Securities

Information You Can Use – SEC Requires Financial Information in XBRL Format

The SEC has approved new rules that will require public companies to provide financial statements in an interactive data format called eXtensible Business Reporting Language, or XBRL.[1] This XBRL-formatted financial information will be submitted as an exhibit to specified filings that already require financial statements in standard format. The new rules will be phased in over a three-year period beginning in mid-2009.[2] For many companies, the process of preparing XBRL-formatted financial statements will be unfamiliar and time-consuming, at least initially, as such companies will need to map their unique financial data with standardized XBRL "tags" from one of several industry-specific taxonomies. Recognizing the challenges associated with the imposition of this new requirement, the rules exclude XBRL-formatted data from certain liability provisions of the federal securities laws for a limited period of time.

In this advisory, we briefly recount the path that led to the SEC's adoption of XBRL, and we describe in general terms how XBRL works. We then summarize the new rules, including their phase-in period, detailed tagging requirements, and the reports and filings subject to the new rules. We next discuss the temporary exclusion for XBRL data from certain liability provisions of the federal securities laws, as well as the consequences for failing to comply with the rules. Finally, we address some implementation considerations.

Background

XBRL is a computer programming language that can be used to code specific pieces of information, such as earnings per share, allowing such information to be gathered from multiple reporting organizations for the purposes of comparing and contrasting the data. Momentum towards an XBRL requirement for SEC filings has been building steadily over the past several years. As with the SEC's most notable previous technological innovation, the EDGAR filing system,[3] the SEC introduced XBRL through a voluntary filer program, which began in 2005.[4] Citing the potential benefits of interactive data based on its experience with the voluntary program, in May 2008 the SEC proposed rules requiring public companies to provide XBRL-formatted financial statements.[5] The SEC's

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[1] *See* Interactive Data to Improve Financial Reporting, Rel. No. 34-59324(Jan. 30, 2009) ("Adopting Release"). The Adopting Release is available on the SEC's website at http://www.sec.gov/rules/final/2009/33-9002.pdf. The effective date of the new rules will be 60 days after the rules are published in the Federal Register. At the same open meeting at which the new XBRL rules were approved, the SEC also mandated the filing of the risk/return summary section of mutual fund prospectuses in XBRL format beginning in 2011. *See* Press Release, U.S. Securities and Exchange Commission, SEC Approves Interactive Data for Financial Reporting by Public Companies, Mutual Funds (Dec. 18, 2008)).

[2] The new rules do not apply to registered investment companies or business development companies (as defined in Section 2(a)(48) of the Investment Company Act of 1940).

[3] EDGAR stands for the SEC's Electronic Data Gathering, Analysis and Retrieval System. The SEC began to require domestic issuers to file most documents on EDGAR in 1993. *See* Rel. No. 33-6977 (Feb. 23, 1993).

[4] Rel. No. 33-8529 (Feb. 3, 2005). According to the Adopting Release, over 100 companies have participated in the voluntary program.

[5] *See* Interactive Data to Improve Financial Reporting, Rel. No. 33-8924 (May 30, 2008). The priority accorded this initiative by the SEC is also reflected in the creation of the Office of Interactive Disclosure in 2007 and several roundtables on the subject hosted by the SEC.

proposal was strongly endorsed by the SEC's Advisory Committee on Improvements to Financial Reporting, or CIFiR, which urged XBRL reporting as part of a series of recommendations to increase the usefulness of information in SEC filings.[6] CIFiR noted that interactive data would allow investors to sort and analyze particular line items across companies more quickly and efficiently than with the current filing system. At the open meeting approving the new rules, then-Chairman Christopher Cox echoed these themes, stating that XBRL-formatted data will make it easier for investors, analysts, and regulators to access, review and analyze financial data.

The new rules may be just the first step by the SEC in a more comprehensive move towards interactive data. For now, the rules do not require, for example, submission of interactive data for financial information contained within the body of a report (such as selected financial data and management's discussion and analysis of financial condition and results of operation), nor do the rules cover executive compensation data provided under Item 402 of Regulation S-K. Also, as described below, the rules do not require detailed tagging of narrative disclosures within financial statement footnotes. Some or all of these may well be on the horizon, however. The new XBRL rules will also complement and help facilitate the SEC's rollout of its new Interactive Data for Electronic Applications, or IDEA, system. Unveiled in August 2008, the IDEA system is intended initially to supplement, and eventually to replace, the EDGAR database with a system based on interactive data.[7]

How XBRL Works

XBRL allows users to retrieve, sort, compare and manipulate individual pieces of similarly tagged data. Investors can use XBRL-formatted data to generate their own financial ratios, spreadsheets, and charts in order to quickly analyze and compare financial information from multiple companies. In this sense, data in XBRL format can be characterized as "interactive." This contrasts with current formats such as ASCII and HTML,[8] which merely allow data to be viewed on a screen or Web browser and then plugged into some other program for purposes of analysis.

