

# REIT Disclosure Requirements When Acquiring or Disposing of Real Estate Operations

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*When a public real estate investment trust (REIT) acquires or disposes of real estate, the transaction may trigger financial disclosure requirements under SEC rules and guidance. Specifically, Rule 3-14 of Regulation S-X (Rule 3-14) sets forth the financial statement requirements for the acquisition (or probable acquisition) of a business that generates substantially all of its revenues through the leasing of real property.\*\* Additionally, Article 11 of Regulation S-X (Article 11) requires public REITs to file pro forma financial information reflecting the effect of any significant acquisition or disposition. These requirements can apply to a number of different SEC filings and reports traditionally filed by public REITs, including registration statements, proxy statements and current reports on Form 8-K.*

*Given the recent pace of acquisitions and dispositions of real estate operations in the REIT space, public REITs and other reporting companies should take note of the requirements of Rule 3-14, Article 11 and other disclosure obligations that may apply to them.*

*This article summarizes the analytical framework for identifying and resolving financial statement disclosure issues in connection with the acquisition and disposition of real estate operations.*

## APPLICATION OF RULE 3-14

### Basic Framework—Determining if Rule 3-14 Financial Statements are Required

The purpose of Rule 3-14 is to enable investors to assess the financial impact on a public

REIT of certain real estate acquisitions such that they are able to make an informed investment decision. Analyzing an acquisition or series of acquisitions under Rule 3-14 requires answering a series of questions comprised, at the most basic level, of the following:

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- Are “real estate operations” being acquired?
- Have the acquisitions closed or are the acquisitions “probable?”
- Are the acquisitions “significant,” individually or in the aggregate?

The answers to each of these questions is discussed in further detail below. Answering these questions will determine the Rule 3-14 financial statement requirements, if any, associated with the acquisition or series of acquisitions, and will also guide the corresponding filing obligations associated with those financial statements.

However, correctly navigating the SEC’s rules, forms and related guidance requires careful, nuanced analysis and it is important to consult with a law firm and a public accounting firm to ensure that you have reached the right conclusions and are in full compliance with the SEC’s rules and guidance. Failure to timely file the required Rule 3-14 financial statements can have serious consequences for a public REIT.

### **Rule 3-05 vs. Rule 3-14: Defining “Real Estate Operations”**

Rule 3-14 applies to acquisitions of significant real estate operations, while Rule 3-05 applies to acquisitions of significant business operations. Rule 3-14 is typically the more relevant of these rules for public REITs, though it is also possible for REIT transactions to implicate Rule 3-05 in certain circumstances.

Under Rule 3-14, a “real estate operation” is defined as “a business that generates substantially all of its revenues through the leasing of real property,” which is intended to address

the fact that the acquisition of a “real estate operation” may either be the acquisition of an entity holding real property or a direct interest in the real property.

However, the condition that the acquired business must generate “substantially all” of its revenues through the leasing of real property is not meant to be a bright line test and its application will depend on specific facts and circumstances. For instance, based on current SEC guidance, certain asset classes (e.g., office, apartment and industrial buildings, as well as shopping centers and malls) are generally considered to generate substantially all of their revenues through leasing of real property. Conversely, certain other asset classes (e.g., nursing homes, hotels, golf courses, auto dealerships and equipment rental operations) are generally not considered to generate substantially all of their revenues through leasing of real property, because these operations are more susceptible to variations in revenues and costs due to market and managerial factors.

As a result, all potential revenue streams of an acquisition must be carefully assessed to determine whether the Rule 3-14 or, alternatively, the Rule 3-05 financial statement requirements may apply. The financial statement requirements under the two rules differ, with the requirements of Rule 3-05 generally being more extensive and more burdensome.

