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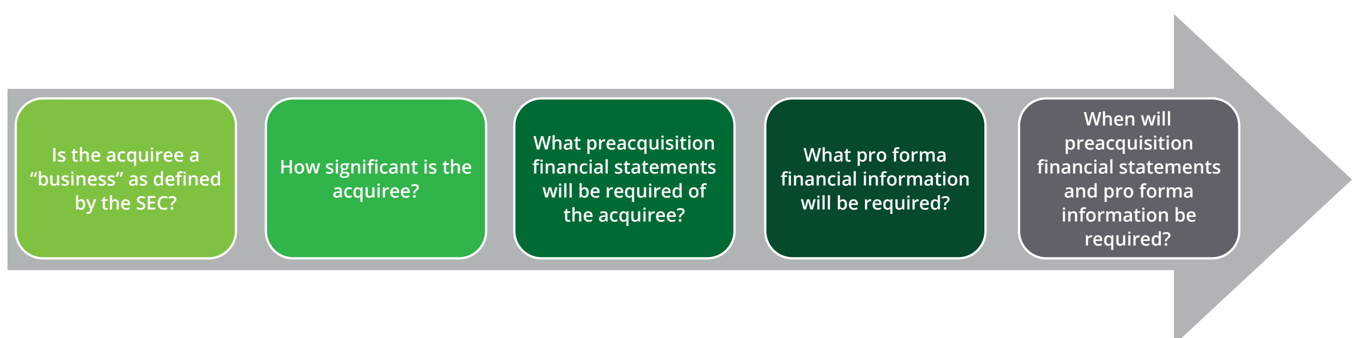
On the Radar

SEC Reporting Considerations for Business Acquisitions

For many companies, M&A transactions are infrequent yet often substantial events with potentially significant consequences. Given their complexity, they can also present a number of accounting and financial reporting challenges and opportunities. SEC registrants planning an acquisition may wish to consider the key requirements discussed below.

Information to Be Gathered Up Front

Under Regulation S-X, Rule 3-05, registrants, including entities undertaking an IPO, are required to file the separate preacquisition financial statements for a significant acquired or to be acquired business (acquiree). Similarly, Regulation S-X, Rule 3-14, may require registrants to provide preacquisition financial statements for a significant acquired or to be acquired real estate operation (real estate acquiree). Registrants must often use judgment to determine their SEC reporting and public-company acquisition disclosure requirements for a transaction. Questions to consider in making this determination include the following, among others:



The Definition of a Business

Separate financial statements under Rule 3-05 are required only if the acquiree meets the definition of a business for SEC reporting purposes. Therefore, a company must carefully determine whether an acquiree qualifies as such. The definition of a business for SEC reporting purposes is not the same as the definition under U.S. GAAP, and financial statements may be required under Rule 3-05 even if the acquisition does not meet the U.S. GAAP definition of a business.

The SEC definition of a business focuses primarily on whether the nature of the revenue-producing activity generally remains the same after the acquisition. The definition of a business under U.S. GAAP (in ASC 805) focuses first on whether the acquisition passes a "screen" test (i.e., whether substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar identifiable assets) and, if not, on whether an acquired set of activities and assets is a business, which is determined by further evaluating a "framework" to determine whether an input and a substantive process were acquired.

Significance of the Acquired Business

The financial information, if any, that must be included in SEC filings is generally based on the size of the acquiree, which the SEC refers to as the acquiree's "significance." To determine the significance of the acquiree, the registrant must perform the investment test, the asset test, and the income test:

Test	Description
Investment Test	The U.S. GAAP purchase price is compared with the aggregate worldwide market value of the registrant's common equity. If the registrant has no aggregate worldwide market value (e.g., when common equity is not publicly traded, including in an IPO), total assets should be used in the test instead.
Asset Test	The registrant's share of the acquiree's total assets is compared with the registrant's total assets on the basis of the most recent preacquisition annual financial statements of each company.
Income Test	• *Income component* — The registrant's share of the acquiree's pretax income is compared with the registrant's pretax income on the basis of the most recent preacquisition annual financial statements of each company. Pretax income is defined in Regulation S-X, Rule 1-02(w), as "consolidated income or loss from continuing operations before income taxes (after intercompany eliminations) attributable to the controlling interests." • *Revenue component* — If both the registrant and the acquiree have material revenue in each of the two most recently completed fiscal years, the revenue component is calculated by comparing the registrant's share of the acquiree's revenue with the registrant's revenue on the basis of the most recent preacquisition annual financial statements of each company. If either the registrant or the acquiree does not have material revenue for each of the two most recently completed fiscal years, only the income component should be used. • An acquiree will only be considered significant under the income test if both the income component and the revenue component (if applicable) exceed the significance threshold (i.e., 20 percent). When both components exceed the significance threshold, the lower of the income or revenue component is used to determine significance in accordance with the income test.

