

August 9, 2017

Clicking Into Compliance: September 1, 2017 Effective Date for SEC Exhibit Hyperlink Requirement

In an effort to facilitate easier access to exhibits for investors and others, the SEC adopted [final rules](#) in March 2017 requiring companies to include hyperlinks to each document listed in the exhibit index of any registration statement or report filed on the EDGAR system. The requirements will become effective on September 1, 2017, for large accelerated filers and accelerated filers. Non-accelerated filers and smaller reporting companies that submit filings in American Standard Code for Information Interchange (ASCII) will not be required to comply with the final rules until September 1, 2018. This delay in implementation is intended to mitigate the cost burden for smaller reporting companies related to switching over to the HTML format.

Affected Filings

The hyperlinking requirements apply broadly to most filings by SEC reporting companies. The final rules apply to registration statements and reports for which exhibits are required under Item 601 of Regulation S-K, including:

- Registration Statements: Forms 10, S-1, S-3, S-4, S-8, S-11, F-1, F-3, F-4, SF-1 and SF-3
- Annual and Periodic Reports: Forms 10-K, 10-Q, 8-K, 10-D, F-10 and 20-F

Presently, investors and others wishing to access exhibits to an EDGAR filing must exit the filing itself and return to the filing page, or search for the earlier filing from which an exhibit is incorporated by reference. Once the final rules are implemented, users will be able to access exhibits by simply clicking on the relevant hyperlink in the index.

Exhibits Requiring Hyperlinks

All exhibits in the above-referenced registration statements or reports must be hyperlinked, except the following:

- XBRL exhibits;
- Exhibits that are filed with Form ABS-EE (applicable to asset-backed issuers); and

- Exhibits filed in paper pursuant to a temporary or continuing hardship exemption under Rule 201 or 202 of Regulation S-T, or pursuant to Rule 311 of Regulation S-T.¹

The SEC is requiring the use of HTML format because the alternative filing format, ASCII, does not presently support hyperlinks. The hyperlink requirement will apply to exhibits (1) filed (or provided) concurrently with the report or registration statement or (2) incorporated by reference from a previous filing. Companies should note that hyperlinks must be included for all registration statements and amendments, even before they become effective. Additionally, at this time, EDGAR does not accept documents that hyperlink exhibits to external websites.

Non-Functioning or Inaccurate Hyperlinks

Companies will be required to correct any reports or registration statements containing non-functioning or incorrect hyperlinks. Guidelines for corrections are as follows:

- Pre-effective registration statements must be corrected before becoming effective, by means of pre-effective amendment.
- Effective registration statements and reports must be corrected in the company's next periodic report requiring an exhibit under Item 601 of Regulation S-K.
- Effective registration statements may also be corrected by means of post-effective amendment.
- Foreign private issuers must correct inaccuracies in the company's next Form F-10 or 20-F.

The SEC has noted that where a filing contains an inaccurate exhibit hyperlink, the inaccurate hyperlink alone will not render the filing materially deficient, nor affect a company's eligibility to use short-form registration statements.

¹ Companies may re-file those exhibits electronically at their discretion.

Recommendation

The SEC adopting release encourages compliance with the new requirements before the September 1 effective date. Although the next Form 10-Q for many reporting companies will not be due until November, filers should nonetheless be prepared to comply with the new rule for any current reports on Form 8-K and any registration statements, including short-form registration statements, such as Form S-8. We recommend confirming sufficiently in advance of filing that each exhibit listed in exhibit indices has a functioning link, as well as updating disclosure controls and procedures to incorporate this step into a company's standard filing process.

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