KPMG LATHAM&WATKINS LLP

WHEN DO YOU NEED ACQUIRED BUSINESS FINANCIALS IN A PROSPECTUS?

General Rule: Your prospectus must include (or incorporate by reference) financial statements for a **significant** acquisition of a **business** that has **closed 75 days or more** before the offering. Significant means **above 20%** on **any of** the three tests described below. For **probable** acquisitions above the **50%** significance level, financials are needed even if the deal hasn't closed yet. The same is true for recently closed acquisitions above the 50% significance level. In every case where target financial statements are required, you will also need pro forma financial information.

> ***Note: in the case of a probable or recently closed acquisition that is above the 20% significance level but less than the 50% significance level, marketing and/or disclosure considerations may lead to the inclusion of acquired company financial statements (and related pro formas) even before the expiration of the 75-day grace period. This is a case-by-case analysis.***

Here's What You Need in Order to Get Your Answer:

What is the issuer's ***investment*** (GAAP purchase price/consideration transferred)?

What are the ***total assets*** of the target and the acquiror?

What is the ***pre-tax income*** of the target and the acquiror?

Is the transaction "***probable***"?

- Is there a binding purchase agreement or signed LOI?
- This inquiry is fact-specific. Bear in mind industry and issuer-specific considerations.

Is the target a "***business***"?

- Is the target a separate product line, operating unit, division, subsidiary or business entity?
- Will the nature of the revenue-producing activity of the acquired assets remain generally the same as before the transaction?

The SEC Definition of Significant (S-X Rules 3-05 and 1-02(w)):

An acquisition is ***significant*** if you trip **any** of the following three tests above the 20% level:

• **Investment Test**	The amount of the acquiror's investment in the target compared to the acquiror's total assets.
• **Total Asset Test**	The total assets of the target compared to the acquiror's total assets.
• **Pre-Tax Income Test**	The target's income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles **("pre-tax income")** compared to the pre-tax income of the acquiror for its most recent full fiscal year. If either the acquiror or the target had a net loss, then the absolute value of the negative amount is used for this test.

Basic Scenarios	Historical Financial Statements Required
• **Individual acquisition** (or multiple acquisitions of related businesses) **20% significance or less**	**No separate financial statements needed**.
• **Individual acquisition** (or multiple acquisitions of **related** businesses) greater than **20%** significance but less than **40%** significance	**Audited financial statements for the most recent fiscal year** of the target must be included. Unaudited interim financial statements for any stub period may also be needed, subject to staleness rules.
• **Individual acquisition** (or multiple acquisitions of related businesses) greater than **40%** significance but less than **50%** significance	**Audited financial statements for the two most recent fiscal years** of the target must be included. Unaudited interim financial statements for any stub period may also be needed, subject to staleness rules.
• **Individual acquisition** (or multiple acquisitions of related businesses) greater than **50%** significance	**Audited financial statements for the three most recent fiscal years** of the target must be included. Unaudited interim financial statements for any stub period may also be needed, subject to staleness rules.
• **Multiple acquisitions** of **unrelated** businesses that are less than **20%** significant individually, aggregating more than **50%** significance on a combined basis	**Audited financial statements for the most recent fiscal year** will be required for a majority of the acquisitions even if they are individually insignificant (*i.e*. below the 20% significance level). Unaudited interim financial statements for any stub period may also be needed, subject to staleness rules.

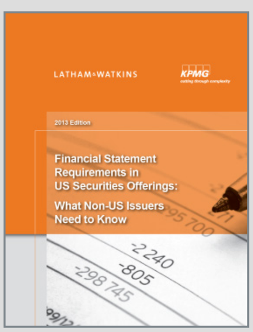
Pro Forma Financial Information Required	
Where historical financial statements of the target are required, pro forma financial information complying with S-X Article 11 must also be included. Article 11 requires:	
• A condensed pro forma **balance sheet**	As of the end of the most recent period for which a consolidated balance sheet of the acquiror is required, unless the transaction is already reflected in that balance sheet.
• A condensed pro forma **income statement**	For the acquiror's most recently completed fiscal year and the most recent stub period of the acquiror, unless the historical income statement reflects the transaction for the entire period.

Special Situations	
• **Emerging growth company IPOs**	EGCs are not required to present more than two years of target's audited financial statements in an IPO filing, even if presenting three years of acquiror audited financials.
• **Using pro forma financials of the acquiror**	A serial acquiror may be able to use pro forma financials that are more recent than its most recent audited financials for purposes of calculating significance in certain circumstances. This can be useful where the pro forma information produces a larger "denominator" for testing significance.
• **Rule 144A offerings**	Since the public offering requirements are only applicable to Rule 144A offerings by analogy, exceptions may be appropriate in some circumstances. This will be a case-by-case analysis.
• **Shelf takedowns**	The rules for shelf takedowns are generally the same as those for new registration statements. However, in certain circumstances, such as a purely secondary offering, it is possible to conduct an offering using an existing shelf without providing historical financial statements for probable acquisitions that exceed the 50% significance level.
• **Acquisitions of related businesses**	Related businesses are treated as a single business when measuring significance. If significance under S-X Rule 3-05 is met, separate financial statements for each of the related businesses (or combined financial statements, if appropriate under GAAP) will be required.
• **Operating real estate (REITs)**	Significance tests and disclosure requirements are different for REITs. Audited income statements must be provided for any "significant" acquisition that would account for 10% or more of the acquiror's total assets as of the last fiscal year end prior to the acquisition. Three years of audited income statements will be required if the acquisition is from a related party (otherwise, one year will suffice). See S-X Rule 3-14.
• **Industry roll-ups**	In the IPO context, additional flexibility may be available under SAB 80; not widely used.

Additional Resources:

For more detailed information on financial statement requirements in US securities offerings, see these publications from Latham & Watkins and KPMG:

Financial Statement Requirements in US Securities Offerings: What You Need to Know



Financial Statement Requirements in US Securities Offerings: What Non-US Issuers Need to Know

Desktop reference of financial statement staleness dates for issuers with fiscal years ending December 31, 2014.

Desktop Staleness Calendar for 2015 Offerings

Latham & Watkins resources offering definitions and explanations in plain English:

Book of Jargon®: US Corporate and Bank Finance Blog and App

Words of Wisdom Blog