A filing with financial statements is made interactive by applying XBRL programming code — "tags" — to the pieces of data in the financial statements. For example, a line item such as net income would be specifically tagged with a unique XBRL code. An XBRL viewer (similar to a web browser) will translate the XBRL-coded data for viewing on a computer.[9]

XBRL US, Inc. has developed a standard list of XBRL tags — currently comprising over 13,000 items broken into several industry-specific taxonomies — for financial statements prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP").[10] A separate list of tags is under development for use with financial statements prepared in accordance with International Financial Reporting Standards, or IFRS, as approved by the International Accounting Standards Board, or IASB.[11]

In tagging their financial statements, companies generally must use the standard tag having a definition that matches the financial concept represented by the relevant line item.

[6] *See Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission* ("CIFiR Report") (Aug. 1, 2008), at 98-106. The CIFiR Report is available at http://www.sec.gov/about/offices/oca/acifr/acifr-finalreport.pdf.

[7] *See* Press Release, U.S. Securities and Exchange Commission, SEC Announces "Successor to EDGAR Database 'IDEA' Will Make Company and Fund Information Interactive" (Aug. 19, 2008).

[8] ASCII refers to the American Standard Code for Information Interchange language, and HTML refers to HyperText Markup Language.

[9] The SEC has posted XBRL viewers on its website at http://www.sec.gov/spotlight/xbrl/xbrlwebapp.shtml.

[10] XBRL US, which was retained by the SEC for this purpose, is a non-profit organization the members of which are public companies, accounting firms, software developers, filing agents and other participants in the financial reporting process. The XBRL U.S. GAAP taxonomy of standard tags, as well as a guide for preparers of XBRL-formatted financial statements, is available at XBRL US's website at http://www.xbrl.us.

[11] The IFRS list of tags is being developed by the International Accounting Standards Committee Foundation.

However, in two situations, the rules permit a company to depart from the list of standard tags and create a customized tag, or "extension." First, where the standard tag's definition matches the financial concept represented by the line item, but the company's label for that item in its financial statements differs from the label used in the standard taxonomy, the company may extend the tag by changing the label to match the label used in the company's financial statements. For example, some companies might use the term "operating revenues" on their financial statements to depict net revenues, the label used in the XBRL taxonomy; when preparing their XBRL file, such companies would change - or extend - the label used for this element to become "operating revenues." Second, companies may create extensions for pieces of data for which a standard XBRL tag simply does not exist.[12]

Phase-In Period

The XBRL requirements will be phased in over a three-year period beginning in mid-2009. This is a fairly tight schedule for the first group of companies and will need prompt attention to ensure compliance. The phase-in schedule is outlined in the table below, although companies may always comply before these dates if they like.

FILER GROUP	COMPLIANCE SCHEDULE
Domestic and foreign large accelerated filers[13] that use U.S. GAAP and have worldwide public common equity float above $5 billion.[14]	First quarterly report on Form 10-Q, or, if a foreign filer, annual report on Form 20-F or 40-F, for fiscal periods ending on or after June 15, 2009.
All other domestic and foreign large accelerated filers that use U.S. GAAP.	First quarterly report on Form 10-Q, or, if a foreign filer, annual report on Form 20-F or 40-F for fiscal periods ending on or after June 15, 2010.
All remaining filers using U.S. GAAP and all foreign private issuers using IFRS as issued by the IASB.	First quarterly report on Form 10-Q, or, if a foreign filer, annual report on Form 20-F or 40-F, for fiscal periods ending on or after June 15, 2011.

After the phase-in period, newly public companies must comply with the XBRL filing requirements with their first quarterly report on Form 10-Q or, for foreign filers, their first annual report on Forms 20-F or 40-F.

To further ease transition, the new rules provide a 30-day grace period for each company's first required XBRL filing. In addition, a 30-day grace period will apply to each company's first filing that requires detailed tagging of footnotes and schedules (as described below). These grace periods relate only to the XBRL-tagged exhibit, not to any other part of the filing.[15]

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[12] Although some commentators expressed concern that such extensions could lessen the comparability of interactive data, the SEC dismissed this concern by noting that the standard taxonomy will be updated regularly and will become more comprehensive over time, as commonly-used extensions are incorporated into the standard set of tags. Adopting Release at 38.