It should also be noted that the SEC staff has provided guidance that it is not necessary to provide Rule 3-14 financial statements for a property that has less than three months of rental history such as newly constructed properties or owner-occupied properties. This would include sale-leaseback transactions

where a REIT acquires the real estate assets of previously owner-occupied facilities and leases them back to either the prior owner or a new operator. Also, if a registrant acquires an operating property that it will demolish and build a new rental property, the SEC staff has noted it would not object to the omission of the Rule 3-14 financial statements of the acquired property if the prior rental revenues and operating costs of the property are not representative of the new property to be built. A registrant should explain the basis for omission of the financial statements in the filing. In other cases where the registrant believes the leasing history of a property is not representative of future rental revenues and operating costs, it may request relief from the Office of the Chief Accountant for the SEC's Division of Corporation Finance.

It is important to note that the existence of special circumstances as described above where Rule 3-14 financial statements may not be required does not automatically mean that pro forma financial statements pursuant to Article 11 are also not required. See discussion below under the heading "Determining What Financial Statements are Required."

*Practice Point:* For smaller reporting companies, Rule 8-06, as amended, directs registrants to Rule 3-14 for the requirements relating to financial statement disclosures of real estate operations acquired or to be acquired, while still permitting them to rely on the form and content for annual and interim financial statements provided in Rules 8-02 and 8-03. This would also include those registrants, including REITs, that utilize Regulation A to offer their securities to the public.

### **Determining if an Acquisition is "Probable"**

Rule 3-14 does not define what makes an acquisition "probable" and the SEC has not otherwise provided a bright line test. Existing SEC guidance, however, provides that a determination as to whether any given acquisition is "probable" depends on an ad hoc facts-and-circumstances analysis, including, for example, whether the parties have a definitive written agreement or an agreement in principle, what conditions or contingencies may apply to closing the acquisition and other factors relating to the unique circumstances of such acquisition. The SEC staff has cautioned that there is no one-size-fits-all approach to the question of "probable" and the specific norms in the specific industry and sector must also be taken into account. The SEC staff has further noted that where a registrant's financial statements alone would not provide adequate financial information about the registrant for an investor to make an informed investment decision in light of a pending or potential acquisition, the SEC would view an acquisition as "probable."

### **Determining if an Acquisition is Individually "Significant"**

An individual acquisition is significant if the REIT's investment in the real estate operations exceeds 20% of the aggregate worldwide market value of the REIT's voting and non-voting common equity (also known as the investment test). Unlike Rule 3-05, the asset and income tests do not have to be considered. For purposes of this determination, "related" real estate operations are evaluated as a single acquisition. Real estate operations are considered to be related if they are

under common control or management, the acquisition of one real estate operation is conditional on the acquisition of each other real estate operation, or each acquisition is conditioned on a single common event.

Aggregate worldwide market value of the REIT's voting and non-voting common equity is determined using the average of aggregate worldwide market value calculated daily for the last five trading days of the registrant's most recently completed month ending prior to the earlier of the REIT's announcement date or agreement date of the acquisition.

If a public REIT has no worldwide market value, such as a non-traded REIT, the value is based on the total assets of the registrant and its subsidiaries on a consolidated basis as of the end of the most recently completed fiscal year (or in certain circumstances based on more recent pro forma financial statements). When the investment test is based on total assets of the registrant, assumed debt secured by the real properties to be acquired is to be included in determining the amount of the investment in the acquired real estate operation.

### **Determining if a Series of Acquisitions is "Significant" in the Aggregate**

Rule 3-14 provides that separate financial statements are also required in registration statements and proxy statements, as applicable, when the aggregate impact of consummated and probable acquisitions of real estate operations since the date of the most recently filed audited balance sheet, for which financial statements are either not required or not yet required, exceeds the 50% level.

This 50% significance level is measured

based on common equity market capitalization or total assets consistent with the tests noted above for individually significant acquisitions.

In our view, if acquisitions occur at different points in time since the date of the most recently filed audited balance sheet, the 50% significance level should be based on different market values throughout that period. While this point has not been addressed explicitly by the SEC, Rule 3-14 ties the registrant's market value to the announcement date or agreement date, and therefore significance would necessarily need to be measured based on an aggregation of percentages with different denominators.

