

SEC Requires Hyperlinks to Exhibits

Also Proposes Rules Requiring Use of Inline XBRL

April 11, 2017

Capital Markets and Securities

The U.S. Securities and Exchange Commission (“SEC”) has adopted amendments to its rules and forms that will require companies filing registration statements and reports subject to the exhibit requirements of Item 601 of Regulation S-K to include an active hyperlink to each exhibit listed in the exhibit index, whether or not the exhibit is incorporated by reference.¹ To facilitate the use of hyperlinks, subject to a small exception, the amendments also require companies to file such registration statements and reports on the SEC’s electronic filing system, EDGAR, in HyperText Markup Language (“HTML”) format.

The SEC also has proposed rule amendments that would require the use of the Inline eXtensible Business Reporting Language (“XBRL”) format for public companies and mutual funds that submit financial statement information and risk/return summaries using XBRL. The proposed amendments would also eliminate the current requirement for such filers to post XBRL data files on their websites.²

Exhibit Hyperlinks

Background

Item 601 of Regulation S-K requires reporting companies to include specified exhibits when filing certain registration statements and periodic and current reports with the SEC. Such exhibits may be included in that same filing or incorporated by reference from a previous filing. Forms 20-F and F-10 similarly require the inclusion of exhibits. Finding an exhibit that has been incorporated by reference from a prior filing can sometimes be time consuming and frustrating, because it involves first tracking down the referenced filing and then finding the exhibit within that filing.

Highlights of the Amendments

The recent rule and form amendments require companies to include an active hyperlink to each exhibit listed in the exhibit list of the applicable filing. The amendments apply to filings on all of

¹ *Exhibit Hyperlinks and HTML Format*, Rel. No. 33-10322; 34-80132 (Mar. 1, 2017), which can be found at <https://www.sec.gov/rules/final/2017/33-10322.pdf> (hereinafter, the “Hyperlinks Release”).

² *Inline XBRL Filing of Tagged Data*, Rel. No. 33-10323; 34-80133 (Mar. 1, 2017), which can be found at <https://www.sec.gov/rules/proposed/2017/33-10323.pdf> (hereinafter, the “XBRL Release”).

the forms described under Item 601 of Regulation S-K other than Form ABS-EE.³ The amendments also apply to Forms 20-F and F-10.⁴

For periodic and current reports, the amendments require the filer to include an active hyperlink for each exhibit listed in the report (whether filed with the report or incorporated by reference) at the time the report is first filed. For registration statements, the amendments require the inclusion of hyperlinks in the initial registration statement and each subsequent pre-effective amendment.⁵

There are several exceptions from the requirement to include active hyperlinks to filed exhibits. These include exhibits filed in paper pursuant to a temporary or continuing hardship exemption under Rules 201 or 202 of Regulation S-T or pursuant to Rule 311 of Regulation S-T, as well as any XBRL exhibits and exhibits filed with Form ABS-EE.⁶ The SEC noted that XBRL exhibits and exhibits filed with Form ABS-EE are filed in unconverted code, which cannot easily be reviewed. Further, Form ABS-EE prohibits exhibits from being incorporated by reference.

Recognizing that companies may currently incorporate by reference to exhibits that have been filed only on paper, the SEC determined that the amendments will not require companies to re-file electronically exhibits that were previously filed only on paper.

Inaccurate or Non-Functioning Hyperlinks

The amendments contain instructions to registrants for how to address inaccurate or non-functioning exhibit hyperlinks in their filings. In the case of a registration statement that is not yet effective, the registrant must correct the hyperlink by filing a pre-effective amendment. For an effective registration statement or a periodic or current report, the registrant must correct the hyperlink in the next periodic report that requires or includes an exhibit pursuant to Item 601. The SEC also noted that an inaccurate exhibit hyperlink will not, by itself, render the filing materially deficient, nor affect a registrant's eligibility to use short-form registration statements such as Forms S-3 and F-3.⁷

Requirement to File in HTML

Filings on EDGAR are made in one of two specified formats: HTML or American Standard Code for Information Interchange (ASCII), with HTML being by far the most common (in 2015, over 99 percent of the filings that are implicated by the amendments were filed in HTML). The SEC's release for the proposed amendments noted that while ASCII documents can include cross-references, hyperlink functionality is not currently supported. Although the SEC initially proposed to eliminate the option to use ASCII altogether, after consideration of public

³ The impacted forms under Item 601 of Regulation S-K are 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 (the "Securities Act"), and Forms 10, 10-K, 10-Q, 8-K and 10-D under the Securities Exchange Act of 1934 (the "Exchange Act").

⁴ The rules and forms amended are Item 601 of Regulation S-K, Rules 11, 102 and 105 of Regulation S-T, and Forms 20-F and F-10, See Hyperlinks Release, at 38-47. Excluded from the scope of the amendments are Form 6-K and Forms F-7, F-8 and F-80; the SEC decided that hyperlinks to exhibits filed with such forms would be of limited use. *Id.*, at 10.

⁵ *Id.*

⁶ *Id.*, at 9-10.

⁷ *Id.*, at 16.

comments, the final amendments permit registrants to continue to use ASCII for any schedules or forms that are not subject to the new hyperlink requirement. This exception also applies to other documents that are included with any such filing, such as an exhibit.

Effective Date

Registrants must comply with the new hyperlink requirement for filings on or after September 1, 2017. However, non-accelerated filers and smaller reporting companies that submit filings in ASCII format have until September 1, 2018 to comply.⁸ The SEC encourages registrants to comply early with the new exhibit hyperlink requirements. Public companies should begin to review their exhibit lists in preparation for the need to include active hyperlinks.

Proposal to Require Use of Inline XBRL Format

Background

In 2009, the SEC adopted rules requiring operating companies that prepare their financial statements in accordance with United States generally accepted accounting principles or International Financial Reporting Standards as issued by the International Accounting Standards Board to provide information from their financial statements accompanying specified filings in XBRL as exhibits to such filings. That year, the SEC also required open-ended management investment companies (mutual funds) to provide risk/return summary information in XBRL format by submitting it as an exhibit to their filings. The XBRL rules also require such filers to post the XBRL files to their websites.⁹

Highlights of the Proposed Amendments

The proposal would amend the XBRL rules to require that affected filers provide the relevant financial statement and risk/return summary information in the Inline XBRL format, which allows filers to embed the XBRL data directly into their filings, thus eliminating the need for a separate XBRL data file exhibit.¹⁰ The SEC's proposed amendments would also eliminate the requirement for filers to post any XBRL data files to their websites.

The proposed amendments would be phased in over three years for operating company financial statement information, and over two years for mutual fund summary risk/return information.¹¹ The proposal is open for public comment until May 16, 2017.

⁸ *Id.*, at 1.

⁹ XBRL Release, at 5.

¹⁰ *Id.*, at 7.

¹¹ *Id.*, at 103-04.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Capital Markets and Securities practice:

<u>David Martin</u>	+1 202 662 5128	dmartin@cov.com
<u>David Engvall</u>	+1 202 662 5307	dengvall@cov.com
<u>Keir Gumbs</u>	+1 202 662 5500	kgumbs@cov.com
<u>Matt Franker</u>	+1 202 662 5895	mfranker@cov.com
<u>Reid Hooper</u>	+1 202 662 5984	rhooper@cov.com
<u>Mark Johnson</u>	+1 202 662 5949	mjohnson@cov.com

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to unsubscribe@cov.com if you do not wish to receive future emails or electronic alerts.