[13] "Large accelerated filer" is defined in Rule 12b-2 under the Securities Exchange Act of 1934 (the "Exchange Act") and means an issuer with worldwide market capitalization of at least $700 million on the last business day of its second quarter and that has filed at least one annual report with the SEC and been subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act for at least 12 calendar months.

[14] The worldwide public common equity float is determined as of the end of the second fiscal quarter of the company's most recently completed fiscal year. This first group is expected to include approximately 500 companies.

[15] The 30-day grace periods expire on the earlier of the due date or filing date of the applicable report. *See* Rule 405(a)(2)(ii) of Regulation S-T.

Tagging Requirements

In a company's first year of XBRL filing, only the face of the financial statements must be tagged in detail, i.e., with individual tags applied to each discrete data element. During the first year, footnotes to the financial statements and financial statement schedules may be tagged as single blocks of text. To tag a footnote as a single block of text, the company would select the standard tag that corresponds most closely to the content of the footnote, and the entire text of the footnote would be tagged as a single element of data.[16] For example, if a company's financial statements include a footnote entitled "Inventories," the entire footnote would be mapped with the single tag "Inventory Disclosure [Text Block]." Financial statement schedules and tables within footnotes could be tagged as text blocks in the same manner.

Beginning with a company's second year of XBRL filing, detailed tagging of the footnotes and financial statement schedules will be required in addition to tagging of the face of the financial statements. This will require the following level of detail:

■ each complete footnote, as well as each complete financial statement schedule, should be tagged as a single block of text;

■ each accounting policy in the footnote describing significant accounting policies should be tagged as a single block of text;

■ each table in a footnote should be tagged as a separate block of text; and

■ within each footnote and schedule, each amount (i.e., monetary value, percentage, and number) should be separately tagged.

In a change from the proposed rules, narrative disclosures within footnotes may be tagged in detail, but need not be.[17] Because of the variety of subjects addressed and the importance of context, such narrative disclosures may not lend themselves to being tagged with discrete labels as easily as financial data. Use and further development of standard XBRL tags for narrative disclosures may, therefore, depend on demand for such information in the marketplace, and, in any event, will likely come after the market gains experience with the use of financial statement data in interactive format.

XBRL Filing and Posting Requirements

Once phased in, companies must provide XBRL-tagged financial information with specified filings, as noted below. Because XBRL data is only required in filings that contain the registrant's financial statements, it need not be provided with registration statements that incorporate financial statements by reference from another filing, nor must it be provided for the target company in a business combination.

XBRL-tagged financial information must be provided with the following filings, to the extent such filings contain financial statements of the company:

■ annual and quarterly reports on Forms 10-Q, 10-K, 20-F, and 40-F;

■ transition reports for a change in fiscal year;

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[16] The U.S. GAAP XBRL taxonomy of tags includes approximately 110 tags to be used with blocks of text, each of which ends with the phrase "[Text Block]." Examples include "Significant Accounting Policies," "Debt Disclosure," "Income Tax Disclosure," and "Fair Value Disclosures."

[17] The proposed XBRL rules would have required companies to separately tag each narrative footnote disclosure that was specifically required to be disclosed by U.S. GAAP or the SEC's rules, beginning with the company's second year of XBRL filing.

- reports on Forms 8-K and 6-K, but generally only if such reports contain revised versions of financial statements that were previously filed and that have been revised pursuant to applicable accounting standards to reflect the effects of certain subsequent events; and

- registration statements under the Securities Act of 1933 (the "Securities Act"), other than for initial public offerings, that contain a price or price range.

To effect XBRL filing, companies must prepare an interactive data file containing all of the financial information coded with the appropriate tags. This interactive data file must be included as an exhibit with the report or registration statement being filed.[18] This exhibit will be provided in addition to the financial statements and schedules in traditional ASCII or HTML format. Subject to the initial grace periods noted above, the XBRL-tagged interactive data file is due at the same time as the report with which it is filed.

XBRL interactive data files must also be posted to the company's website (if one exists) at the time of filing with the SEC (or, if available, by the end of the 30-day grace period described above).[19] This data must remain on such website for 12 months. As a practical matter, merely posting the interactive data file on a company's website may not provide useful information to investors. Although the rules do not require it, companies may wish to consider offering investors a means to view the data posted on their website in a useful format. Depending on the path of evolving technology, this might be done by providing a link to a XBRL viewer or including such a viewer on the company's website.