If the acquisitions and probable acquisitions are in excess of the 50% level, a registrant is required to provide (i) pro forma financial statements pursuant to Article 11 reflecting the aggregate effects of all such acquisitions (not just a mathematical majority) in all material respects, and (ii) separate historical financial statements for consummated and probable acquisitions whose individual significance exceeds 20% for which financials are not yet otherwise required (i.e., consummated acquisitions that are still in the 74-day grace period (discussed below) or individual probable acquisitions that do not exceed 50% significance).

### **Determining What Financial Statements are Required**

If Rule 3-14 financial statements are required, they must show historical financial information about the acquired operations as well as the impact, on a pro forma basis, of the relevant acquisitions either on an individual or an aggregate basis, as determined by the significance tests described above.

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For all acquisitions or series of acquisitions where financial statements are required (including acquisitions from related parties), Rule 3-14 provides that the financial statements must present one year of audited financial statements plus the most recent year to date interim period prior to the acquisition, or such shorter period as the operation has been in existence. However, Rule 3-06 will permit the filing of audited financial statements covering a period of nine to 12 months to satisfy the requirement for filing audited financial statements for a period of one year for an acquired or to be acquired real estate operation. The audited financial statements are subject to auditor independence requirements. In the past, the SEC staff has provided guidance that for the acquisition of a real estate operation with a rental history of more than three months but less than nine months, the financial statements may be presented on an unaudited basis.

The financial statements to be presented include statements of revenues and expenses, with additional disclosures required in the notes to the financial statements regarding cash flows to the extent available (e.g., the type of any omitted expenses; an explanation of the impracticability of preparing financial statements that include the omitted expenses; and a description of how the financial statements presented are not indicative of the financial condition or results of operations of the acquired business going forward because of the omitted expenses).

When a public REIT is required to provide historical financial statements under Rule 3-14, the historical financial statements must also be accompanied by unaudited pro forma financial information specified under Article 11

reflecting the effect of the relevant acquisition (or group of related acquisitions). These pro formas typically are required to include a pro forma balance sheet and pro forma income statements covering the same periods as those presented in the historical financial statements.

Article 11 is not inextricably linked to Rule 3-14, however. While a requirement to file Rule 3-14 financial statements generally results in an corresponding requirement to provide Article 11 pro forma financial statements, it is also possible for a public REIT to be required to file pro forma financial statement even if it is not required to provide Rule 3-14 financial statements. The most common example of this is a significant disposition, which does not implicate Rule 3-14 at all, but still triggers the requirement to provide pro forma financial statements under Article 11 within four business days of closing, as noted below. Likewise, the SEC staff's view is that even in instances where a significant acquisition (or group of related acquisitions) does not trigger Rule 3-14 (e.g., in the case of a newly-constructed facility or a previously owners-occupied property) the materiality of the transaction alone could trigger a requirement for pro forma financial statements under the "catch-all" clause of Rule 11-01(a)(8) ("other transactions . . . for which disclosure of pro forma financial information would be material to investors"). We urge public REITs to consult with counsel prior to concluding that pro forma financial information would not be required in the case of significant acquisition or disposition transactions.

For purposes of any required pro forma financial statement, the SEC's rules limit adjustments to: (i) "Transaction Accounting Adjustments," that are simply to reflect the ap-



plication of the required accounting treatment of a significant acquisition or disposition; (ii) "Autonomous Entity Adjustments" that are necessary to reflect the operations and financial position of the registrant as a standalone, autonomous entity if the registrant was previously part of another entity; and (iii) "Management's Adjustments," which are optional adjustments, at management's discretion, that may be presented to enhance an understanding of the pro forma effects of the transactions, provided that management has a reasonable basis for the adjustments, they are appropriately limited in scope and they are complete so as to present a fair statement of the pro forma financial information (i.e., they present both the "synergies and dis synergies" of the relevant transaction).

