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SEC Requires Hyperlinks to Exhibits Starting in September

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The SEC approved rules yesterday to require issuers to include a hyperlink to the exhibits listed in the exhibit index. This applies to registration statements and reports subject to the exhibit requirements under Item 601 of Regulation S-K, as well as Forms F-10 and 20-F. The filings must be submitted in HTML format.

The rules are effective for filings submitted on or after September 1, 2017, although the Commission encourages early compliance. Smaller reporting companies or a company that is neither a large accelerated filer or an accelerated filer, and that submits filings in ASCII, can wait an additional year to comply.

Exhibit hyperlinks are required in an initial registration statement and each subsequent pre-effective amendment, not just in the registration statement that becomes effective. They are not required in Form 6-Ks or for the multijurisdictional forms used by Canadian issuers, since exhibits are not required for those forms.

We are all familiar with how common it is to come across non-functioning hyperlinks. In response to concerns raised, an inaccurate exhibit hyperlink alone wouldn’t render the filing materially deficient or affect a company’s eligibility to use short-form registration statements. A company can correct a non-functioning hyperlink, or a hyperlink to the wrong exhibit, in the next Exchange Act report that requires an exhibit pursuant to Item 601 of Regulation S-K or Form 20-F, a post-effective amendment to a registration statement, or using a pre-effective amendment for a registration statement that is not yet effective. Because Edgar does not accept hyperlinks to external websites, the Commission did not address the liability concerns related to hyperlinks raised by commenters.

While registration statements and reports will be required to be filed in HTML format, companies can continue to file in ASCII any schedules or forms that are not subject to the exhibit filing requirements under Item 601, such as proxy statements or an exhibit included with a filing.

The list of SEC forms affected include: Forms S-1, S-3, S-4, S-8, S-11, SF-1, SF-3, F-1, F-3, and F-4 under the Securities Act and Forms 10, 10-K, 10-Q, 8-K, and 10-D under the Exchange Act, as well as Forms 10-D and 20-F.

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.

Ning Chiu
+1 212 450 4908
ning.chiu@davispolk.com