

SEC Amends Electronic Filing Requirements for Form 144s and Other Filings

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The Securities and Exchange Commission (the “SEC”) recently adopted rule and form amendments mandating the electronic filing or submission of certain documents and reports on the SEC’s Electronic Data Gathering, Analysis and Retrieval (“EDGAR”) system. Additionally, the SEC will now require the use of Inline eXtensible Business Reporting Language (“Inline XBRL”) for all Form 11-K financial statements and certain foreign language documents.

Historically, under Rule 101(b) of Regulation S-T, filers could submit the following documents either electronically or in paper format: (1) annual reports to security holders (“glossy” annual reports); (2) notices of exempt solicitations and preliminary roll-up communications; (3) annual reports for employee benefit plans on Form 11-K; (4) notice of proposed sale of securities on Form 144 where the issuer of the securities is subject to the reporting requirements under Section 13 or 15(d) of Securities Exchange Act of 1934, as amended (the “Exchange Act”); (5) reports filed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the International Finance Corporation, or the European Bank for Reconstruction and Development; (6) filings of required reports by foreign private issuers under Form 6-K; and (7) documents filed with the SEC pursuant to Section 33 of the Investment Company Act.

The SEC amended Rule 101 of the Regulation S-T to mandate electronic filing of the documents listed above. The final rules became effective July 11, 2022, and issuers must comply with most of the new rules beginning on January 11, 2023. The amendments requiring electronic filing of Form 144s will be effective six months after the publication by the SEC of a revised EDGAR Filer Manual reflecting the updated requirements. As the SEC expects publication of the revised EDGAR Filer Manual to occur in September 2022, the Form 144 amendments are likely to become effective in March 2023. The compliance date for including Inline XBRL in Form 11-K financial statements and certain foreign language documents is July 11, 2025.

Submission of Annual Reports on EDGAR

Exchange Act Rules 14a-3(c) and 14c-3(b), Form 10-K, and Form 6-K for foreign private issuers all require registrants subject to these rules to furnish to the SEC multiple copies of their glossy annual reports to security holders. Rule 101(b)(1) of Regulation S-T permitted registrants to submit those glossy annual reports to security holders in either paper or electronically on EDGAR. However, in 2016, the SEC staff indicated that it would not object if issuers posted their glossy annual reports on their corporate websites in lieu of mailing paper copies or submitting the report on EDGAR if the report remains accessible for at least one year after posting. Most issuers currently rely on this guidance and post their glossy annual reports on their respective websites as opposed to filing them with the SEC.

The new rule will require registrants to submit their glossy annual reports to the SEC via electronic submission on EDGAR in accordance with the EDGAR Filer Manual. The 2016 interpretive

guidance will be withdrawn on the compliance date. Companies may continue the practice of posting their glossy annual reports online but doing so will not satisfy the new electronic filing rules. The adopting release advises that the electronic version of a company's glossy annual report should be in PDF format and should not otherwise be reformatted, re-sized, or otherwise redesigned for purposes of electronic submission on the SEC's EDGAR system. Issuers should note that the notice and access provisions will continue to require registrants complying with those provisions to post their glossy annual report on their website in addition to submitting the glossy annual report to the SEC via EDGAR.

With respect to foreign private issuers, the amendments also require foreign private issuers to satisfy their Form 6-K requirement to furnish such a report by submitting the report electronically on EDGAR.

Submission of Form 144s on EDGAR

Currently, most Form 144s are submitted to the SEC by mail or by email, an option adopted as an alternative to mailing during the COVID-19 pandemic. The new rules will require Form 144 filers to submit the form via EDGAR. In addition to the electronic filing requirement, the amended rules have other significant implications. First, electronic submission of Form 144 filings may bring increased attention to the filings and the proposed sales by affiliates of an issuer as such information will be publicly available online. Forms submitted by mail are accessible to the public, but they are not easily accessible, which has historically limited attention to these filings. Second, filers will need to obtain EDGAR access codes to submit the Form 144s, a process that typically requires two to three days of processing time. Third, the SEC also amended Rule 144(h)(1) to remove the requirement that a copy of the Form 144 notice be sent to the respective securities exchange. To assist with the transition to electronic filing, the SEC plans to provide an online fillable Form 144 to support the electronic assembly of such information and transmission to EDGAR.

The rules will apply six months from the date of publication of the revised EDGAR Filer Manual reflecting the updates to Form 144. This is expected to occur in September 2022, meaning the rules will likely become effective in March 2023.

Inclusion of XBRL for Form 11-K

The amended rules also require the use of Inline XBRL for financial statements required by Form 11-K. Under the previous rules, annual reports on Form 11-K were not subject to structured data reporting requirements and the financial statements required by Form 11-K were not machine-readable. In order to better access, organize, and evaluate information presented by filers, the SEC adopted amendments requiring registrants to present financial information required by Form 11-K in Inline XBRL. Under this amendment, the tagging requirement for annual reports on Form 11-K would mirror the Inline XBRL requirements for financial information contained in annual reports on Forms 10-K, 20-F, and 40-F. The SEC anticipates that adopting this amendment will also enable analytical tools to extract tagged information in a more efficient, automated manner. Issuers must comply with these requirements beginning on July 11, 2025.

Conclusion

Reporting companies should prepare for compliance with these amended rules in several ways. Most companies can easily produce PDF versions of their glossy annual reports, so the requirement to file the annual report via EDGAR is not likely to be a substantial burden.

However, companies may need to adopt new processes in connection with the Form 144 amendments as they may now find themselves becoming more involved in the Form 144 filing process than when notices on Form 144 were filed on paper and primarily handled by brokers. Issuers may wish to remind officers and directors that their related entities and persons may need to obtain EDGAR access codes for these notices. Additionally, companies should consider the potential market impact of insiders electronically filing notices on Form 144 on EDGAR that are more readily accessible to the public than paper filings. To mitigate market impact, it may be preferable for issuers to adopt procedures around the filing of notices on Form 144 in advance of earnings announcements or to encourage insiders, in certain cases, to publicly announce more information about the insider trading plans they adopt so there are fewer unexpected filings of notices on Form 144.

Finally, when the July 11, 2025 Form 11-K compliance date approaches, issuers will need to factor in the requirement to incorporate Inline XBRL for Form 11-K into the timeline for the filing of Form 11-K. In many cases, converting financial statements into Inline XBRL may significantly increase the Form 11-K processing time.

The final rule release adopting the amendments can be found [here](#). For further information, please contact a member of the Haynes Boone [Capital Markets and Securities Practice Group](#).