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ARTICLE



SEC Rolls Out Modernized Filing Fee Payment and Exhibit Rules

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The Securities and Exchange Commission (SEC) has adopted rules modernizing filing fee disclosures and payment methods. The changes are aimed at reducing reliance on a dated and onerous process for filers and Commission staff.

On January 31, the SEC's new rules concerning registration fee disclosure became effective. The new rules also update the payment methods for registration fees, which rules will become effective on May 31. Filers may voluntarily comply with the new rules before the applicable compliance date once the EDGAR system has been modified for compatibility with the new rules.

Filing Fee Disclosure

Among other things, the amendments require filers to provide all required information for filing fee calculations in a structured exhibit, replacing the filing fee table on the cover page of most fee-bearing filings. The new exhibit requirement and the related instructions are set forth in Item 601(b)(107) of Regulation S-K and the relevant SEC forms and schedules. The tables required for each form vary slightly, and each form has also been amended accordingly. This new fee table exhibit is required as of January 31.

The amendments will also require the filing fee exhibit to be tagged with XBRL. The XBRL tagging requirement has a phased-in compliance date — July 31, 2024 for large accelerated filers and July 31, 2025 for all other filers.

The amendments will affect most fee-bearing forms, schedules and statements filed under either the Securities Act of 1933, as amended (including Forms S-1, S-3, S-4, S-8, S-11, F-1, F-3 and F-10), the Securities Exchange Act of 1934, as amended (including Schedules 13E-3, 13E-4F, 14A, 14C, TO and 14D1-F), and the Investment Company Act of 1940, as amended (including Forms N-2, N-5 and N-14).

'Pay-As-You-Go' Filers

Under the new rules, all Rule 424 final prospectus filings for shelf takedowns from a Form S-3 or a Form F-3, as applicable, will require a separate filing fee exhibit, regardless of whether fees were prepaid by the issuer. For a well-known seasoned issuer relying on Rule 456(b) to "pay as you go" when it does a takedown from an effective shelf registration statement on Form S-3 or Form F-3, as applicable, under newly-amended Rule 424(g)(1), the issuer's registration fee exhibit is required to comply with a specific table format shown in Form S-3 or Form F-3, respectively. For all other Rule 424 filings by issuers that are not using "pay as you go," a table is not required. However, the maximum aggregate amount or maximum offering price of the securities to which the prospectus relates, along with a statement identifying the filing as a final prospectus for the offering, must be included within the final prospectus itself.

Filing Fee Payment Methods

In another step toward modernization, the amendments eliminate the option to pay filing fees via paper check and money orders. The SEC will continue to accept filing fee payments via wire transfer. The amendments also add the option to pay filing fees by ACH transfer and by debit or credit cards issued by US banks (subject to a daily and per filing fee limit of $25,000). In the adopting release for the amendments, the SEC advised issuers to consider settlement timing for ACH transfers and debit or credit card payments and to time required payments accordingly. The amended fee payment rules will become effective on May 31.

Filing Fee Offsets

The amendments modify fee offset rules and require issuers to provide additional information about fee offset sources. Rule 457(a) of the Securities Act currently requires a company registering securities to pay an additional fee in connection with any pre-effective amendment to a registration statement in which it seeks to increase the amount of securities registered or to register a new class of securities, even if the company is concurrently decreasing the amount of securities of another class it is registering (i.e., the SEC prohibits filing fee refunds). Form instructions will be amended to clarify that an issuer that previously paid a filing fee for a registration statement can rely on Rule 457(b) to use such fee to offset any new fees resulting from an increase in the amount of one or more classes of securities or the addition of one or more classes concurrently with a decrease of one or more classes of securities in the same registration statement. The amendments are limited to issuers that have not previously used Rule 457(o), which allows for the filing fee to be calculated based on a maximum aggregate offering price instead of a number of securities and is most often used in connection with shelf registration statements, to calculate their filing fee.

Next Steps

While the changes may require a learning curve, the new rules are being made with the intention of improving the preparation process for SEC filings and payment processing of filing fees, in order to improve efficiency and lower costs. The filing fee exhibit is required for any future filings on the forms that the amendments impacted. The SEC recommends that issuers tag their filing fee exhibits with XBRL prior to the applicable compliance date in order to resolve any problems with their filing vendors in advance and also to ensure that their corporate policies contemplate the new payment methods and to coordinate with their bank accordingly.

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