

INSIGHTS

Frequently Asked Questions About the SEC's New Rules Requiring Hyperlinked Exhibits in Exchange Act and Securities Act Filings

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By: [Charles H. Still Jr.](#)

On March 1, 2017, the Securities and Exchange Commission adopted changes to rules and forms that will require companies to provide hyperlinks to the exhibits listed in the exhibit index in most reports and registration statements filed under the Securities Exchange Act of 1934 and the Securities Act of 1933. The changes are intended to make it easier to find and access exhibits in a company's public filings.

Which reports and registration statements will require hyperlinking of exhibits?

With a few exceptions (noted below), hyperlinking of exhibits will be required in all reports and registration statements for which exhibits are required under Item 601 of Regulation S-K, as well as in certain other registration statements and reports filed by foreign private issuers. The reports requiring hyperlinked exhibits include:

- Exchange Act reports on Forms 10-K, 10-Q, 8-K, 20-F and 10-D;
- Exchange Act registration statements on Forms 10 and 20-F; and
- Securities Act registration statements on Forms S-1, S-3, S-4, S-8, S-11, SF-1, SF-3, F-1, F-3, F-4 and F-10.

For registration statements, hyperlinking is required in the initial registration statement and each subsequent pre-effective amendment, not just in the registration statement that becomes effective (as was contemplated in the proposed rules).

Hyperlinking of exhibits is **not** required for:

- Exchange Act reports on Forms 6-K and 40-F;
- Exchange Act registration statements on Forms 8-A and 40-F; and
- Form ABS-EE.

Which exhibits must be hyperlinked?

The exhibit index in the forms requiring hyperlinking of exhibits must include a hyperlink to all

exhibits listed in the index, other than exhibits filed in XBRL and exhibits permitted to be filed in paper form only.

Hyperlinks are required both for exhibits filed with the report or registration statement and for exhibits incorporated by reference.

When do the hyperlinking requirements become effective?

Hyperlinking of exhibits is required for most registrants in filings made on or after September 1, 2017.

A registrant that is a “smaller reporting company” or a non-accelerated filer that submits filings in ASCII format rather than HTML format will be required to comply with the hyperlinking requirements for filings made on or after September 1, 2018. Additionally, the compliance date for any Form 10-D that will require hyperlinking to exhibits filed with Form ABS-EE is delayed until the SEC has made certain programming changes to facilitate hyperlinking of such exhibits.

Early compliance with the new requirements is permitted, and the SEC has encouraged early compliance.

What happens if a hyperlink in a filing is inaccurate or nonfunctioning?

Inaccurate or nonfunctioning hyperlinks in a registration statement that is not yet effective must be corrected in a pre-effective amendment to the registration statement. Inaccurate or non-functioning hyperlinks in a registration statement that has become effective or in an Exchange Act report must be corrected in the next Exchange Act periodic report that requires hyperlinked exhibits. However, an inaccurate exhibit hyperlink alone will not render the filing materially deficient or affect the registrant’s ability to use short form registration statements.

What are the new requirements for submitting filings in HTML format?

Currently, electronic filings made using the EDGAR system may be made in either ASCII format or HTML format. Because filings in ASCII format cannot support functional hyperlinks, the rule changes require that all filings for which hyperlinking of exhibits is required be made in HTML format. The compliance dates for use of HTML format are the same as those for the hyperlinking requirements.

Where can I find the new rules and additional information?

The new requirements are contained in amendments to Regulation S-K and Regulation S-T and to Forms 20-F and F-10. The SEC’s adopting release for the final rules, which includes the text of the rules, is available [here](#). The press release announcing the new rules is available [here](#).