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Proposed SEC Rules Requiring Hyperlinks to Exhibits in Filings

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On August 31, 2016, the U.S. Securities and Exchange Commission (SEC) proposed rules and form amendments that would require each SEC registrant that is filing a registration statement or current report that is subject to the exhibit requirements under section 601 of Regulation S-K, or that is filing a Form F-10 or 20-F, to include a hyperlink to each exhibit that is listed in the exhibit index of the SEC filing. The proposed rules, which are part of the SEC's comprehensive project to re-evaluate disclosure requirements (the Disclosure Effectiveness Initiative), are primarily intended to allow users of EDGAR to access exhibits in an efficient manner via a hyperlink. As currently proposed, the rules would not require Canadian issuers that are SEC registrants to include hyperlinks to exhibits in multijurisdictional disclosure system (MJDS) forms filed with the SEC.

Background

SEC registrants may, when filing a registration statement or current report, incorporate by reference a document that is listed in the exhibit index of such registration statement or current report by referring to a previously filed registration statement or current report that includes the actual document listed in the exhibit index. This alleviates the need for filers to refile the same exhibit with multiple registration statements and current reports. However, the process of seeking and retrieving exhibits that are incorporated by reference can be both time-consuming and cumbersome because a person must review the exhibit index to determine the filing in which the exhibit is included and then search through the registrant's filings to locate the filing with which the particular exhibit was actually filed.

Scope of the Proposed Rule

The proposed amendments would apply to nearly all forms that are required to include exhibits under Item 601 of Regulation S-K,¹ 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 8-K, 10, 10-D, 10-K and 10-Q under the *Securities Exchange Act of 1934*, as amended; the proposed amendments also include corresponding revisions to Form F-10 and Form 20-F. For periodic or current reports, the active hyperlink to each exhibit would need to be included when the report is filed. If the filing is a registration statement, the registrant would be required to include an active

¹ Exhibits proposed to be excluded from the rules include XBRL exhibits, exhibits filed on paper under temporary or continuing hardship exemptions and exhibits incorporated by reference that were filed on paper before electronic filing on EDGAR became mandatory (although the SEC sought comment on whether issuers should be required to electronically refile exhibits that were filed on paper before electronic filing became mandatory).

hyperlink to each exhibit only in the version of the registration statement that becomes effective. As currently proposed, the rules would not apply to Form 6-K or Form 40-F or to other MJDS forms (such as Forms F-7, F-8 and F-80) because the exhibits filed with these forms are attached to them.²

Currently, filers must submit electronic filings to the SEC using the EDGAR system in either ASCII format or HTML format. HTML has features that allow for hyperlinks that link to another place in the same document or to a separate document. ASCII, however, cannot support functional hyperlinks. Therefore, the proposed rules would require all filings covered by the proposal to be filed in the HTML format. The SEC does not anticipate this HTML requirement to affect many filers, as over 99% of filings that were made in 2015 on the forms that would be affected by the proposed rules were filed in the HTML format. Public comments on the new rules were to be submitted to the SEC on or before October 27, 2016, and the SEC has not yet adopted the rules.

If you have any questions regarding the foregoing, please contact [Jeffrey Nadler](#) (212.588.5505) or [Paul Watkins](#) (212.588.5547) in our New York office.

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² The SEC did, however, seek comment on whether Form 6-K and/or other MJDS forms should nonetheless be revised to require exhibit hyperlinks.