

# SEC Adopts Amendments to Require Exhibit Hyperlinks in Registration Statements and Exchange Act Reports

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On March 1, 2017, the U.S. Securities and Exchange Commission (SEC) adopted rule amendments that require reporting companies to include an active hyperlink to each exhibit listed in the exhibit index, including those incorporated by reference from a previous SEC filing made on EDGAR in registration statements filed pursuant to the Securities Act of 1933, as amended (the Securities Act) and periodic and current reports and registration statements filed pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act).

The rule amendments are intended to facilitate access to exhibits listed in an SEC filing's exhibit index by allowing investors and other market participants to click a hyperlink that goes directly to exhibits included in the current filing, as well as those incorporated by reference to a previous SEC filing made on EDGAR, rather than requiring a search through the registrant's prior filings to locate and access exhibits incorporated by reference.

Under the amended rules, registrants will be required to include an active hyperlink to each exhibit listed in the exhibit index in the registration statement or in the current or periodic report, whether or not the exhibit is included with the filing or incorporated by reference from a previous SEC filing made on EDGAR. With respect to registration statements, exhibit hyperlinks must be included in the initial registration statement and in each subsequent amendment thereto (including pre-effective amendments).

The amended rules apply to Securities Act registration statements and Exchange Act reports that are subject to the exhibit filing requirements under Item 601 of Regulation S-K.<sup>1</sup> Foreign private issuers filing a Form F-10 or a Form 20-F will also be required to comply with the amended rules.

In addition, because the text-based American Standard Code for Information Interchange (ASCII) format cannot support functional hyperlinks, the final rules also require companies to submit all filings subject to the rule amendments on EDGAR in HyperText Markup Language (HTML) format.

The exhibit hyperlink requirement will not apply to (1) exhibits filed with proxy statements, (2) exhibits filed with Form 6-K, (3) exhibits filed with the multi-jurisdictional disclosure system used by Canadian

issuers, (4) exhibits filed with Form ABS-EE, (5) XBRL exhibits, or (6) exhibits 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. In addition, the amended rules will not require registrants to refile electronically any exhibits that were previously filed only in paper form.

Under the amended rules, a registrant will be required to correct nonfunctioning or incorrect hyperlinks by filing a pre-effective amendment for a registration statement that is not yet effective or for effective registration statements or Exchange Act reports, in the next Exchange Act periodic report that requires or includes an exhibit pursuant to Item 601 of Regulation S-K (or, for foreign private issuers, pursuant to Forms 20-F or F-10) or by filing a post-effective amendment to the registration statement. The SEC has clarified that an inaccurate hyperlink alone will not render a filing materially deficient, nor will it affect a registrant's eligibility to use short-form registration statements.

The SEC will be issuing an updated EDGAR Filer Manual that will describe the procedures needed to create a hyperlink to an exhibit that the registrant previously filed on EDGAR, as well as the procedures needed to create a hyperlink to an exhibit that is being filed at the same time as a registration statement or report.

While the SEC has encouraged early compliance, registrants are required to comply with the amended rules for filings submitted on or after September 1, 2017; however, non-accelerated filers and smaller reporting companies that submit filings in ASCII format will not be required to comply with the amended rules until September 1, 2018.

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1. The amended rules affect filings on Forms 10-K, 10-Q, 8-K, S-1, S-3, S-4, S-8, S-11, 10, 20-F, F-1, F-3, F-4, F-10, SF-1, SF-3, and 10-D. For certain filings on Form 10-D, a separate phase-in period applies to allow the SEC staff to work on programming changes to EDGAR to permit issuers to include

the Form 10-D and Form ABS-EE in a single submission so that the required hyperlinks can be created at the time the Form 10-D is filed. Additional

information will be available on the SEC's website and in the Federal Register when the compliance date for Form 10-D is determined.

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