

Reminder: Hyperlink Your Exhibits Starting September 1!

SEC Filing Fees Increasing October 1

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“For any person using the internet, it is nearly unthinkable for a web page to indicate that more information is available and not to include a hyperlink to such information.”^[1]

While it seems unthinkable to today’s internet users for a webpage to refer to more information without providing an easily navigable link to such additional information, that is the case for exhibits to public company filings on the current EDGAR system of the Securities and Exchange Commission (or SEC). Currently, companies are required to include as exhibits to registration statements and other reports certain documents and disclosures, by either attaching the documents or incorporating them by reference from another filing. However, companies are not presently required to provide a live link to such exhibits. If an investor or other viewer of the filing wishes to see such exhibit, it generally requires sifting through a company’s public filings.

However, this will change for many public companies starting next week. As part of the SEC’s continuing efforts to improve access to public company information, commencing September 1, 2017, many SEC-registered companies will be required to include a hyperlink to exhibits included in their registration statements and current and periodic reports. Non-accelerated filers and smaller reporting companies that submit their filings in ASCII have been given a longer transition period, and will be required to comply starting September 1, 2018.^[2]

Types of Filings Impacted

This new requirement impacts registration statements and reports under the Securities Act of 1933, as amended and the Securities Exchange Act of 1934, as amended (the “Exchange Act”), including:

- Forms S-1, S-3, S-4, S-8, S-11, F-1, F-3, F-4, SF-1 and SF-3;
- Forms 10, 10-K, 10-Q, 8-K and 10-D; and
- Forms F-10 and 20-F.^[3]

The requirement does not apply to the following:

- XBRL exhibits (i.e., the XBRL taxonomy extension documents);
- exhibits filed in paper under temporary or continuing hardship exemptions; or
- exhibits filed with Form ABS-EE (a form filed by asset-backed issuers).

Companies with a calendar year end will likely first feel the impact of this this new requirement with any upcoming 8-K filings and their 10-Q filings for the third quarter of 2017.

Hyperlinking Exhibits

The SEC rules will require companies to include an active link to both exhibits that are filed with the registration statement or report and those exhibits that are incorporated by reference to another EDGAR filing.

The SEC permits filings on its EDGAR system in either ASCII (American Standard Code for Information Interchange) format or in HTML (HyperText Markup Language) format. Only HTML, not ASCII format, can support hyperlinking. Accordingly, any filings subject to the new requirements must be done in HTML format. The SEC is not requiring that all issuers move exclusively to HTML filings; schedules or forms not subject to Regulation S-K's Item 601 exhibit requirements (for example, proxy statements) may continue to be filed in ASCII format.

This past July, the SEC updated its EDGAR Filer Manual to address the new requirement to hyperlink exhibits. The updated EDGAR Filer Manual can be found through the SEC's website [here](#).

Other Key Takeaways

- **Inaccurate Exhibit Hyperlinks:** If a registrant mistakenly files an inaccurate or non-functioning hyperlink, the remedy is to: (1) in the case of registration statement that is not yet effective, file a pre-effective amendment with the corrected hyperlink; and (2) in the case of an effective registration statement or a current or periodic report, include a correct hyperlink in the company's next Exchange Act periodic report that includes exhibits under Regulation S-K. According to the SEC's release of the final rule, including an inaccurate exhibit will not make the filing materially deficient or render the company ineligible to use a short-form registration statement.
- **Registration Statements:** Exhibits in registration statements are required to be hyperlinked in both an initial registration statement and any subsequent pre-effective amendment.
- **Impact on Prior Paper Filings:** The SEC is not requiring registrants to refile any exhibits or documents that were previously filed only in paper.

SEC's Filing Fees Increasing Starting October 1, 2017

On August 24, 2017, the SEC issued its fee advisory for fiscal year 2018. Starting October 1, 2017, the applicable filing fee for Securities Act registration statements (i.e., Forms S-1, S-3, S-4, S-8, S-11, F-1, F-3, F-4, SF-1 and SF-3) will be \$124.50 per million. The SEC filing fees required to be paid by issuers are calculated based on the maximum offering price for which a company is proposing to offer securities.

If you have any questions on these topics, please contact Sarah Hesse at shesse@beneschlaw.com or another member of Benesch's Corporate & Securities Practice Group.

[1] “Opening Statement on Hyperlinks and HTML Adopting Release” by Acting Chairman Michael S. Piwowar on March 1, 2017, available at: <https://www.sec.gov/news/statement/opening-statement-on-hyperlinks-and-html-adopting-release.html>

[2] A “smaller reporting company” is an issuer that (i) is not an investment company, an issuer of asset-backed securities or a majority-owned subsidiary of a parent that is not a smaller reporting company and (ii) has either a public float of less than \$75 million or if the public float is zero, has annual revenues of less than \$50 million. A “non-accelerated filer” is a reporting company that does not meet the definition of an accelerated filer or a large accelerated filer.

[3] The new requirement does not apply to Form 6-K or multi-jurisdictional disclosures that do not require exhibits. Additionally, the SEC is delaying the compliance date for the hyperlinking requirement with respect to Form 10-Ds and will provide separate guidance on Form 10-D compliance.