Transaction Accounting Adjustments and Autonomous Entity Adjustments must be shown in separate columns in the pro forma financial statements, and must also include explanatory notes describing each adjustment, any material uncertainties, material assumptions, calculations and such other information "necessary to give a fair and balanced presentation of the pro forma financial information."

Management's Adjustments, on the other hand, must be presented in the explanatory footnotes to the pro forma financial statements in the form of reconciliations. The SEC has noted that this footnote presentation allows registrants the flexibility to include forward-looking information pursuant to the applicable safe harbor provisions for forward-looking statements.

*Practice Point:* Because management must present a complete and fair statement of the pro forma impact, caution must be exercised

when estimating and disclosing synergies and dis-synergies. Such public disclosure may expose a registrant to stockholder litigation or negative market reactions, even when operating inside the safe harbor for forward-looking statements.

### **When to File Rule 3-14 and Pro Forma Financial Statements**

Rule 3-14 historical financial statements and Article 11 pro forma financial statements are generally required in one or more of the following types of SEC filings by public REITs:

- Form 8-K;
- Registration Statements under the Securities Act of 1933 (including post-effective amendments); and
- Proxy Statements.

### *Form 8-K*

If an acquisition of a real estate operation (or group of related real estate operations) is significant under the aggregate market capitalization test (or total asset test, if no market value) described above (i.e., greater than 20% significance), then a public REIT is required to report the acquisition under Item 2.01 of Form 8-K by the fourth business day after the date of acquisition. The REIT also must file Rule 3-14 financial statements and accompanying Article 11 pro forma financial information under Item 9.01 of Form 8-K by the 71st calendar day (or next business day if it occurs on a weekend or holiday) after the Item 2.01 due date.

Under General Instruction B.3. of Form 8-K, a registrant is not required to file an Item 9.01 Form 8-K containing Rule 3-14 financial state-

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ments and pro forma financial information if such registrant has already previously reported the information and the information in the Form 8-K would be “substantially the same” as what was previously presented. The SEC staff has provided the following examples of when previously filed financial statements will not be deemed “substantially the same” pursuant to the instruction:

- The previously filed financial statements would not satisfy the required age of financial statements in the Form 8-K because operating results for two or more interim quarters are omitted;
- The previously filed financial statements are interim financial statements and the Form 8-K requires filing of updated audited annual financial statements; and
- The previously filed acquiree financial statements were prepared in accordance with the requirements for smaller reporting companies in Article 8 of Regulation S-X, but the registrant is not a smaller reporting company.

The Form 8-K filing requirements and the related application of Rule 3-14 may appear relatively straightforward; however, there are a number of transactions where the analysis can be very nuanced and draw on informal SEC staff guidance. The following are a few examples of such transactions. It should be noted that even with similar fact patterns, each case is subject to its specific facts and circumstances and further interpretation by the SEC staff.

Acquisitions by REITs involving joint ventures implicate a number of considerations such as where (i) a joint venture that is

consolidated by the REIT for financial reporting purposes acquires a significant real estate operation, and (ii) a REIT’s unconsolidated joint venture that is itself a significant real estate operation becomes consolidated for financial reporting purposes.

- In the first case, where a registrant’s consolidated joint venture acquires a significant real estate operation, in order to determine if an Item 2.01 Form 8-K and related financial statements under Item 9.01 of Form 8-K are required, such registrant would look to the total investment by the joint venture and not the registrant’s portion of the investment when testing for significance. For example, Company A, a public REIT, enters into a joint venture with Company B and Company A consolidates the joint venture for financial reporting purposes. If the joint venture acquires a real estate operation for \$200 million (which is over the 20% significance test for Company A), with Company A contributing \$150 million (which is under the 20% significance test for Company A) and Company B contributing the remaining \$50 million, an Item 2.01 Form 8-K and related Item 9.01 Form 8-K with 3-14 financial statements and pro forma financial information would have to be filed by Company A for the acquisition because the total investment of the consolidated entity was greater than 20% significant.
- In the second case, where a formerly unconsolidated joint venture that itself meets the definition of a real estate operation is required to be consolidated by a registrant for financial reporting purposes, the question is whether the

