

## SEC ADOPTS AMENDMENTS TO REQUIRE HYPERLINKS TO EXHIBITS LISTED IN REGISTRATION STATEMENTS AND EXCHANGE ACT REPORTS

On March 1, 2017, the U.S. Securities and Exchange Commission (SEC) adopted rule amendments to require registrants to include hyperlinks to each exhibit listed in the exhibit index included in registration statements filed under the Securities Act of 1933 (Securities Act) and periodic and current reports filed under the Securities Exchange Act of 1934 (Exchange Act). The rule amendments are intended to make it easier for investors and other users to access exhibits listed in the exhibit index without having to manually search through the registrant's SEC filings to locate and access the exhibits. The rule amendments further the objectives of the SEC staff's Disclosure Effectiveness Initiative, a broad staff review of the SEC's public company disclosure, presentation and delivery requirements. The final rule release is available online at <https://www.sec.gov/rules/final/2017/33-10322.pdf>.

Currently, if an investor or other user wants to access an exhibit incorporated by reference into a Securities Act registration statement or an Exchange Act report, he or she would need to search across the registrant's previous SEC filings to locate and access the exhibit.

Under the amended rules, registrants filing a Securities Act registration statement or an Exchange Act report subject to the exhibit filing requirements of Item 601 of Regulation S-K<sup>1</sup> will be required to include an active hyperlink to each exhibit listed in the exhibit index included in the registration statement or report, whether or not the exhibit is included with the filing or incorporated by reference from a previous SEC filing made on EDGAR. Similarly, under the amended rules, foreign private issuers filing a Form F-10 or a Form 20-F will also be required to include active hyperlinks to each exhibit that is listed in the exhibit index included in the filing. Registrants filing a Securities Act registration statement will be required to include active hyperlinks in the initial registration statement as well as each subsequent pre-effective amendment to the registration statement. Because proxy statements are not subject to Item 601 exhibit filing requirements, the exhibit hyperlink requirement will not apply to any exhibits filed with proxy statements. In addition, the exhibit hyperlink requirement will not apply to (i) exhibits filed with Form 6-K, (ii) exhibits filed with other multijurisdictional disclosure system forms used by Canadian issuers, (iii) XBRL exhibits, (iv) exhibits filed with Form ABS-EE or (v) exhibits filed in paper pursuant to a temporary or continuing hardship exemption under Rules 201 or 202 of Regulation S-T or under Rule 311 of Regulation S-T. The amended rules will not require registrants to refile electronically any exhibits previously filed only in paper.

Under the amended rules, if a hyperlink to an exhibit does not link to the correct exhibit or is nonfunctioning, the registrant will be required to correct the hyperlink by filing, in the case of a registration statement that is not yet effective, a subsequent pre-effective amendment to the registration statement, or in the case of a registration statement that is effective or an Exchange Act report, in the next Exchange Act periodic report that requires or includes an exhibit under Item 601 of Regulation S-K (or in the case of a foreign private issuer, under Form 20-F or Form F-

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<sup>1</sup> The specific forms that are subject to the amended rules are 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 and Forms 10, 10-K, 10-Q, 8-K and 10-D under the Exchange Act.

10). If a filing contains an inaccurate exhibit hyperlink, the inaccurate hyperlink alone would not render the filing materially deficient, nor affect a registrant's eligibility to use short-form registration statements.

Because the text-based American Standard Code for Information Interchange ("ASCII") format cannot support hyperlinks, Securities Act registration statements and Exchange Act reports that are subject to Item 601 exhibit filing requirements and Form F-10s and Form 20-Fs will also be required to be submitted in HyperText Markup Language (HTML) format.

Registrants are required to comply with the amended rules for filings submitted on or after September 1, 2017, except that smaller reporting companies and non-accelerated filers that submit filings in ASCII format need not comply with the amended rules until September 1, 2018.

## About Curtis

Curtis, Mallet-Prevost, Colt & Mosle LLP is a leading international law firm. Headquartered in New York, Curtis has 17 offices in the United States, Latin America, Europe, the Middle East and Asia. Curtis represents a wide range of clients, including multinational corporations and financial institutions, governments and state-owned companies, money managers, sovereign wealth funds, family-owned businesses, individuals and entrepreneurs.

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