SEC To Require Exhibit Hyperlinks and HTML Format

By Bruce Newsome | March 28, 2017

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On March 1, 2017, the Securities and Exchange Commission (the “SEC”) adopted final rules that will require registrants to include a hyperlink to each exhibit identified in nearly all of the registration statements and reports subject to Item 601 of Regulation S-K or under Form F-10 or Form 20-F (the “Final Rule”). To facilitate this requirement, the Final Rule also requires registrants to submit these filings in HyperText Markup Language (“HTML”) format. The SEC anticipates that the Final Rule will streamline and simplify the process by which investors and other users access exhibits. Most registrants must comply with the Final Rule beginning September 1, 2017. However, “smaller reporting companies” and “non-accelerated filers” that submit filings in American Standard Code for Information Interchange (“ASCII”) do not need to comply with the Final Rule until September 1, 2018. The full text of the adopting release is available here.

Background

Item 601 of Regulation S-K sets forth the exhibits registrants must file with registration statements filed under the Securities Act of 1933 (the “Securities Act”) and the Securities Exchange Act of 1934 (the “Exchange Act”), and with periodic and current reports under the Exchange Act. Registrants must include an exhibit index that lists each exhibit included in the filing. Once filed, currently registrants can incorporate the exhibit by reference to meet the exhibit requirements in subsequent filings.

Under the current system, a person who wants to review an exhibit must (1) review the exhibit index to determine the filing in which the exhibit was included and (2) then search through the registrant’s filings to locate the appropriate filing in order to access exhibits incorporated by reference. Critics consider this process time consuming and cumbersome.

The Final Rule

Exhibit Hyperlinks

Registrants will be required to include a hyperlink to each exhibit identified in the exhibit index of the following forms:

- Forms S-1, S-3, S-4, S-8, S-11, F-1, F-3, F-4, SF-1 and SF-3 under the Securities Act;
- Forms 10, 10-K, 10-Q, 8-K and 10-D under the Exchange Act; and
- Forms F-10 and 20-F.

For registration statements, exhibit hyperlinks must be included in not only the initial registration statement, but each subsequent pre-effective amendment as well.

Registrants will not be required to include hyperlinks for certain exhibits and forms, including:

- Form ABS-EE;
- XBRL exhibits;

- Other forms under the multi-jurisdictional disclosure system used by certain Canadian issuers or in Form 6-K; and
- Exhibits filed in paper pursuant to a temporary or continuing hardship exemption under Rules 201 or 202 of Regulation S-T, or pursuant to Regulation 311 of S-1.

While the Final Rule does not require registrants to refile any documents previously filed in paper, registrants must include a notation to identify exhibits filed in paper form only.

HTML Format

Registrants will be required to file registration statements or reports subject to exhibit filing requirements under Item 601 of Regulation S-K, and Forms 20-F and F-10, in HTML format. Currently, registrants may submit electronic filings to the SEC using the Electronic Data Gather, Analysis, and Retrieval System ("EDGAR") in either ASCII format or HTML format. However, documents prepared in ASCII format cannot support functional hyperlinks. Consequently, registrants will be required to submit affected registration statements and reports in HTML format only. Registrants may still file schedules and forms not subject to the exhibit filing requirements under Item 602, such as proxy statements, in ASCII format.

Inaccurate Exhibit Hyperlinks

Several commenters expressed concerns related to the procedure to correct, and the consequences of filing, inaccurate exhibit hyperlinks. In response, the SEC added an instruction to Rule 105 of Regulation S-T that requires registrants to correct a nonfunctioning or inaccurate hyperlink, in the case of an ineffective registration statement, in a pre-effective amendment to the registration statement, or in the case of an effective registration statement or an Exchange Act report, in the next Exchange Act periodic report that requires or includes an exhibit pursuant to Item 601 of Regulation S-K. Moreover, SEC staff noted that an inaccurate hyperlink alone would neither render the filing materially deficient nor affect a registrant's ability to use short-form registration statements.

Effective Date

Most registrants must comply with the Final Rule beginning September 1, 2017. Nevertheless, SEC staff encourages early compliance with the new filing requirements.

A registrant that qualifies as a "smaller reporting company" or a "non-accelerated filer" and submits filings in ASCII must comply with the Final Rule beginning September 1, 2018.

The effective date for any Form 10-D that will require hyperlinks to any exhibits filed with Form ABS-EE is delayed until SEC staff completes technical programming changes to allow issuers to include the forms in a single submission. SEC staff will publish a document in the Federal Register to notify the public of the compliance date for Form 10-D once these changes are complete.

Conclusion

SEC staff estimates that registrants will incur an average of one (1) to four (4) burden hours to hyperlink to required exhibits, depending on the specific form type.[1] Nevertheless, this process can be complex and time consuming. Registrants should provide for additional time beyond the SEC staff's estimates. Registrants that prepare EDGAR filings in-house should also familiarize themselves with the Final Rule and, once issued, review the updated EDGAR Filer Manual that describes how to properly hyperlink exhibits. Registrants that rely on a third party, such as a financial printer, to prepare EDGAR filings, should ensure the party is prepared and able to comply with the Final Rule.

If you have any questions about this topic, please contact a member of our Capital Markets and Securities Practice Group.

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1 Four (4) hours for Forms 10-K and 20-F, three (3) hours for Forms S-1, S-4, S-11, SF-1, F-1, F-4 and F-10, two (2) hours for Forms S-3, S-8, SF-3, F-3, 10 and 10-Q, and one (1) hour for Forms 10-D and 8-K.