

Memorandum

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

September 2, 2016

On August 31, 2016, the Securities and Exchange Commission (“SEC”) proposed rule amendments that would 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 on 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

The proposed rule is intended to further the objectives of the SEC’s “Disclosure Effectiveness Initiative” – a comprehensive evaluation of the SEC’s disclosure requirements recommended by the SEC staff in its Report on Review of Disclosure Requirements in 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 proposes to amend 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.² In the SEC’s view, requiring registrants to link to

¹ See [Exhibit Hyperlinks and HTML Format](#), Release No. 33-10201, 34-78737; File No. S7-19-16 (Aug. 31, 2016).

² The SEC is also proposing to revise the definition of “hyperlink” in Item 11 of Regulation S-T.

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.

Under the proposed rule, the amendments would apply to “nearly all of the forms that are required to include exhibits under Item 601” of Regulation S-K, specifically:

- 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.

With regard to registration statements, the SEC proposes to require registrants to include an active hyperlink to each exhibit only in the version of the registration statement that becomes effective.

The SEC is also proposing similar amendments to Form F-10 and Form 20-F.

As proposed, the hyperlink requirement would *not* apply to:

- exhibits filed with Form ABS-EE, because that form “is used solely to facilitate the filing of tagged data and related information that must be filed as exhibits to the form,” does not permit exhibits to be incorporated by reference, and contains exhibits in unconverted code; and
- exhibits in eXtensible Business Reporting Language (“XBRL”), since such exhibits are “similarly in unconverted code and not incorporated by reference into other filings.”

Because the exhibit hyperlinking requirement proposed by the SEC “would be feasible only if registrants are required to file in HTML,” the SEC is proposing to require all registrants to file the forms affected by the proposed rule in HTML format.

The SEC has set a 45-day comment period in connection with its proposed rule amendments.

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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