consolidation would only trigger an Item 2.01 Form 8-K and related Item 9.01 Form 8-K if the company's investment in the joint venture that triggers the consolidation is 20% significant. For example, Company A, a public REIT, enters into a joint venture with Company B and initially Company A does not consolidate the joint venture for financial reporting purposes. The joint venture with Company B meets the definition of a real estate operation. At a later date, Company A makes an additional investment in the joint venture of \$20 million (which is under the 20% significance test) and as a result of the additional investment Company A begins to consolidate the joint venture. Given that the additional investment was under 20% significant, it can be argued that an Item 2.01 Form 8-K and related Item 9.01 Form 8-K would not be required, but we understand the SEC staff has not taken a firm position on this issue.

Another instance that requires careful consideration and planning is where a company acquires a series of related properties, each of which closes at different times. For instance Company A, a public REIT, acquires a portfolio of two properties from Company B, with the acquisition of (i) Property X at 21% significance and closing on (t); and (ii) Property Y at 10% significance and closing on (t) + 90 days. In this instance, Company A would have four business days from the closing of the Property X acquisition to file the 2.01 Form 8-K for Property X and 71 days from due date of the Item 2.01 Form 8-K to file the Item 9.01 Form 8-K with the Rule 3-14 financial statements for Property X and the related pro forma financial information. Even though Property Y is not

individually significant, because it is a "related" property and the combined significance is over 20% an Item 2.01 Form 8-K and related Item 9.01 Form 8-K would still be required. Given that the Form 8-Ks for Property X will already have been filed when Property Y closes, the question is whether Company A would (A) only have four business days to file the Item 2.01 and the Item 9.01 8-K with the Rule 3-14 financial statements for Property Y and related pro forma financial information, including both Property X and Y or (B) whether Company A would have 71 days from the due date of the Item 2.01 Form 8-K to file the Item 9.01 Form 8-K with the Rule 3-14 financial statements for Property Y and the related pro forma financial information. This point is open to interpretation and has not been clearly addressed by the SEC staff.

*Practice Point:* While Rule 3-14 only applies to acquisitions of real estate operations, Item 2.01 of Form 8-K applies to both acquisitions and dispositions of real estate operations, and a filing requirement may be triggered by not only a significant acquisition under the investment test but also by a significant disposition under the investment, asset and income tests applicable to acquisitions of businesses more generally under Rule 3-05. It should be noted that the Form 8-K 71-day grace period for filing financial statements for significant acquisitions does not apply to the pro forma financial statement requirement for dispositions. Additionally, a registrant may acquire or dispose of a property that does not meet the definition of a real estate operation. In those instance, the determination of whether the acquisition or disposition is significant (and therefore reportable under Item 2.01 of Form 8-K) is based on whether the equity in the net book value of the



property or the amount paid or received for the property upon the acquisition or disposition exceeded 10% of the total assets of the registrant and its consolidated subsidiaries.

### *Registration Statements and Proxies*

If an acquisition of a real estate operation (or group of related real estate operations) is significant under the aggregate market capitalization test (or total asset test, if no market value), then Rule 3-14 financial statements and the related pro forma financial information are required to be included in registration statements and proxy statements filed by the REIT. See the “REIT Formation Transactions” section below for a discussion on the Rule 3-14 financial statements and pro forma financial information requirements in a registration statement filed in connection with a REIT formation transaction. Additionally, if a probable real estate operation acquisition (or group of related real estate operations) is significant or if a series of acquisitions is significant in the aggregate (i.e., greater than 50% significance), including probable acquisitions, separate financial statements are also required in registration statements and proxy statements. If the acquisitions and probable acquisitions are in excess of the 50% level, a registrant is required to provide pro forma financial statements reflecting the aggregate effects of all such aggregate acquisitions in all material respects and separate historical financial statements for consummated and probable acquisitions whose individual significance exceeds 20% for which financials are not yet otherwise required (i.e., consummated acquisitions that are still in the 74 day grace period (discussed below) or individual probable acquisitions that do not exceed 50% significance).

