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SEC rule amendments to require electronic submission of Form 144 filings and “glossy” annual reports

The SEC recently adopted rule amendments that will require registrants and other persons to file or otherwise submit electronically via EDGAR a variety of documents that previously could be submitted in either electronic or paper format. The amendments will have their most significant impact on the filing of Form 144 notices of sales of securities of reporting companies and the submission of “glossy” annual reports to security holders, most of which are currently filed or submitted in paper format. Many filers already submit electronically the other documents for which the option to submit in paper format will no longer be available.

Many of the documents covered by the amendments – including the glossy annual report – will not be subject to mandatory electronic submission until six months after the effectiveness of the amendments. Form 144 notices will become subject to mandatory electronic filing after a longer transition period that will extend well into 2023.

The amendments also will require, after a three-year transition period, the use of the Inline XBRL structured data language for annual financial statements and other financial information contained in annual reports of employee benefit plans filed on Form 11-K under the Exchange Act.

The amendments will be effective on July 11, 2022. The SEC’s adopting release (No. 33-11070) can be accessed [here](#).

Summary of amendments

Mandatory electronic submission requirements

The SEC has adopted amendments to Regulation S-T and to rules and forms primarily under the Securities Act of 1933 and the Securities Exchange Act of 1934 to expand the types of documents that are subject to mandatory electronic submission using the SEC’s EDGAR system.

The amendments will require registrants and other persons to file or otherwise submit electronically the following documents that previously could be submitted in either electronic or paper format:

- notices on Form 144 of sales of securities of issuers subject to the reporting requirements of Exchange Act Section 13 or 15(d);
- annual reports to security holders generally furnished to the SEC for its information under the proxy rules (referred to as “glossy” annual reports);
- annual reports for employee benefit plans filed on Form 11-K under the Exchange Act;
- reports or other documents submitted by foreign private issuers under cover of Form 6-K under the Exchange Act;
- notices of exempt solicitation and notices of exempt preliminary roll-up communications furnished to the SEC for its information under the proxy rules;
- certifications by stock exchanges that a security has been approved by the exchange for listing and registration; and
- periodic reports and reports with respect to distributions of primary obligations filed by multilateral development banks.

In addition, the SEC has amended Regulation S-T to eliminate the requirement that registrants submit certain untranslated foreign language documents in paper format and to mandate, for the first time, that they submit those documents electronically in PDF format (subject to future upgrading of EDGAR to accommodate additional formats).

The SEC indicates in its release that in 2021 less than one percent of Form 144 filings were made electronically via EDGAR and that “very few” of the

limited number of glossy annual reports submitted to the SEC were submitted in electronic format.

Mandatory electronic filing of Form 144 notices

Under amended Securities Act Rule 144(h)(1), the filer of a Form 144 will be required to file the form via EDGAR if it provides notice of sales of securities of an issuer that is – and has been for a period of at least 90 days immediately before the sale – subject to the reporting requirements of Exchange Act Section 13 or 15(d). The filer of a Form 144 that provides notice of sales of securities of a *non-reporting issuer* will be required to continue to file the form in paper format. Upon expiration of the transition period, the SEC staff will withdraw its COVID-19-related guidance that has permitted registrants to file Form 144 by e-mail.

An amendment to Rule 144(h)(1) will eliminate the current requirement that a Form 144 filer transmit a copy of the form to the principal exchange, if any, on which the issuer's securities are admitted to trading. The SEC observes that this requirement, which was designed to provide notice to the exchange of paper Form 144 filings, will no longer be necessary once the form is filed electronically.

The SEC states that, before electronic filings are first required, it plans to update the text of Form 144 to make the form an “online fillable document” like Form D filed under Regulation D of the Securities Act and Forms 3, 4, and 5 filed under Section 16(a) of the Exchange Act. The form changes are intended to make it easier for filers to input Form 144 information. Data entered into the revised Form 144 will be formatted in a structured, machine-readable Extensible Markup Language (XML), which also will make it easier for investors and third-party data services to extract, process, and analyze data in the filing.

The SEC notes in its release that many Form 144 filers today submit the notices through their broker-dealers, which will have to change their processes to file the form via EDGAR on behalf of their clients. To provide broker-dealers adequate time to make the changes, the SEC has extended the compliance date for electronic Form 144 filings beyond the six-month deadline for other electronic submissions covered by the amendments. The extended transition period for filing Form 144 via EDGAR will extend the compliance date to six months after the date of publication in the Federal Register of the SEC's release that adopts the version of the EDGAR Filer Manual addressing Form 144 updates for electronic filings. If the SEC meets its target date of September 2022 to adopt the relevant version of the EDGAR Filer Manual, as described in the release, filers should

expect to be required to file their electronic Form 144 notices beginning in March 2023 or soon thereafter.

Mandatory electronic submission of glossy annual reports to security holders

A registrant currently has the option to mail paper copies of its glossy annual report to the SEC, to submit the report to the SEC electronically via EDGAR or, in reliance on SEC staff guidance, to post an electronic version of the report on its corporate website. Under the amendments, registrants will be required to submit their reports to the SEC via EDGAR, which the SEC says will serve “as a repository” for electronic copies of these reports, “whether or not registrants decide to post the reports on their corporate websites.” Foreign private issuers will be subject to the electronic filing obligation for their reports under amended Form 6-K.

Unless EDGAR is upgraded to accommodate other formats, the reports must be submitted in PDF format without being reformatted, resized, or otherwise redesigned for purposes of the submission. Accordingly, as the SEC elaborates, the submission “should capture the graphics, styles of presentation, and prominence of disclosures (including text size, placement, color, and offset, as applicable) contained in the reports” mailed to security holders or made available to them under the notice and access provisions of the proxy rules.

The SEC notes that the notice and access provisions will continue to require registrants complying with those provisions to publish their glossy annual reports to security holders on a website in addition to the SEC's website.

Use of Inline XBRL for Form 11-K financial information

SEC rules require operating companies to submit the information from the financial statements included in periodic and current reports and some registration statements in a structured, machine-readable and human-readable data language using Inline XBRL. The amendments will extend the Inline XBRL structured data reporting requirements to the financial information required in annual reports filed on Form 11-K for employee stock purchase, savings, and similar plans.

Consistent with the data reporting requirements for financial information contained in annual reports filed on Forms 10-K and 20-F, the amendments will require every data point in the financial statements contained in Form 11-K to be tagged in Inline XBRL.

In addition, where the employee benefit plan report contains notes to the financial statements and other narrative disclosures, filers of Form 11-K, like filers of Forms 10-K and 20-F, will be required to apply block tags to the narrative disclosures and detailed tags to any numerical amounts presented in the narrative text.

Form 11-K filers will have a three-year transition period following effectiveness of the amendments before they are first required to make Inline XBRL submissions. This transition period is consistent with the period that was afforded to non-accelerated filers (among others) when the SEC adopted rules requiring use of Inline XBRL for issuer financial statements.

This SEC Update is a summary for guidance only and should not be relied on as legal advice in relation to a particular transaction or situation. If you have any questions or would like any additional information regarding this matter, please contact your relationship partner at Hogan Lovells or any of the lawyers listed in this update.

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