disclosure scheme.”³ As noted in Release No. 33-7355, such an amendment would “provide issuers greater flexibility and efficiency in accessing the public securities markets.”⁴

Whether it is part of a more comprehensive disclosure scheme or a more focused amendment, we respectfully ask that the Commission amend Rule 3-14 to align it with Rule 3-05(b)(4)(i), so that financial statements for property acquisitions that are less than or equal to 50% significant are not required to be included in the acquiror’s registration statement or proxy statement unless such registration statement is declared effective, or a proxy statement is mailed, 75 days or more after the acquisition is consummated.

- 2. Rule 3-14 should be amended to align it with Rule 3-05(b)(4)(iii), so that it is clear that financial statements of an acquired property are not required to be separately presented once the financial results of such property are reflected in the audited consolidated financial statements of the acquiror for a full fiscal year.**

Rule 3-05(b)(4)(iii) provides that separate financial statements of an acquired business are not required to be separately presented once the operating results of the acquired business have been reflected in the audited consolidated financial statements of the acquiror for a complete fiscal year unless such financial statements have not been previously filed or unless the acquired business is of major significance. Rule 3-14 is silent on this point and there is a divergence in practice in connection with how long acquirors continue to separately present Rule 3-14 financial statements. Consistent with Rule 3-05, some acquirors stop separately presenting Rule 3-14 financial statements after such financial statements have been reflected in the audited consolidated financial statements of the acquiror for a full fiscal year. Other acquirors continue

² *Streamlining Disclosure Requirements Relating to Significant Business Acquisitions*, Release No. 33-7355 (Oct. 10, 1996) [61 Fed. Reg. 54509, 54510].

³ *Id* at 54512.

⁴ *Id* at 54513.

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to separately present Rule 3-14 financial statements for all significant property acquisitions made during the period covered by the acquiror's financial statements.

Similar to the inconsistency with Rule 3-05(b)(4)(i), the inconsistency between Rule 3-14 and 3-05(b)(4)(iii) does not have a compelling rationale. Once the financial results of an acquisition, whether of a business or property, that have previously been presented on a standalone basis are reflected in an acquiror's financial statements, there is no reason that the financial statements of the acquisition should also be presented separately. When amending Regulation S-X to establish uniform instructions governing the periods to be covered by financial statements, the Commission noted that the instructions had been designed by the Commission with "the intention of providing users with easy access to sufficient data for an informed decision while refraining from requiring data in excess of the amount necessary to satisfy most users or data for which the costs of preparation cannot be justified by the benefits."⁵ The Commission's concern of providing users with sufficient information for an informed decision without requiring information in excess of the amount necessary is reflected in Rule 3-05(b)(4)(i) but not in Rule 3-14.

We respectfully ask that the Commission amend Rule 3-14 to align it with Rule 3-05(b)(4)(iii), so that it is clear that separate financial statements of acquired property need not be separately presented once the financial results of such property have been reflected in the audited consolidated financial statements of the acquiror for a complete fiscal year.

We would be happy to discuss any questions with respect to this letter, and any such questions may be directed to David H. Roberts at (617) 570-1039.

Sincerely,



GOODWIN PROCTER LLP

⁵ Release No. 33-6234 (Sept. 2, 1980) [45 Fed. Reg. 63682, 63684].