However, Rule 3-14 financial statements of an acquired or to be acquired real estate operation do not need to be included in a registration statement or proxy statement if the acquisitions are less than or equal to 50% significant in the aggregate, and either (i) the consummation of the acquisition has not yet occurred, or (ii) the date of the final prospectus or prospectus supplement relating to an offering as filed with the SEC, or mailing date in the case of a proxy statement, is no more than 74 days after consummation of the acquisition of the real estate operation, and the financial statements have not previously been filed by the registrant.

Rule 3-14 financial statements in registration statements and proxy statements are no longer required to be included once the operating results if the acquired real estate operations have been reflected in the audited financial statements of the registrant for nine months.

It should be noted that the SEC staff will not take a registration statement or post-effective amendment effective unless that registration statement includes all required Rule 3-14 financial statements and pro forma financial information. Before conducting an offering off of an effective shelf-registration statement, a registrant should determine in connection with any recent acquisitions or probable acquisitions of real estate operations whether (i) Rule 3-14 financial statements and pro forma financial information are required to be included in the registration statement, through incorporation by reference or otherwise, (ii) even if Rule 3-14 financial statements and pro forma financial statements are not technically required, whether the prospectus would contain a material omission without them, and (iii)

whether the acquisition represents a “fundamental change” and therefore a post-effective amendment to the registration statement would need to be filed. For any acquisition of a real estate operation that is over 50% significant, Rule 3-14 financial statements and pro forma financial information should be included, through incorporation by reference or otherwise, in an effective shelf registration statement, before commencing a takedown offering off of that shelf registration statement.

*Practice Point:* Only individually significant consummated transactions trigger a Form 8-K filing requirement, but transactions that are individually significant including probable acquisitions, and a series of acquisitions and probable acquisitions that are significant in the aggregate must both generally be included in registration statements and proxy statements.

### **Special Cases: Blind Pools, REIT Formation Transactions and Triple Net Leases**

#### *Blind Pools*

During the Industry Guide 5 distribution period for blind pool offerings, significance for all acquisitions of real estate operations, including properties that are triple net leased, is computed by comparing the registrant’s investments in the real estate operation to the sum of: (i) the registrant’s total assets as of the date of the acquisition, plus (ii) the proceeds (net of commissions) in good faith expected to be raised in the registered offering over the next 12 months.

After the distribution period ends, significance is determined using the total assets as of the acquisition date until the registrant files its next Form 10-K. After that next Form 10-K

is filed, the registrant can determine significance using total assets as of the end of the most recently completed fiscal year included in the Form 10 K.

#### *REIT Formation Transactions*

Rule 3-14 does not formally address REIT formation transactions. The SEC’s current guidance, however, recognizes that the literal application of Rule 3-14 could result in a new REIT providing financial statements of real estate operations that are clearly insignificant to investors. In identifying the financial statements required to be included in the initial registration statement, the SEC has allowed new REITs to compute significance using a denominator equal to the total cost of the real estate operations acquired immediately prior to filing an initial registration statement, real estate operations to be acquired upon closing the initial public offering, and real estate operations identified as probable future acquisitions.

