

SEC Disclosure Updates — Exhibit Hyperlinks, Industry Guide 3, and Inline XBRL

On March 1, 2017, the Securities and Exchange Commission (SEC) voted to adopt final rule and form amendments to require issuers to include hyperlinks to each exhibit included in SEC filings. The same day, the SEC also issued a notice requesting comment on possible revisions to bank holding company disclosures called for by Industry Guide 3 — *Statistical Disclosure by Bank Holding Companies* and proposed rules relating to the use of Inline XBRL for filings of operating company financial statement information. Each of these actions is summarized below.

Hyperlinks to Exhibits in SEC Filings

The SEC has adopted final rules requiring issuers to include a hyperlink to each exhibit in the filing's exhibit index to facilitate investor access to documents filed with the SEC. Issuers must comply with the rules, originally proposed in August 2016, on or after September 1, 2017, or September 1, 2018, for smaller reporting companies and companies that are neither large accelerated filers nor accelerated filers and submit filings in ASCII. Earlier compliance with the new requirements is encouraged.

Issuers will be required to include an active hyperlink to each exhibit identified in the exhibit index of the filing unless the exhibit is 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. This requirement will apply to all forms for which exhibits are required under Item 601 of Regulation S-K, including Forms S-1, S-3, S-4, and S-8 under the Securities Act of 1933, as amended, Forms 10, 10-K, 10-Q, and 8-K under the Securities Exchange Act of 1934, as amended, as well as Forms F-10 and 20-F. The final rules, however, exclude exhibits that are filed with Form ABS-EE and exhibits filed in the eXtensive Business Reporting Language (XBRL). According to the adopting release, issuers will not be required to refile electronically exhibits previously filed in paper, including organizational documents, so as not to impose an additional compliance burden.

Issuers also will be required to file in HTML format the registration statements and reports subject to the exhibit filing requirements under Item 601 of Regulation S-K, as well as Forms F-10 and 20-F. Previously, issuers could file in HTML or the text-based American Standard Code for Information Interchange (ASCII) format, but the ASCII format will no longer be permitted because it cannot support functional hyperlinks. Non-accelerated filers and smaller reporting companies that submit filings in ASCII will have an extra year within which to comply to reduce the administrative burden of compliance. While the affected registration statements and reports will be required to be filed in HTML, issuers may continue to file in ASCII any schedules or forms that are not subject to the exhibit filing requirements under Item 601, such as proxy statements, or other documents included with a filing, such as an exhibit. The new rules are intended to make it easier and faster for investors and other users to find and retrieve the documents filed as exhibits to SEC filings.

Industry Guide 3

The SEC also issued a request for public comment on bank holding company disclosures called for by Industry Guide 3 — *Statistical Disclosure by Bank Holding Companies*. Industry Guide 3 was first published in 1976 as “a convenient reference to the statistical disclosures sought by the staff of the Division of Corporation Finance in registration statement and other disclosure documents filed by bank holding companies.” The financial services industry has changed significantly since Guide 3 was first published. Consequently, disclosure guidance may not, in all cases, reflect recent industry developments or changes in accounting standards relating to financial reporting and other requirements. The SEC's request for comment on Guide 3 is part of the SEC staff's efforts to modernize, update and streamline the SEC's disclosure regime.



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Related Practice Areas

- Corporate

Among other things, the SEC is seeking comment on:

- Whether and to what extent specific quantitative and qualitative disclosures for bank holding companies called for by Guide 3, as well as other sources of disclosure for bank holding companies and other issuers in the financial services industry, should be modified to provide important information about bank holding company issuers;
- Potential improvements to the Guide 3 disclosure regime, which could include new disclosures, the elimination of duplicative or overlapping disclosures, or revisions to current disclosures;
- How Guide 3 disclosures can be most effectively presented from the perspective of investor protection and efficient capital formation;
- The scope and applicability of Guide 3, including whether it should apply to other issuers in the financial services industry; and
- The effects of regulation on bank holding companies, including with regard to their operations, capital structures, dividend policies, and treatment in bankruptcy.

The comment period for Guide 3 disclosures will remain open until May 8, 2017.

Inline XBRL

The SEC also proposed amendments that would require the use of Inline XBRL for the submission of operating company financial statement information and mutual fund risk/return summaries. The proposed amendments are intended to improve the quality of the data and decrease the cost of preparing the data for SEC submission over time, which would benefit investors, analysts, filers, and other market participants. In 2009, the SEC adopted rules requiring operating companies to provide the information from the financial statements accompanying their registration statements and periodic and current reports in a machine-readable format using XBRL, by submitting that information to the SEC in exhibits to such reports and posting it on their websites. The same year, the SEC also required mutual funds to provide risk/return summary information from prospectuses in XBRL format in exhibits to reports and on their websites. Inline XBRL allows filers to embed XBRL data directly into an HTML filing, thereby eliminating the need to tag a copy of the information in a separate XBRL exhibit. The proposed amendments also would eliminate the requirement for filers to post Interactive Data Files on their websites.

The SEC noted that the use of Inline XBRL has the potential benefit of reducing the likelihood of inconsistencies and would give the preparer full control over the presentation of XBRL disclosures within the HTML filing. In addition, the SEC noted that tools like the open source Inline XBRL Viewer on www.SEC.gov could be used to review the XBRL data more efficiently.

Under the proposed rules, requirements for operating company financial statements would be phased in over a three-year period. Requirements for mutual funds risk/return summaries would be phased in over a two-year period.

Comments on the proposed rules may be submitted to the SEC until 60 days after the date of publication in the Federal Register.

To discuss any questions you may have regarding the issues discussed in this Alert, or how they may apply to your particular circumstances, please contact Christopher J. Bellini at (612) 260-9029 or cbellini@cozen.com or Ellen Canan Grady at (215) 665-5583 or egrady@cozen.com.