

New Procedures for Mutual Fund and Insurance Product SEC Filings

April 04, 2019

In Release No. 33-10618 (Mar. 20, 2019), the SEC adopted amendments (the “Amendments”) that consolidate, conform, and otherwise refine numerous requirements applicable to filings with the agency. This Alert calls attention to certain new requirements that will have particular relevance to mutual funds, variable annuities, variable life insurance, and other insurance products registered with the SEC.

Confidential Treatment of Terms in Exhibits

Historically, registrants wishing to redact confidential terms from “reinsurance agreements” or other “material contracts” required to be filed as exhibits to SEC filings have had to submit confidential treatment requests to the SEC. The SEC would grant any such confidential treatment only for a limited period of time, so that subsequent requests for the SEC to extend the relief also might be necessary.

Under the Amendments, such requests for confidential treatment (or extensions) are no longer required. Rather, a registrant need only file the reinsurance agreement or other material contract as an exhibit (a) with the confidential terms redacted and (b) with representations on the cover page of the exhibit that the redacted information is not “material” and would likely cause competitive harm to the registrant if publicly disclosed. The standards for making such representations are comparable to standards that historically have applied to confidential treatment requests for such terms.

Although the new procedure is available immediately, it does not supersede the old procedure, and registrants can continue to rely on their existing orders until the end of the periods for which those orders provide confidential treatment.

However, registrants who wish to redact confidential terms from agreements to be filed as exhibits in the foreseeable future (or to extend the period of confidential treatment for previously filed agreements) should consider filing (or refiling) those exhibits using the new procedure.

Required Links to Exhibits and HTML Format

The Amendments generally require that:

- a filing's exhibit list provide an active link to each electronically filed exhibit listed there,
- for exhibits that are incorporated into the filing by reference, the link be an active hyperlink to where the exhibit appears in the SEC's "EDGAR" system, and
- the filing be in HTML format (as opposed to ASCII format).

Registered investment companies, unlike most other registrants, have not previously been subject to these requirements.

Therefore, to provide adequate time to comply, the exhibit link and HTML requirements apply to registered investment companies only as to filings made on or after April 1, 2020. Other types of registrants may already be subject to such those requirements, however, and no registrant is prohibited from complying with these requirements immediately.

The SEC's adopting release notes that an inaccurate hyperlink alone would not render a filing materially deficient, so that such an inaccuracy would not necessarily have to be corrected immediately. For example, although an inaccurate hyperlink in a registered investment company registration statement that has not yet become effective must be corrected in a pre-effective amendment, if such a registration statement is already effective, an inaccurate link generally can be corrected in the next post-effective amendment that is filed.

Incorporation of Information by Reference into Financial Statements

The Amendments contain a new prohibition against incorporation of material into the financial statements by reference or by other cross-reference to sources outside the financial statements. Specifically, such incorporation or cross-references are prohibited, unless required or permitted by the SEC's rules, U.S. Generally Accepted Accounting Principles, or International Financial Reporting Standards as issued by the International Accounting Standards Board. This prohibition is effective May 2, 2019.

Non-Material Attachments/Schedules to Exhibits

Under the Amendments, non-material attachments or schedules generally may be omitted from exhibits filed with the SEC, provided that the exhibit or accompanying text identifies the nature of the omitted material. This change is effective May 2, 2019.

This brief summary is not exhaustive, and many Amendments adopted by the release are relevant to SEC registrants other than those specifically referred to in this message. Therefore, all SEC registrants should carefully review the full release in order to evaluate the Amendments' impact in their particular circumstances.

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