Historically, the SEC has also provided that in computing significance of any future real estate operation acquisition until the time the registrant files its Form 10-K covering the year the initial public offering is consummated, the registrant can use the same base as was used in the initial registration statement. That base would not be reduced for probable acquisitions for which audited financial statements were included in the registration statement and the acquisition remains probable. However, that base would be reduced for any real estate operation not acquired or no longer probable. It is unclear whether the SEC will still allow for this alternate significance test where the REIT has a market capitalization given that Rule 3-14 significance is now measured based on

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aggregate market capitalization and not total assets.

### *Triple Net Leases*

Rule 3-14 does not differentiate between acquisitions of properties subject to triple net lease arrangements with a single lessee and the acquisitions of all other real estate operations. Moreover, for triple net leases, the Release guides registrants away from the SEC's prior guidance, pursuant to which, with respect to time-of-acquisition reporting, public REITs have historically provided full audited financial statements of the lessee or guarantor instead of Rule 3-14 financial statements of the real estate operation when the asset concentration was significant. Despite the change, registrants should continue to follow the SEC's guidance regarding the ongoing requirement to provide lessee or guarantor financial statements<sup>1</sup> in periodic reports where there is significant asset concentration (i.e., exceeds 20% of the registrant's assets as of its most recent balance sheet) with a single lessee for real estate operations subject to a triple net lease.<sup>2</sup>

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### APPENDIX A

#### Summary of Rule 3-14 and Prior Rules and Guidance

| Subject Matter                    | Amended Rules | Prior Rules and Guidance |
|-----------------------------------|---------------|--------------------------|
| <b>Applicability of Rule 3-14</b> |               |                          |

| Subject Matter                                | Amended Rules   | Prior Rules and Guidance  |
|---|---|---|
| <b>General Applicability</b>                  | Rule 3-14 applies to acquisitions, including probable acquisitions, of real estate operations that are significant  |   |
| <b>Definition of "Real Estate Operations"</b> | Rule 3-14 defines a "Real Estate Operation" as "a business that generates substantially all of its revenues through the leasing of real property," though this definition is not a bright line test   | Not previously defined in Rule 3-14, but SEC guidance was generally consistent with the newly codified definition |
| <b>Probable Acquisitions</b>                  | Not defined by Rule 3-14. Determining whether an acquisition is probable depends on careful consideration of all facts and circumstances (e.g., is there a definitive agreement, what conditions and contingencies exist and other factors) |   |
| <b>Acquisition Thresholds</b>                 |   |   |
| <i>Individual Significance</i>                | 20% of aggregate market capitalization (or total assets, if no market value)  | 10% of total assets   |
| <i>Aggregate Significance</i>                 | 50% of aggregate market capitalization (or total assets, if no market value)  | 10% of total assets   |
| <b>Related Acquisitions</b>                   | Real estate operations should be treated as a single acquisition if they are "related" (e.g., under common control or management, or conditioned upon acquisition of each other or a single common event)                                   |   |

| Subject Matter   | Amended Rules   | Prior Rules and Guidance  | Subject Matter                                 | Amended Rules  | Prior Rules and Guidance   |
|--|---|---|--|--|--|
| <b>Form and Content of Rule 3-14 Financial Statements</b>    |   |   |  |  |  |
| <b>Significant Acquisitions</b>                              |   |   |  |  |  |
| <i>General</i>   | One year of audited financial statements, plus the most recent YTD period and interim statements showing the pro forma impact   | Rule 3-14 did not previously include an express requirement to provide interim financial statements | <b>Pro Forma Adjustments</b>                   | Pro forma adjustments may only relate to:<br>Transaction Accounting Adjustments (to reflect required accounting treatment)<br>Autonomous Entity Adjustments (to reflect operation as a stand-alone entity)<br>Management's Adjustments (optional adjustments appropriately limited in scope)                             | Article 11 and Rule 11-02(a) provided a qualitative and less rigid framework that described the objectives of the pro forma preparation requirements                     |
| <i>Related Parties</i>                                       | Same as acquisitions from non related parties, described above  | Three years of audited financial statements   |  |  |  |
| <b>Content of Financial Statements</b>                       | Financial statements should include statements of revenues and expenses, with additional disclosure in the notes to the financial statements regarding cash flows, if available |   | <b>Preparation of Financial Statements</b>     | Rule 3-14 financial statements should be prepared and audited in accordance with Regulation S-X and be for the period that the real estate operation has been in existence, if shorter than the period explicitly required for the applicable financial statements, and will be subject to auditor independent standards |  |
| <b>Financial Statements Covering 9-12 Months (Rule 3-06)</b> | Financial statements covering a period of 9-12 months satisfy the requirement that financial statements cover a one-year period   | Accommodations of Rule 3-06 did not apply to Rule 3-14  | <b>Smaller Reporting Companies (Rule 8-06)</b> | Registrants are now directed to amended Rule 3-14 for financial statement requirements, with smaller reporting companies permitted to rely on the form and content for annual and interim financial statements provided in Rule 8-02 and 8-03  | Rule 8-06 previously provided disclosure requirements for financial statements of real estate operations that were substantially similar to those set forth in Rule 3-14 |

