

Summary of Disclosure Requirements for Acquired Businesses

The following are the general rules that govern the filing requirements for financial statements of recently acquired businesses.¹

When do historical and pro forma financial statements of an acquired business need to be filed on Form 8-K?

Within 75 days following completion of a “significant” acquisition.

When is an acquisition significant?

If any of the following tests are met at a > 20% level (based on most recent fiscal year), the acquisition is deemed “significant”:

Investment Test	Registrant’s investment in the acquired business (<i>i.e.</i> purchase price) <u>divided by</u> aggregate worldwide market value of registrant’s common equity or, if worldwide market value is unavailable (<i>e.g.</i> IPO), the registrant’s total assets
Asset Test	Consolidated total assets of the acquired business <u>divided by</u> registrant’s consolidated total assets
Income Test	<u>Lower of</u> the following two tests: <i>Net income:</i> acquired company’s pre-tax income from continuing operations before cumulative effect of accounting changes (after intercompany eliminations) (“pre-tax income”) <u>divided by</u> registrant’s pre-tax income <i>Revenue (where registrant and acquired company have recurring annual revenue):</i> registrant’s share of acquired company’s consolidated revenues (after intercompany eliminations) <u>divided by</u> registrant’s consolidated total revenues

When are acquired company financial statements required in a registration statement?

- Any acquisition significant at a > 20% level that closed 75+ days before the effective date of the registration statement; or
- Any acquisition significant at a > 50% level that closed at any point before the offering closed or that is “probable”.

Additional requirements apply if the aggregate impact of businesses acquired or to be acquired since the most recent balance sheet date for which financial statements are not required or are not yet required to be filed exceeds 50%.

Which historical acquired company financial statements are required in a registration statement?

- One year audited if significant at > 20%, but ≤ 40% (but may omit if included in registrant’s post-acquisition results for 9 months) plus most recent interim period (no comparative interim period required).
- Two years audited if significant at > 40% (but may omit if included in registrant’s post-acquisition results for one year) plus any interim periods specified (would include the comparative interim period).

When will historical acquired company financial statements go stale for purposes of going effective on a registration statement?

For annual financial statements, age requirements are generally the same as if the acquiree were the registrant. However, the requirement to update financial statements filed 45 or more days after year end is dependent on the registrant’s (not the acquiree’s) eligibility for relief under S-X 3-01(c). If the registrant would be required to update its financial statements 45 or more days after year end, the acquiree’s financial statements must also be updated. For interim financial statements, age requirements are the same as if the acquiree were the registrant.

Which pro forma financial statements are required?

If historical financial statements of an acquired company are required, pro forma financial statements must also be filed. In a registration statement, if the aggregate impact of businesses acquired or to be acquired since the most recent balance sheet date for which financial statements are not required or are not yet required to be filed exceed 50%, pro forma financial information depicting the aggregate effects of all such businesses in all material respects are required.

¹ There are many exceptions to these general rules and additional rules apply with respect to merger proxy statements, exchange offers, acquisitions of real estate operations, investment companies, entities under common control and smaller reporting companies. The company’s auditors and legal counsel should be consulted in all cases.