The financial statement periods of the acquiree that the registrant must present will be based on the test that results in the highest significance level, generally as follows:

- *Significance does not exceed 20 percent* — No financial statements required.
- *Significance exceeds 20 percent but not 40 percent* — Financial statements for the most recent fiscal year (audited) and the latest year-to-date interim period that precedes the acquisition date (unaudited).
- *Significance exceeds 40 percent* — Financial statements for the two most recent fiscal years (audited), the latest year-to-date interim period that precedes the acquisition date (unaudited), and the corresponding interim period of the prior year (unaudited).

In addition, registration statement filings must include financial statements and pro forma information for any probable or recently closed acquisitions that are 50 percent or greater in significance. Registrants must also consider the aggregate significance of the individually insignificant acquisitions that are probable and consummated since the end of the registrant's most recently presented fiscal year. Pro forma financial information must be provided if the aggregate significance is 50 percent or greater.

Form of Financial Statements

Preacquisition financial statements of the acquiree are generally prepared on the same basis as if the acquiree were a registrant. However, an acquiree that is not a public company does not need to comply with certain accounting principles or disclosure requirements that apply only to public companies, such as those related to segments or earnings per share. In addition, some accounting standards differentiate between disclosure requirements or adoption dates for public business entities (PBEs) and those for nonpublic entities. Significant acquirees whose financial statements are included in a registrant's filing under Rule 3-05 are considered PBEs under U.S. GAAP. Therefore, such acquirees should use the adoption dates and disclosure requirements for PBEs when preparing their financial statements. However, the SEC staff announced that it would not object to elections by certain PBEs to use the non-PBE effective dates for the sole purpose of adopting the FASB's standards on revenue (ASC 606) and leases (ASC 842).

Generally, the annual financial statements for a significant acquisition may be audited in accordance with AICPA standards. If an acquired company is identified as a predecessor, however, the audit may need to be performed in accordance with PCAOB standards. In addition, while SEC regulations do not require registrants to audit or review interim financial statements provided under Rule 3-05, a company's underwriters will often require that a review of interim information be performed by an independent auditor for due diligence or comfort letter purposes.

A company will want to understand whether the acquiree is able to make available audited annual and unaudited interim financial statements as part of negotiations during the acquisition process because the preparation and subsequent audit of financial statements can take a significant amount of time and effort.

Pro Forma Financial Information

A pro forma balance sheet and income statement are generally required under SEC rules if the business acquisition is deemed to be significant:

Balance Sheet	On the basis of the registrant's latest balance sheet included in the filing, transaction accounting adjustments should be computed by assuming that the transaction was consummated on the balance sheet date. Such adjustments are limited to those that reflect the accounting for the transaction in accordance with U.S. GAAP or IFRS® Accounting Standards, as applicable, and may include, among other items, the recognition of goodwill and intangible assets and adjustments of assets and liabilities to fair value on the balance sheet.
Income Statement	On the basis of the registrant's latest fiscal year and interim period included in the filing, transaction accounting adjustments should be computed by assuming that the transaction occurred at the beginning of the fiscal year presented and was carried forward through any interim period presented.

In addition to the required transaction accounting adjustments, a registrant may choose to present management's adjustments in the form of a reconciliation in the explanatory notes to the pro forma financial information. These adjustments reflect synergies and dis-synergies identified by management when evaluating whether to consummate an acquisition. Such adjustments, to the extent they do not qualify as transaction accounting adjustments, may include, among other things, closing facilities, discontinuing product lines, and terminating employees. When synergies are presented, any related dis-synergies must also be presented.

When Information Is Required

Registrants need to be aware of the timing requirements related to their SEC reporting and public-company acquisition disclosures. The following are considerations related to four key events:

Requirements Related to the Current Report on Form 8-K

A registrant must file an initial Form 8-K within four business days of the consummation of a significant business acquisition. The registrant generally has an additional 71 calendar days to file an amended Form 8-K that contains the financial statements required, including pro forma financial information.

Financing the Acquisition

A registrant may sometimes complete an offering of securities before the consummation of the business acquisition to raise the necessary capital. In doing so, the acquiree's financial statements and related pro forma financial information may need to be provided before the acquisition is consummated.

Registration Statement on Form S-4 and Proxy Statement Requirements

The acquiree's financial statements and related pro forma financial information may be required in registration statements on Form S-4 and in proxy statements, depending on which organization's shareholders must approve the transaction and the nature of the consideration — that is, cash only, cash and equity, or equity only. Financial statement requirements for an acquiree in a registration statement on Form S-4 and in a proxy statement may differ from the requirements in Rule 3-05. Further, a registrant may need to provide additional disclosures for the acquiree (e.g., management's discussion and analysis).

Updating Requirements for Future Registration Statements

An SEC registrant may be required to update the acquiree's financial statements and related pro forma financial information in future registration statements and amended registration statements.

See Deloitte's Roadmap *SEC Reporting Considerations for Business Acquisitions* for a comprehensive discussion of the SEC's guidance on reporting for business acquisitions, including acquisitions of real estate operations and pro forma financial information.

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