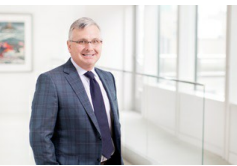





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SEC Adopts Mandatory HTML Format and Exhibit Index Hyperlink Requirement

March 27, 2017

On March 1, 2017, the Securities and Exchange Commission adopted rule and form amendments that require hyperlinks in exhibit indexes included in Securities Act and Exchange Act filings pursuant to Item 601 of Regulation S-K and in Forms F-10 and 20-F. The amendments also require that registrants submit those filings in HyperText Markup Language (HTML). The complete text of the adopting release is available [here](#). Although the release encourages early adoption and compliance, the rules formally take effect on September 1, 2017, except for registrants that currently submit filings in ASCII format and that are not accelerated or large accelerated filers, who need not comply until September 1, 2018.

Pursuant to Item 601 of Regulation S-K, which applies to most Securities Act registration statements (Forms S-1, S-3, S-4, S-8, S-11 F-1, F-3, F-4, SF-1, and SF-3) and periodic and current reports under the Exchange Act (Forms 8-K, 10, 10-K, 10-Q and 10-D), registrants are required to include as part of each filing an exhibit index that lists all of the exhibits included in the filing. Registrants may generally incorporate filed exhibits into subsequent filings by reference to the prior filing in lieu of re-filing the exhibit. The hyperlink amendment to Item 601 and to similar requirements in Forms F-10 and 20-F facilitates the retrieval of exhibits that are incorporated by reference to prior filings by eliminating the need for viewers to locate the prior filing in order to access the incorporated prior exhibit. In adopting the proposal, Commissioner Kara M. Stein noted that the amendments “should make it much easier to access exhibits” and stated that the amended rule and forms “will eliminate the inefficiencies associated with the [exhibit] search process.” The requirements were adopted substantially as proposed, except that the final rule requires an active hyperlink to each document referenced in the exhibit index for all such forms (whereas the proposing release only required Securities Act registration statements to include hyperlinks for exhibits that are included in the version of the registration statement that is ultimately declared effective by the Commission).

The requirement does not apply to paper filings made 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. The requirement also excludes XBRL exhibits and exhibits filed with Form ABS-EE. The Commission also ultimately elected not to amend Form 6-K or the multi-jurisdictional forms used by certain Canadian issuers (such as Forms F-7,

F-8, and F-80) because exhibits and exhibit indexes are not required for those forms.

The Commission also adopted amendments to Rule 105 of Regulation S-T, which generally governs the formatting of documents filed with the Commission on EDGAR. The final rule will require registrants to file any registration statement or report subject to the hyperlinking requirement in HTML format and permits registrants to continue to file any schedules or forms not subject to the hyperlink requirement in either HTML or ASCII format (such as proxy statements or filings on Schedules 13D or 13G). The amendments also require registrants to correct non-functioning or incorrect hyperlinks in their next Exchange Act report, or, in the case of registration statements that are not yet effective, by filing a pre-effective amendment to such registration statement. The adopting release makes it clear that a non-functioning or incorrect hyperlink will not alone render a filing materially deficient nor affect the registrant's eligibility to use short-form registration statements (such as Forms S-3 and F-3).

This memorandum is a summary for general information and discussion only and may be considered an advertisement for certain purposes. It is not a full analysis of the matters presented, may not be relied upon as legal advice, and does not purport to represent the views of our clients or the Firm. Robert T. Plesnarski, an O'Melveny partner licensed to practice law in Washington, DC and Pennsylvania, Shelly Heyduk, an O'Melveny partner licensed to practice law in California, and James M. Harrigan, an O'Melveny associate licensed to practice law in Washington, DC and Maryland contributed to the content of this newsletter. The views expressed in this newsletter are the views of the authors except as otherwise noted.

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