Liability Limitations

In recognition of the evolving nature of XBRL technology and the learning curve for public companies to comply with the new rules, the SEC approved, as proposed, a fairly broad exclusion from the liability provisions of the federal securities laws for interactive data. These provisions were the subject of numerous comments when the rules were proposed, and they caused Commissioner Luis Aguilar to vote against the XBRL rule proposal.[20]

In a significant change from the proposed rules, the final rules contain a sunset provision under which these exclusions from liability will terminate for each company two years after the date the company is first required to submit an XBRL file, and, in all events on October 31, 2014.[21]

During this temporary exclusion period, liability for errors or misstatements in the XBRL interactive data file will be limited as follows:

> *First*, the XBRL interactive data file will not be deemed to be "filed" or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act or Section 18 of the Exchange Act, nor will such data be subject to the liabilities of such sections.[22]

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[18] The interactive data file would be filed as Exhibit 101 under Item 601(b) of Regulation S-K.

[19] *See* Rule 405(a)(4) and Rule 405(g) of Regulation S-T. The interactive data file need only be posted on the website by the end of the calendar day on the earlier of the date the file is submitted or required to be submitted. *Id.*

[20] Commissioner Aguilar objected to the exclusions from liability on the grounds that they weakened investor protection. Commissioner Aguilar's statement in opposition to the proposal can be found at http://www.sec.gov/news/speech/2008/spch121708laa.htm.

[21] *See* Rule 406T(d) of Regulation S-T.

[22] *See* Rule 406T(b) of Regulation S-T.

Second, the XBRL interactive data file will be deemed to comply with Rule 405 of Regulation S-T, which is the principal new rule addressing the content and filing of interactive data, if the company makes a good faith attempt to comply with the rule and promptly amends any deficiency after becoming aware of it.[23] The rule includes a safe harbor which states that a company will be deemed to have "promptly" corrected a deficiency if it does so by the later of 24 hours or 9:30 a.m. on the next business day after becoming aware of it.[24]

However, except in cases where the company makes a good faith effort to comply with Rule 405 and promptly corrects any deficiency, the interactive data file will be subject to liability under the antifraud provisions of the federal securities laws, including Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Given the heightened pleading requirements for a Rule 10b-5 claim,[25] it may be challenging for a plaintiff to bring a Rule 10b-5 claim based on misstatements or omissions in the XBRL interactive data file.[26]

Although the proposed rules included an explicit exception from the foregoing liability exclusions for certain interactive data displayed in a form readable by humans, the SEC decided to omit this exclusion from the final rule on the basis that interactive data displayed in a form readable by humans is best addressed in relation to traditional concepts of liability.[27]

In addition to the limited liability provisions described above, as proposed, the XBRL interactive data file will be excluded from the officer certification requirements of Rules 13a-14 and 15d-14 under the Exchange Act, and companies will not be required to obtain auditor assurance on such files.

Consequences for Failing to Comply with XBRL Rules

Failure to submit (or post on the company's website) the XBRL exhibit on the date required (or by the end of one of the two 30-day grace periods) will have several consequences, each until the required XBRL exhibit is properly submitted or posted:

■ the company will be deemed not to have available adequate current public information for purposes of the Rule 144 resale safe harbor; and

■ the company will be deemed not current with its Exchange Act reporting obligations, which will make it ineligible for short form registration on Forms S-3, F-3 and S-8.[28]

Once the interactive data file is submitted or posted, the company will regain current status for these purposes, and, as such, the company will not lose its status as having "timely" filed its Exchange Act reports solely as a result of the delay in providing the interactive data file.[29]

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[23] *See* Rule 406T(c) of Regulation S-T. Pursuant to this rule, if the company is deemed to comply with Rule 405, the company will not be subject to liability for failure to comply with such rule, nor will it be subject to any liability under the antifraud or other provisions of the securities laws. *Id.* This limitation will apply, presumably, even if a party has already relied on the mistaken data contained in the exhibit.

[24] Rule 11 of Regulation S-T.

[25] A Rule 10b-5 plaintiff must prove causation, reliance on a materially misleading statement or omission, and that the defendant acted with "scienter," meaning that the defendant acted knowingly (although some courts have allowed proof of recklessness to suffice).

[26] The XBRL liability exclusions go beyond those built into the SEC's rules regarding EDGAR filings, which limit liability only for electronic transmission errors beyond the company's control (and where the company corrects the error by filing an amendment as soon as reasonably practicable after becoming aware of it). *See* Rule 103 of Regulation S-T. The XBRL-tagged financial information required by the new rules will have the benefit of this rule in addition to the other liability limitation provisions described above. *See* Rule 406T(b)(3) of Regulation S-T.

