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Legal Update
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Get Ready to Hyperlink SEC Exhibit Filings Beginning September 1

Beginning September 1, 2017, the exhibits listed in the exhibit index of specified filings made with the US Securities and Exchange Commission (SEC) will have to be hyperlinked.[1] This includes exhibits filed with a registration statement or report as well as exhibits that are incorporated by reference to prior filings. Public companies should now be preparing to comply with this upcoming requirement.

In preparation for this new requirement, the SEC amended its EDGAR Filer Manual to provide instructions on how to hyperlink to exhibits submitted with a previous submission and to exhibits submitted concurrently with a filing.[2] These instructions are contained in Chapter 5 of Volume II of the EDGAR Filer Manual.

The hyperlink requirement is explained in our Legal Update, "SEC Requires Hyperlinks for Exhibits in Company Filings," dated March 9, 2017.[3] Briefly, companies filing SEC forms that are subject to Item 601 of Regulation S-K[4] must provide hyperlinks for their exhibit indexes. These forms include Forms S-1, S-3, S-4, S-8, S-11, SF-1, SF-3, F-1, F-3 and F-4 under the Securities Act of 1933 and Forms 10, 10-K, 10-Q, 8-K and 10-D under the Securities Exchange Act of 1934. Similarly, Forms F-10 and 20-F must include hyperlinks for their exhibit indexes.

Non-accelerated filers and smaller reporting companies that submit filings in the ASCII format have until September 1, 2018, to comply with the requirement to provide hyperlinks for their exhibits.

Practical Considerations for Exhibit Hyperlinks

Companies should make sure they are prepared to comply with the necessary mechanics of exhibit filings. Appropriate company personnel should review the relevant changes to the EDGAR Filer Manual to understand what has to be done at their end to assure that filings with exhibits proceed smoothly. Companies should also coordinate with their financial printers, EDGAR filing agents or software providers to determine the necessary mechanics of placing the hyperlinks in an exhibit index that needs to be converted to the EDGAR format.

A company's annual report on Form 10-K or Form 20-F may not be its first filing subject to the new exhibit hyperlinks requirement. However, because an annual report generally has a substantially longer list of exhibits than other reports, advance planning is warranted. As part of the disclosure control process, companies should begin locating the URLs for the exhibits included in their last annual report exhibit index well before their next annual filing is due.

The recent amendments to the EDGAR Filer Manual serve as an important reminder: now is a good time to get ready for exhibit hyperlinks.

For more information about the topics raised in this Legal Update, please contact the author, Laura D. Richman, at +1 312 701 7304, any of the following lawyers or any other member of our Corporate & Securities practice.

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Endnotes

1 The adopting release for the exhibit hyperlink requirement is available at https://www.sec.gov/rules/final/2017/33-10322.pdf.

2 The adopting release for the amendment of the EDGAR Filer Manual is available at https://www.sec.gov/rules/final/2017/33-10385.pdf. Chapter 5 of Volume II of the EDGAR Filer Manual is available at https://www.sec.gov/info/edgar/edgarfm-vol2-v42.pdf.

3 https://www.mayerbrown.com/files/Publication/5d8118bc-4fdf-4cbb-a455-fc811f904c7b/Presentation/PublicationAttachment/73cdf78f-8afa-4a16-9079-0587a582df84/170309-UPDATE-CS.pdf.

4 Item 601 of Regulation S-K, available at http://www.ecfr.gov/cgi-bin/text-idx?SID=8e0ed509ccc65e983f9eca72ceb26753&node=17:3.0.1.1.11&rgn=div5%20-%20se17.3.229_1601#se17.3.229_1601, contains a helpful exhibit table indicating which exhibits are required for each report subject to such item.

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