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SEC Approves Final Rules Requiring XBRL

The Securities and Exchange Commission (“SEC”) recently approved rules that require public companies and mutual funds to file their financial statements in interactive data format using eXtensible Business Reporting Language, or “XBRL.”

What is XBRL?

XBRL is a computer program language that uses data tags to identify information contained in a company’s financial statements. The data tags use standard definitions to classify and define the financial information within the financial statements. XBRL provides a consistent structure that can be recognized by various software programs, and allows financial information to be exported directly into databases, spreadsheets and financial reporting systems, making it easier and more efficient for analysts and investors to view, analyze and compare the financial information.

For more information regarding the XBRL filing rules, please contact your regular Vorys attorney or a member of the Vorys Corporate and Finance Group by calling 614.464.6400.

When do the new rules become effective?

Companies required to file interactive reports under the new rules will be phased in over a three-year period, as follows:

Periodic reports for periods ending on or after June 15, 2009:

- Domestic and foreign large accelerated filers that use U.S. Generally Accepted Accounting Principles (“GAAP”) and have a worldwide public common equity float above \$5 billion

Periodic reports for periods ending on or after June 15, 2010:

- All other domestic and foreign large accelerated filers using GAAP

Periodic reports for periods ending on or after June 15, 2011:

- All remaining filers using GAAP, including smaller reporting companies
- All foreign private issuers using International Financial Reporting Standards as issued by the International Accounting Standards Board

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What filings do the new rules apply to?

XBRL is required for (1) all registration statements containing financial statements, (2) all Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, and (3) any Current Report on Form 8-K that contains revised or updated financial statements.

What are the requirements of the new rules?

Under the new rules, in addition to filing the registration statement or report on EDGAR (or EDGAR's successor, IDEA), a company must also submit a separate XBRL-formatted exhibit, which will be filed as new Exhibit 101. The requirements of the new interactive data filing can be found in Rule 405 of Regulation S-T.

In this new exhibit, every amount (i.e., monetary value, percentage and number) on the financial statements must be tagged. There are approximately 13,000 standardized tags for companies to choose from, and a company may create its own tags when needed. Some numbers and items included in the financial statements may have more than one relevant tag. For example, the number "\$500,000" may be tagged with "U.S. Dollars," "Net Profit," "3rd Quarter" and "2008." The data tags will not be visible and will not change the visual appearance of the document filed with the SEC.

The footnotes to the financial statements must also be tagged. During a company's first year of required XBRL filing, the company may tag entire footnotes as a single block of text without tagging the components of the footnote. Beginning in the second year of XBRL filing, however, the company must tag the footnote as a whole, as well as tag each significant accounting policy, each table as a whole, and each individual amount included in the footnote.

The new rules also require that each financial statement schedule must be tagged. In a company's first year of required XBRL filing, the company may tag the entire schedule as a block. Beginning in year two, however, each individual amount in the schedule must be tagged.

What are the deadlines for filing XBRL exhibits?

A company's first required XBRL exhibit may be filed up to 30 days after the due date of the filing requiring the exhibit. Additionally, the first exhibit of the company's second year of XBRL compliance, which requires the more detailed footnote and schedule tagging discussed above, may be filed up to 30 days after the due date of the related filing. All other XBRL exhibits must be filed as part of the underlying registration statement or report.

Are there additional posting requirements?

A company must post its financial statements in interactive data format on its corporate website by the end of the calendar day on which they are filed with the SEC. The interactive data must remain on the company's website for at least twelve months.

What are the consequences of errors and non-compliance?

If a company fails to file or post on its website interactive data by its due date, the company will not be eligible to use short-form registration statements (i.e., Forms S-3 and S-8), and will be considered not to have adequate current public information for Rule 144 purposes. Once the missing filing or posting is made, the company is restored to current and timely status.

Are there limitations on liability for errors in XBRL files?

The SEC has implemented a temporary exclusion period for errors and misstatements in XBRL files. For purposes of liability, for the two-year period beginning with the date by which a company is first required to submit an XBRL file (and no later than October 31, 2014), the XBRL file will not be deemed “filed” or be part of a registration statement or prospectus. Also, the XBRL file will be deemed to comply with Rule 405 (the rule requiring interactive data) if the company makes a “good faith attempt” to comply with the rule and promptly amends to correct an error after becoming aware of it. A safe harbor provides that a company will have corrected an error “promptly” if it does so by the later of 24 hours or 9:30 a.m. on the next business day after becoming aware of the error. If the company does not act promptly, the XBRL file will be subject to liability under Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder.

In addition to the limitations above, XBRL data will, however, be excluded from the scope of officer certifications, and a company will not be required to obtain auditor assurance on such interactive data files.

What happens if technical difficulties prevent filing?

If a company experiences unanticipated technical difficulties that prevent the timely preparation and electronic submission of interactive data, the filing will be deemed current for a period of up to six business days, after which time it will be deemed to be not current.

What must companies do now?

To convert to XBRL, a company has two choices. It may either:

- upgrade its system and obtain the necessary software to produce XBRL financial statements internally, and integrate the addition of data tags into its financial statement preparation process; or
- continue to prepare financial statements as it currently does and, once completed, work with an XBRL service provider (such as a financial printer) to convert them to XBRL.

Interactive data tagging requires much more issuer involvement than EDGAR conversion. Tagging must be completed manually by those who are knowledgeable about the company’s financial statements. The SEC estimates the internal hours required to tag financial statements for a company’s first XBRL filing to be 125 hours. For the company’s initial filing in year two of XBRL compliance, the tagging for the financial statements is estimated to decrease to about 17 hours, with 70 additional hours for the more extensive footnote tagging. The time for subsequent filings may be significantly shorter because, after the first successful filing, XBRL files may be reused as templates.

If you have any questions regarding the XBRL filing rules, please contact your regular Vorys attorney or a member of our Corporate and Finance Group by calling (614) 464-6400.