

Get Ready for Mandatory SEC Exhibit Hyperlinks Beginning September 1

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The Securities and Exchange Commission's final rules requiring hyperlinking of exhibits to SEC filings will be effective for most public companies on September 1, 2017. This update summarizes the final rules, answers the top questions and suggests steps that registrants can take to help assure smooth implementation and compliance.

The final rules, adopted in March 2017, are available [here](#). In July 2017, the SEC released an [updated EDGAR Filer Manual \(Volume II\) \(Version 42\)](#). The updated EDGAR Filer Manual includes technical instructions for complying with the hyperlink requirement (see Section 5.5.2).

What are the general requirements of the final rules?

Under the final rules, registrants that file registration statements and reports subject to the exhibit requirements of Item 601 of Regulation S-K (S-K Item 601), or that file Forms F-10 and 20-F, must include (1) an active hyperlink to an exhibit that is filed with the registration statement or report or (2) if the exhibit is incorporated by reference from an earlier filing, an active hyperlink to an exhibit separately filed on EDGAR. Hyperlinks to external addresses are not permitted.

To facilitate the hyperlink requirement, the final rules require that all registration statements and reports subject to S-K Item 601 and Forms 20-F and F-10 be submitted in HyperText Markup Language (HTML), rather than American Standard Code for Information Exchange (ASCII), which does not support functional hyperlinks. This ancillary requirement should not be problematic for most registrants. As noted in the adopting release, less than 1% of the impacted forms filed on EDGAR in 2015 were filed in ASCII.

What Forms are covered by the final rules?

The hyperlink requirement applies to all SEC registration statements and reports for which exhibits are required under S-K Item 601, including:

- registration statements on Forms S-1, S-3, S-4, S-8 and S-11 under the Securities Act of 1933 (Securities Act); and
- reports on Forms 10-K, 10-Q and 8-K under the Securities Exchange Act of 1934 (Exchange Act).

To what extent are hyperlinks required in reports and registration statements filed by foreign private issuers?

The final rules require hyperlinks to exhibits filed with Exchange Act Forms 20-F and F-10, as well as Securities Act Forms F-1, F-3 and F-4. Exhibit hyperlinks are *not* required in filings on Form 6-K or in other multijurisdictional forms used by certain Canadian issuers.

Do exhibits previously filed in paper have to be refiled electronically?

No. A hyperlink is not required for any exhibit incorporated by reference to an exhibit filed in paper before use of EDGAR became mandatory. Registrants are permitted to restate and refile paper exhibits in electronic format if they desire.

What are the other significant exceptions to the hyperlink requirement?

The hyperlink requirement does not apply to:

- exhibits that are filed in paper pursuant to a temporary or continuing hardship exemption under Rules 201 or 202 of Regulation S-T or pursuant to Rule 311 of Regulation S-T, although specific notations must be placed in the exhibit index to identify these exhibits and any confirming electronic copies filed; and
- XBRL exhibits.

How should a registrant link to an exhibit contained in a registration statement or report originally filed as a single ASCII file (i.e., where the only available link would be the whole file)?

Although not addressed in the final rules or in formal guidance, we understand that the SEC staff has provided informal advice that a registrant in this situation should hyperlink to the ASCII filing containing the exhibit and, in the exhibit index, specifically identify the exhibit from the hyperlinked filing that is being incorporated by reference. Alternatively, the registrant can elect to voluntarily refile the exhibit as part of the current filing.

What happens if a filing includes a non-functioning or inaccurate hyperlink?

The adopting release clarifies that an inaccurate hyperlink will not, in and of itself, render the filing in which it is contained materially deficient, nor will it affect the registrant's eligibility to use short-form registration statements such as Form S-3.

A registrant must correct a non-functioning or inaccurate hyperlink:

- in the case of a registration statement that is not yet effective, by filing a pre-effective amendment to such registration statement; and
- in the case of a registration statement that is effective or an Exchange Act report, in the next Exchange Act periodic report that requires or includes an exhibit pursuant to S-K Item 601 (or, for a foreign private issuer, pursuant to Form 20-F or Form F-10) or, if the registrant elects, by filing a post-effective amendment to such registration statement or an amendment to the filed Exchange Act report.

When must registrants begin including exhibit hyperlinks in affected filings?

For most registrants, hyperlinks must be included in all affected filings made on or after September 1, 2017.

Non-accelerated filers and smaller reporting companies that currently use ASCII format have until September 1, 2018 to comply.

What steps should registrants take to assure timely compliance with the hyperlink requirement?

Registrants that use financial printers or other service providers should reach out to those providers to coordinate the mechanics for including hyperlinks in their SEC reports and registration statements.

Registrants that prepare their EDGAR filings in-house should familiarize themselves with the technical requirements of the EDGAR Filer Manual and test and update their systems and software to ensure their filings can include functioning hyperlinks consistent with EDGAR processes.

Registrants that currently file registration statements and reports in ASCII format will need to convert their filing process to HTML format by the applicable compliance date. It is important to note that the extended compliance date of September 1, 2018 is available only to smaller reporting companies and non-accelerated filers using ASCII format. *Any accelerated and large accelerated filers using ASCII must convert to HTML by September 1, 2017.*

Additionally, all registrants should:

- establish disclosure controls and procedures to validate the accuracy and functionality of exhibit hyperlinks and timely correct inaccurate or nonfunctioning hyperlinks;
- begin reviewing the exhibit index to the last filed Form 10-K to make sure it is up-to-date and that all citations to documents incorporated by reference are correct and complete; and
- consider whether there are any documents incorporated by reference to old paper filings that should be restated and filed electronically. This is not required by the final rules, but would have the benefit of making current filings more investor-friendly.

If you have any questions about these requirements, including how they may apply to your particular situation, please contact experienced legal counsel.

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