

SEC Requires Hyperlinks to Exhibits in Company Filings

In March 2017, the Securities and Exchange Commission (“SEC”) adopted rule and form amendments that apply to registrants that file registration statements and reports subject to the exhibit requirements under Item 601 of Regulation S-K, or that file Forms F-10 or 20-F, requiring all such filings (i) to include a hyperlink of each exhibit listed in the exhibit index and (ii) to be submitted in HyperText Markup Language (“HTML”) format.¹ For “accelerated filers”² and “large accelerated filers”³ the rules will apply to filings submitted on or after September 1, 2017. Other registrants that submit filings in ASCII have until September 1, 2018 to comply with the rules.⁴

Under the new rules, each exhibit identified in the exhibit index must include an active link to an exhibit that is filed with the registration statement or report or an active hyperlink to an exhibit separately filed on EDGAR being incorporated by reference.⁵ The rules do not apply to (i) 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 or (ii) exhibits filed with Form ABS-EE or to XBRL exhibits.⁶ The rules will not require registrants to refile electronically any documents previously filed only in paper.

Any registration statement or report subject to the exhibit filing requirements under Item 601 of Regulation S-K and Forms F-10 and 20-F will be required to be filed in HTML form. Registrants may continue to file any schedules or forms that are not subject to the exhibit filing requirements under Item 601 in ASCII. The SEC will issue an updated EDGAR Filer Manual that will describe the procedures needed to create the necessary hyperlinks.

A registrant must correct a nonfunctioning hyperlink, or a functioning hyperlink to the wrong exhibit, by filing: (i) in the case of a pre-effective registration statement, a pre-effective amendment to such registration statement with a corrected hyperlink, or (ii) in the case of an effective registration statement or an Exchange Act report, a corrected hyperlink in the next Exchange Act report that requires, or includes, an exhibit pursuant to Item 601 of Regulation S-K (or, in the case of a foreign private issuer, pursuant to Form 20-F or Form F-10). The registrant may also correct the hyperlink by filing a post-effective amendment to the registration statement. An inaccurate exhibit hyperlink alone will not render a filing materially deficient and will not affect a registrant’s eligibility to use short-form registration statements.

¹ See *Exhibit Hyperlinks and HTML Format*, Release Nos. 33-10322; 34-80132; File No. S7-19-16 (March 1, 2017), available at <https://www.sec.gov/rules/final/2017/33-10322.pdf>.

² See Rule 12b-2 of the Securities Exchange Act of 1934, as amended.

³ Id.

⁴ The compliance date with respect to Form 10-D that will require hyperlinks to any exhibits filed with Form ABS-EE will be published by the SEC in the Federal Register following technical programming changes by SEC staff.

⁵ EDGAR does not accept documents containing web addresses that hyperlink to external websites and a document filed containing a hyperlink to an external website will be rejected.

⁶ The rules do not apply to Form 6-K or other forms under the multi-jurisdictional disclosure system because such forms do not require exhibits or an exhibit index.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Bradley J. Bondi at 202.862.8910 or bbondi@cahill.com; Charles A. Gilman at 212.701.3403 or cgilman@cahill.com; Kimberly Petillo-Décossard at 212.701.3265 or kpetillo-decossard@cahill.com; John Schuster at 212.701.3323 or jschuster@cahill.com; or Joseph Rosati at 212.701.3438 or jrosati@cahill.com.

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