[27] Adopting Release at 86.

[28] In addition, if not current with Exchange Act reporting obligations, the company could not elect to provide information in Forms S-4 or F-4 at the level prescribed by Forms S-3 or F-3.

[29] *See* Adopting Release at 25.

In addition to the grace periods described above, the rules include two hardship exemptions from the XBRL filing requirements. First, a temporary exemption from the XBRL filing requirements is available for up to six business days, if the company experiences unanticipated technical difficulties that prevent timely submission of an electronic filing.[30] Second, a company may apply in writing for a continuing hardship exemption where the company cannot submit electronic information without undue burden or expense.[31]

Implementation Considerations

Now that XBRL is a reality, public companies will need to focus in earnest on how to implement the new requirements. Companies that participated in the voluntary filer program are ahead of this curve and generally confirm, not surprisingly, that it is the first filing with XBRL tags that requires the most work, by somewhat of a long shot. Largely, subsequent filings will follow the mapping of tags developed for the initial filing.[32] The SEC's rules should spur rapid development of new software and vendor offerings to help companies with their new compliance burdens. As with EDGAR filings, it is likely that some companies will decide to tag their data internally, while others will outsource some or all of the tagging process to a vendor.

To meet the XBRL requirement, companies may follow one of two broad approaches: the so-called "bolt-on" approach or the "integrated" approach. With the bolt-on approach, a company first finalizes its financial statements in a traditional format such as Word, Adobe, HTML or other publishing software. Then, the data elements in the final version of the financial statements are mapped to the appropriate XBRL tags. With the integrated approach, the company's financial reporting systems incorporate interactive data tags, so that, during the preparation of the financial statements, data elements are already mapped with XBRL tags. In this sense, companies using the integrated approach may find that XBRL tagging is simply part and parcel of the preparation of the financial statements.

It remains to be seen whether, and to what extent, auditors will play a role in reviewing interactive data files as part of their quarterly review or annual audit process. As noted above, the Adopting Release makes it clear that companies are not required to obtain auditor assurance on their interactive data files, notwithstanding the general requirement under generally accepted auditing standards that auditors consider the body of a report and the exhibits that accompany filings containing financial statements. The staff of the Public Company Accounting Oversight Board confirmed in 2005 that auditors may be engaged to review or audit such interactive data files, as long as they also review or audit the corresponding financial statements.[33] This audit or review would be focused on providing assurance that the interactive data file accurately reflects the information in the corresponding traditional format financial statements, and that the interactive data file conforms to applicable XBRL taxonomies and SEC rules.[34] Short of a formal review or audit, however, auditors may still have some level of involvement in reviewing the XBRL tagging in connection with their review of the corresponding financial statements. This may be the case particularly when the company follows the integrated approach to tagging described above.

Although the limited liability provisions in the new rules offer some relief for a two-year period, companies will nevertheless need to ensure that their interactive data files are

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[30] Rule 201 of Regulation S-T.

[31] Rule 202 of Regulation S-T.

[32] *See, e.g.,* CIFiR Report at 101 n.176 ("For example, one S&P 500 company participating in the voluntary pilot spent 80 hours learning the tagging tool, understanding SEC requirements, creating extensions for tags, and creating a process for ongoing tagging and future submissions."). *See also* Adopting Release at 44-45, 124-146.

[33] *See* Staff Questions and Answers: Attest Engagements Regarding XBRL Financial Information Furnished Under the XBRL Voluntary Financial Reporting Program on the EDGAR System (May 25, 2005).

[34] *Id.*

accurate, i.e., that the data in such files correctly reflects the data comprising a company's financial statements. Companies will also need to be sure that their interactive data files use the correct tags from the SEC-sanctioned taxonomy and otherwise comply with the new rules. As part of the implementation process, companies should review their disclosure controls and procedures and internal control over financial reporting to ensure that such controls cover the new XBRL reporting requirements.

Many companies will likely outsource the XBRL tagging process. However, companies should be wary of treating the XBRL tagging process the same way as the EDGAR filing process, which many companies outsource to financial printers and other vendors. The XBRL tagging process, even when outsourced, will likely require more ongoing and deeper involvement by company personnel familiar with the company's financial reporting systems and accounting issues than is the case with EDGAR filing. XBRL tagging, unlike EDGAR formatting, cannot be accomplished solely by software, and requires financial reporting and accounting professionals to apply technical financial definitions to a company's unique facts and circumstances. For that reason, appropriate company personnel will likely need to play a central role in overseeing and reviewing the accuracy of the XBRL tagging.

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