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Mandatory Interactive Data Reporting (XBRL) Arrives

In May 2008, the SEC proposed a rule that would require reporting companies to provide financial statement data found in their periodic reports and registration statements in an interactive data format using the eXtensible Business Reporting Language (XBRL). The XBRL reporting requirements will be phased-in beginning on June 15, 2009, based on a company's type and size, and all companies will be required to file interactive financial statements for fiscal periods ending on or after June 15, 2011. The final rule mandating XBRL use was adopted by the SEC on December 17, 2008, and the final adopting release was made available on January 30, 2009.

What is XBRL and what will it do?

XBRL is a computer language used for the electronic communication of financial data that has the potential to increase the utility of the financial disclosures of reporting companies. Reporting companies will be required to use XBRL to individually "tag" all data in their financial statements. Investors, analysts and others will then have the ability to instantly locate relevant data from financial statements and compare them quickly with similar data of other companies, reporting periods and industries. For example, an investor could retrieve all data tagged as "net income" from multiple company filings within seconds. Without XBRL, this comparison would require the investor to comb through each company's filings, extract that information manually and enter it into a spreadsheet.

What filings are subject to the new rules?

Forms 10-Q and 10-K (or Forms 20-F and 40-F for a foreign, private reporting company);

Form 8-K (or Form 6-K for a foreign, private reporting company) containing revised or updated financial statements; and

Registration statements containing financial statements (but not those that incorporate by reference financial statements).

The XBRL interactive data requirement is in addition to current reporting requirements. Financial reports will continue to be filed in the conventional form through EDGAR with the XBRL tagged financial statements filed as an additional exhibit. A reporting company must also post its interactive financials on its website by the end of the calendar day the related periodic report or registration statement was filed (or required to be filed, if earlier) and leave them posted for at least 12 months.

When does the XBRL requirement take effect?

Large accelerated filers who file using U.S. GAAP with over \$5 billion of public float (measured at the end of their most recently completed second fiscal quarter) must begin filing interactive financial data for fiscal periods ending on or after June 15, 2009. All other large accelerated filers using U.S. GAAP must file interactive financial data for fiscal periods ending on or after June 15, 2010. All other reporting companies using U.S. GAAP (and all foreign private issuers using IFRS) must file interactive financial data for fiscal periods ending on or after June 15, 2011. Any reporting company may begin filing interactive data earlier than its required start date.

For its first year of XBRL reporting, a company will be required to tag each note and schedule to its financial statements as individual blocks of text. Additionally, for reporting periods ending one year after its original XBRL filing, the filer will be required to individually tag each quantitative disclosure, significant accounting policy and table within the notes and schedules and will be permitted, but not required, to tag each narrative disclosure individually.

Is there a grace period?

There is a 30-day grace period for a company's first XBRL filing. In year two, the company will have a similar 30-day grace period for its first filing that requires detailed tagging of its notes. Filers taking advantage of a grace period must file an amendment to the original filing with the tagged financials attached. Note that the grace period does not change the date that the original report is due but simply allows an additional 30 days to file the XBRL tagged financials or notes.

What are the consequences of missing an XBRL filing deadline?

The consequences of missing an XBRL filing deadline are the same as missing any other filing deadline: The company will no longer be considered current in its Exchange Act filings, which will, among other things, disqualify it from using certain registration statements and the resale safe harbor exemption under Rule 144, until the XBRL filing is made.

What liability attaches to XBRL files?

Interactive data files may be the basis of modified liability under the federal securities laws within 24 months of the time the filer is first required to submit interactive data files. During this time, XBRL interactive data files will be deemed not filed for purposes of specific liability provisions under federal securities laws and protected from anti-fraud provisions if the filer made a good faith attempt to comply with the XBRL tagging requirements and promptly corrects a filing after becoming aware of any failure to comply. The SEC is adopting rules that exclude interactive data from the officer certification requirements found in periodic reports.

How is XBRL tagging done?

A reporting company has two methods to tag its financial data: (1) purchasing commercially available software and tagging its financial data itself; and (2) engaging a service company that provides XBRL tagging services. While Husch Blackwell Sanders does not offer XBRL tagging services at this time, we will happily direct you to an appropriate service provider.

If you have any questions regarding this or any other Securities matter, please contact one of the following attorneys:

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