

PUBLICATION

SEC to Require Hyperlinks to Exhibits in Registration Statements and Exchange Act Reports

Authors: Penny Somer-Greif

April 10, 2017

The Securities and Exchange Commission (SEC) has adopted amendments to its rules and certain forms that will require registrants to include an active hyperlink to each filed exhibit as identified in the exhibit index of a registration statement or report filed with the SEC. Put forth in March, the amendments are effective September 1, 2017. The SEC uses the term "hyperlinks" generically to refer to both links to a previously-filed exhibit incorporated by reference from another document and links to an exhibit being filed with the report or registration statement in question.

The requirements are applicable to any report or registration statement subject to Item 601 of Regulation S-K, including Securities Act of 1933 registration statements on Forms S-1, S-3, S-4, S-8, F-1, F-3 and F-4, Securities Exchange Act of 1934 (Exchange Act) registration statements on Form 10, Exchange Act reports on Forms 10-K, 10-Q, 8-K and 10-D, and registration statements on Forms F-10 and 20-F. The amendments will also require registrants to file in HyperText Markup Language (HTML) format, instead of American Standard Code for Information Interchange (ASCII), as currently permitted, any such registration statements or reports, because ASCII cannot support the required hyperlinks (although HTML can support hyperlinks to ASCII documents). Such hyperlinks must be included in each pre-effective amendment to a registration statement, instead of just the amendment that goes effective. In addition, nonfunctioning hyperlinks or links to the incorrect exhibit in any such filing must be corrected in the next pre-effective amendment to a registration statement or, with respect to registration statements that have become effective or Exchange Act reports, the next Exchange Act report that requires, or includes, an exhibit. An inaccurate hyperlink alone, however, would not render the filing deficient or affect a company's ability to use short-form registration statements, such as Form S-3.

Importantly, XBRL exhibits are excluded from the hyperlink requirement, as are exhibits on Form ABS-EE, which is essentially just a cover page for an exhibit filing. Exhibits filed in paper pursuant to a temporary or continuing hardship exemption, or originally filed in paper prior to the registrant becoming subject to EDGAR filing requirements, are also excluded.

The required hyperlinks must be to the exhibit as filed with the current filing or previously on EDGAR, as EDGAR does not accept documents containing web addresses that hyperlink to external websites.

Beginning September 1, 2017, registrants must comply with the new requirements in any filings submitted on or after that date, except:

1. any smaller reporting company or any registrant that is not a "large accelerated filer" or an "accelerated filer" as defined in Rule 12b-2 under the Exchange Act, and that submits filings in ASCII, need not comply with the requirements until September 1, 2018 and during such transition period may continue to file registration statements and reports in ASCII; and
2. the compliance date for Form 10-D (asset-backed issuer distribution report pursuant to Section 13 or 15(d) of the Exchange Act) with respect to any exhibits filed with Form ABS-EE will be announced at a later date, after the SEC staff has completed required technical changes to EDGAR in this regard.

The SEC will be issuing an updated EDGAR Filer Manual that will describe the procedures needed to create a hyperlink to an exhibit that a registrant previously filed with a registration statement or report and the procedures needed to create a link to an exhibit that is being filed at the same time as the registration statement or report. We believe, however, that the financial printers (or other service providers that most registrants use to file or to assist them in filing their reports and registration statements on EDGAR) will implement procedures to include the required hyperlinks. We further believe these financial printers will work with registrants on what they need to do in order to ensure the required hyperlinks are included. As the effective date of the amendments gets closer, we suggest that you contact your financial printer or other service provider to discuss.