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SEC Proposes Requiring Hyperlinks to Exhibits Filed with Registration Statements and Exchange Act Reports

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Yesterday, the SEC proposed rules that would require companies to include a hyperlink to each exhibit listed in registration statements and periodic and current reports, including among others Forms S-1, S-3, S-4, S-8, S-11, 8-K, 10-Q and 10-K. The rules would also apply to filings by foreign private issuers made on Forms F-1, F-3, F-4 and 20-F, but not Form 6-K. Since ASCII cannot support functional hyperlinks, exhibits must be submitted in HTML format. 99% of filings made in 2015 were in HTML format.

Currently, anyone trying to access an exhibit that has been incorporated by reference instead of filed with the document must first review the exhibit index to determine which company filing includes a particular exhibit, and then search through the company's Edgar history to find the exhibit. The SEC believes this process is burdensome, and has now proposed rules that would require a hyperlink to each exhibit listed in the exhibit index of any registration statement or report subject to Item 601 of Regulation S-K.

In terms of timing, if the filing is a periodic or current report under the Exchange Act, a company would be required to include an active hyperlink to each exhibit listed in the exhibit index when the report is filed. If the filing is a registration statement, a company would only be required to include an active hyperlink to each exhibit in the version of the registration statement that becomes effective.

While the proposal indicates that this would ensure that the most complete exhibit index is hyperlinked and located in one primary document, it asks several questions about the requirement for registration statements since by the time they become effective, a company typically has filed most or all of the exhibits in previous amendments. The proposal seeks comment on whether companies should instead include hyperlinks to the exhibits filed with (a) the initial registration statement and each pre-effective amendment; (b) each pre-effective amendment that would also include all previously filed exhibits to the registration statement; and/or (c) other pre-effective registration statements, such as those that include a preliminary prospectus distributed in connection with an offer.

Comments are due 45 days after publication in the *Federal Register*.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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