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# SEC Proposes Interactive Data Format to Enhance Financial Disclosure

The U.S. Securities and Exchange Commission (SEC) has proposed rules that would require companies to provide financial statement information in an interactive data format that is intended to improve its usefulness to investors. The format is referred to as XBRL, short for extensible Business Reporting Language, and utilizes interactive data tags to identify individual items in a company's financial statements so that financial statement information can be downloaded into spreadsheets, analyzed using commercial off-the-shelf software, and used within investment models in other software formats. As proposed, the rules would apply on a phased-in schedule to domestic and foreign public companies that prepare their financial statements in accordance with U.S. GAAP and to foreign private issuers that prepare their financial statements using International Financial Reporting Standards (IFRS).

The XBRL disclosure would be provided as a new exhibit to a company's annual and quarterly reports and to all registration statements containing financial statements. The exhibit would contain financial statements, including accompanying notes, and any applicable financial statement schedules in the interactive data format. Initially, companies would be required to tag notes and schedules as blocks of text. After a year of tagging, companies would also be required to provide tags for the details within the financial statement notes and schedules. All filers would be entitled to a 30-day grace period from the filing date of the related report for their initial interactive data submission and to a 30-day grace period in year two of their interactive data reporting when the financial footnotes and schedules would be required to be tagged in detail.

In addition, a filer would be required to post its financial statements in interactive data format on its corporate website on the same day the report or registration statement was deemed officially filed or was required to be filed, whichever is earlier.

The SEC's proposed timetable would require companies having a worldwide public common equity float over $5 billion that report in U.S. GAAP (approximately the 500 largest U.S. companies) to provide their financial disclosures in XBRL format beginning with fiscal periods ending on or after December 15, 2008. If adopted, the first interactive data provided under the new rules would be released in early 2009, likely in connection with 2008 year-end financial reporting.

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The balance of large accelerated filers that report in U.S. GAAP would be subject to the XBRL taxonomies for the fiscal period ending on or after December 15, 2009. All other reporting companies, including small filers and foreign issuers reporting under IFRS, would be required to provide XBRL disclosure for fiscal periods ending on or after December 15, 2010.

The proposed rules treat the viewable interactive data displayed through software on the SEC's website differently from the interactive data file that is generally submitted to the SEC. The viewable interactive data, to the extent identical in all material respects to the corresponding portion of the traditional format filings, would be deemed "filed" with the SEC and subject to the same liability provisions of the federal securities laws as the financial data filed in the traditional format. Accordingly, the viewable interactive data would be subject to the CEO and CFO certification requirements under the Exchange Act.

On the other hand, the interactive data file generally submitted to the SEC would be deemed not filed for purposes of certain liability provisions of federal securities laws and would not be subject to the officer certification requirements. The anti-fraud provisions of the federal securities laws would continue to apply and filers would continue to be subject to liability for the substantive content of the financial disclosures[1] in the same way and to the same extent as they are for their traditionally-filed financial disclosures. Also, filers would be protected from liability for failure to comply with the proposed tagging and related requirements if the filer was acting in good faith, made reasonable effort, and corrected the failure as soon as reasonably practicable after becoming aware of it.

A company that misses the requisite XBRL deadlines would be deemed “not current” on its periodic reports and therefore ineligible for short-form registration (Form S-3, Form F-3, and Form S-8) or incorporation by reference at a level prescribed by Form S-3 or Form F-3. A delinquent filer would also not be eligible for the resale exemption safe harbor under Rule 144. Any company so penalized will automatically become compliant once it files the required XBRL exhibit.

As SEC Chairman Christopher Cox noted, the use of XBRL "would transform financial disclosure from a 1930s form-based system to a truly 21st century model that taps the power of technology for the benefit of investors." It is anticipated that the SEC will adopt a final rule this fall.

1 The content of the financial disclosure refers, for example, to the numerical values in the financial statements and footnotes, and to the statements in the footnotes.

## Practice group contacts

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