

Memorandum

SEC Adopts Rule Amendments Requiring Exhibits to be Hyperlinked and Certain Filings to be Submitted in HTML Format

March 14, 2017

On March 1, 2017, the Securities and Exchange Commission (“SEC”) adopted rule amendments that will require issuers filing registration statements and periodic and current reports that are subject to the exhibit requirements codified in Item 601 of Regulation S-K, as well as those that file Forms F-10 or 20-F, to:

1. include a hyperlink to each exhibit listed in the exhibit index of these filings; and
2. submit these filings on EDGAR in HyperText Markup Language (“HTML”) format.¹

I. Requirement to Hyperlink to Exhibits

- **Exhibits Required under Item 601 of Regulation S-K.** Item 601 of Regulation S-K specifies the exhibits issuers are required to file with their registration statements and periodic and current reports and further requires registrants to include an exhibit index in these filings. The SEC’s new rule amends Item 601 of Regulation S-K, as well as Items 102 and 105 of Regulation S-T (which provide the requirements for exhibits included in electronic filings and govern the use of HTML and hyperlinks, respectively), to require registrants to include an active hyperlink to each filed exhibit identified in the exhibit index, “unless the exhibit is filed in paper pursuant to a temporary or continuing hardship exemption” under Regulation S-T or unless required to be submitted in paper under cover of Form SE.² In the SEC’s view, requiring registrants to link to the actual filings listed in the exhibit index would provide investors and others with easier access to exhibits incorporated by reference, obviating the need to search through the registrant’s filings to view any given exhibit.

¹ See [Exhibit Hyperlinks and HTML Format](#), Release No. 33-10322, 34-80132; File No. S7-19-16 (Mar. 1, 2017).

² See Rules 201, 202 and 311 of Regulation S-T. The SEC is also revising the definition of “hyperlink” in Item 11 of Regulation S-T to mean “the representation of an Internet address in a form that an Internet browser application can recognize as an Internet address.”

The SEC's amendments will apply to "the forms for which exhibits are required under Item 601 of Regulation S-K." As noted in the SEC's proposed rule release, this includes:

- 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 of 1933, as amended; and
- Forms 10, 10-K, 10-Q, 8-K, and 10-D under the Securities Exchange Act of 1934, as amended.

The hyperlink requirement will *not*, however, apply to:

- exhibits in eXtensible Business Reporting Language ("XBRL"); and
- exhibits filed with Form ABS-EE, because, since that form "is essentially a cover page, an investor should have no difficulties locating the applicable exhibits."

With respect to registration statements, in contrast to the SEC's proposed rule, the SEC's final rule amendments will require registrants to include an active hyperlink to each exhibit identified in the exhibit index (other than those filed in XBRL or with Form ASB-EE), not only in the version of the registration statement that becomes effective but in the initial registration statement and each subsequent pre-effective amendment, as well.³

- **Exhibits to Form F-10 and Form 20-F.** The SEC is also adopting corresponding amendments to Form F-10 and Form 20-F to require foreign private issuers to include hyperlinks to exhibits filed with these forms. The SEC is not, however, requiring exhibit hyperlinks "in other forms under the multi-jurisdictional disclosure system used by certain Canadian issuers or in Form 6-K."

Addressing concerns regarding inaccurate exhibit hyperlinks, the SEC is adding an instruction to Rule 105 of Regulation S-T, "stating that a registrant must correct a nonfunctioning hyperlink or hyperlink to the wrong exhibit by filing, in the case of a registration statement that is not yet effective, a pre-effective amendment to such registration statement, or in the case of a registration statement that is effective 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 (or in the case of a foreign private issuer, pursuant to Form 20-F or Form F-10)." According to the SEC, an inaccurate exhibit hyperlink in itself would not render the filing in which it is contained materially deficient, nor would it affect a registrant's eligibility to use short-form registration statements.

Finally, as a reminder, the SEC indicates that EDGAR does not accept documents containing hyperlinks to external websites.

³ The SEC notes that it will issue "an updated EDGAR Filer Manual that will describe the procedures needed to create a hyperlink to an exhibit that the registrant previously filed with a registration statement or report and the procedures needed to create a link to an exhibit that is being filed at the same time as the registration statement or report."

II. Requirement to Submit Filings in HTML Format

Because the SEC's exhibit hyperlinking requirement would be feasible only if registrants are required to file in HTML, the SEC is adopting amendments to Rule 105 of Regulation S-T that will require registrants to file the forms affected by the new hyperlinking requirement in HTML format. Registrants will still be able to file in American Standard Code for Information Interchange ("ASCII") format "any schedules or forms that are not subject to the exhibit filing requirements under Item 601, such as proxy statements, or other documents included with a filing, such as an exhibit."

III. Compliance Dates

- **Effective Date.** The rule amendments will take effect on September 1, 2017, though the SEC "encourage[s] early compliance with the new filing requirements."
- **Phase-In Period for Non-Accelerated Filers and Smaller Reporting Companies.** The SEC is adopting a one-year phase-in period after the effective date of the final rules for non-accelerated filers and smaller reporting companies that submit filings in ASCII format. "During the phase-in period, these filers may continue to file registration statements or report in ASCII and will not need to include hyperlinks to the exhibits listed in the exhibit indexes of their filings." Non-accelerated filers and smaller reporting companies will need to comply with the final rules beginning September 1, 2018.
- **Phase-In Period for Certain Filings on Form 10-D.** Because the SEC staff is currently working on changes to EDGAR "that will allow issuers to include the Form 10-D and Form ABS-EE in a single submission so that the required hyperlinks can be created at the time the Form 10-D is filed," the SEC is delaying the compliance date for any Form 10-D that will require hyperlinks to any exhibit filed with Form ABS-EE. The SEC indicates that it will announce the compliance date for such filings when it is determined.

If you have any questions or would like additional information, please do not hesitate to contact **Yafit Cohn** at +1-212-455-3815 or yafit.cohn@stblaw.com, or any other member of the Firm's Public Company Advisory Practice.

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