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| Subject Matter              | Amended Rules   | Prior Rules and Guidance  | Subject Matter                       | Amended Rules   | Prior Rules and Guidance   |
|-----------------------------|---|---|--------------------------------------|---|--|
| <b>Filing Requirements</b>  |   |   |                                      |   |  |
| <b>Form 8-K Triggers</b>    | Consummated real estate operation (i) acquisitions that are individually significant (20% of aggregate market capitalization (or total assets, if no market value)), and (ii) dispositions that are individually significant at the 20% level under any of the investment, asset or income tests, trigger a Form 8-K filing requirement | Consummated acquisitions or dispositions that are individually significant at the 10% level under the investment test triggered a Form 8-K filing requirement | <i>Registration/Proxy Statements</i> | Rule 3-14 financial statements are required in registration statements and proxy statements until reflected in the audited financial statements of the registrant for nine months, unless less than or equal to 50% significance and either (i) not yet consummated or (ii) within the 74 day grace period and not previously filed | Accommodations relating to acquisitions at below 50% significance and nine-month sunset period for operations reflected in audited financial statements did not previously apply |
| <b>Financial Statements</b> |   |   |                                      |   |  |
| <i>Form 8-K</i>             | Rule 3-14 financial statements for significant acquisitions (not dispositions) must be filed within a 71-day grace period   |   |                                      |   |  |

### NOTES:

\*\*Effective January 1, 2021, the SEC adopted amendments to, among other things, the financial disclosure requirements in Rule 3-05 of Regulation S-X (Rule 3-05) and Rule 3-14. The amendments, adopted as part of the SEC's Disclosure Effectiveness Project, were aimed at improving the information that investors receive regarding the acquisition and disposition of businesses, including real estate operations, and to reduce the complexity and associated compliance costs for registrants. For an overview of Rule 3-14, including a side-by-side comparison of the SEC's prior rules and guidance against amended Rule 3-14, and its related rules and forms please see Appendix A to this article. See SEC Release No. 33-10786; 34-88914 (May 21, 2020), available at <https://www.sec.gov/rules/final/2020/33-10786.pdf> (the Release).

<sup>1</sup>If the lessee/guarantor is a public company subject to the periodic reporting obligations of the Securities Exchange Act of 1934, the registrant may instead include in the filing a statement referring investors to a publicly-available website with the lessee's/guarantor's SEC filed financial information.

<sup>2</sup>Providing significant tenant financial information (when applicable) under Section 2340 of the Division of Corporation Finance's Financial Reporting Manual is also still necessary where Rule 3-14 financial statements are not required at all, for example due to a lack of prior rental history. It should be noted that in other instances



the Financial Reporting Manual contains outdated guidance based on Rule 3-14 before it was amended and we would urge caution in relying on this guidance until the

Division of Corporation Finance updates the Financial Reporting Manual to reflect the amendments.