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## Securities Alert

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### SEC updates requirements for EDGAR electronic submissions and Form 144 filings

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The SEC adopts new rules mandating the electronic filing of additional SEC forms and documents that currently are permitted to be filed or submitted in paper.



#### What's the Impact?

- / The amended rules will require electronic submission via EDGAR of "glossy" annual reports to security holders and Form 144 notices involving public companies, as well as certain other forms and documents
- / Financial statements and accompanying notes to the financial statements required in annual reports on Form 11-K must be tagged using Inline XBRL
- / These amendments are intended to modernize and increase efficiency of the filing process and provide increased accessibility to material information via EDGAR

On June 3, 2022, the U.S. Securities and Exchange Commission ("SEC") approved [rule and form amendments](#) to mandate electronic filing or submission of certain documents that are currently permitted (but not required) to be filed or submitted electronically under current SEC rules and guidance. As adopted, the amendments reflect SEC proposals for electronic filing mandates

made in December 2020 (as part of a broader set of [proposed amendments relating to Rule 144 under the Securities Act of 1933](#)) and November 2021 to update [EDGAR filing requirements](#).

Under these amendments, the following documents will require electronic submission via the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system:

- / Form 144 notices with respect to proposed sales by affiliates of securities issued by issuers subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")
- / "glossy" annual reports to security holders (in PDF format)
- / annual reports of employee stock purchase, savings, and similar employee benefit plans on Form 11-K
- / reports or other documents submitted by a foreign private issuer under cover of Form 6-K
- / notices of exempt solicitations
- / notices of exempt preliminary roll-up communications
- / periodic reports and reports with respect to distributions of primary obligations filed by multilateral development banks
- / certifications made pursuant to the Exchange Act and its rules that a security has been approved by an exchange for listing and registration
- / certain foreign language documents (in PDF format)
- / documents filed pursuant to Section 33 of the Investment Company Act of 1940

Additionally, the amendments mandate the use of Inline XBRL for the filing of the financial statements and accompanying notes to the financial statements required in annual reports on Form 11-K.

These amendments are intended to provide investors, and the public generally, with greater access to material information and to make such information more readily available in a centralized online database. These amended rules will also modernize and increase efficiency of the filing process and allow the SEC to better store, track, and process such information. We highlight certain key provisions of the amendments below.

## Compliance dates

The amended rules will be effective 30 days after publication in the *Federal Register*. The compliance date for electronic filing of all impacted filings, other than electronic filing of Form 144 notices and structured data reporting on Form 11-K, will be six months from the effective date.

The compliance date for electronic filing of Form 144 notices will commence six months from the date the SEC release that adopts the version of the EDGAR Filer Manual addressing updates to Form 144 is published in the *Federal Register*. The SEC indicated that it currently expects that it would consider adoption of the relevant version of the EDGAR Filer Manual in September 2022, with publication in the *Federal Register* thereafter. This extended transition period is intended to

provide sufficient time for broker-dealers to transition clients for whom they prepare and submit Form 144 filings, including time for Form 144 filers who do not currently have access to EDGAR to apply for and obtain EDGAR access codes.

For Form 11-K filers, there will be a three-year transition period after the effective date of the amendments to submit the financial statements and accompanying notes to the financial statements required by Form 11-K in Inline XBRL.

## Form 144 updates and filing requirements

On and after the applicable compliance date, notices on Form 144 may no longer be filed in paper format by mail or, under temporary COVID-19 accommodations, submitted by e-mail. Instead, the amendments will require that Forms 144 be submitted electronically via EDGAR in all cases where the issuer of the securities is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

To help facilitate electronic filing of Forms 144, the SEC will create an online fillable document for Form 144 similar to other fillable forms that are currently available for other Form-specific XML filings on EDGAR, such as Forms D, 3, 4, and 5.

The amended rules will also delete the requirement in Rule 144(h)(1) to send a copy of the Form 144 notice to the principal exchange on which the restricted securities are listed as this is no longer necessary since Forms 144 will be filed electronically and the information will be readily available upon filing.

A previously proposed amendment to eliminate the Form 144 filing requirement for the sale of securities of companies that are not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act was not adopted. Therefore, affiliates relying on Rule 144 for a non-reporting issuer will still be required to file a notice of sale on Form 144 in paper form pursuant to Rule 101(c)(6) of Regulation S-T and Rule 144.

## “Glossy” annual report to security holders filing requirements

On and after the applicable compliance date, companies will be required to submit electronic copies of their “glossy” annual reports to security holders electronically via EDGAR, whether or not the report is posted on the company’s website. This will be in addition to the requirement to file the annual report on Form 10-K electronically.

Foreign private issuers will also be required to furnish their glossy annual reports to the SEC electronically via EDGAR, in response to the requirements of Form 6-K.

Going forward, it is intended that EDGAR will serve as the central repository for all electronic copies of glossy annual reports to security holders. However, the proxy rules will continue to require certain registrants subject to the proxy rules to publish their glossy annual report to security holders on a website other than EDGAR.

## Inline XBRL mandate for financial statements and accompanying notes to the financial statements required by Form 11-K

The amendments will require that the financial information required by Form 11-K, including narrative disclosures such as the notes to the financial statement, be tagged using Inline XBRL, which has the benefit of being machine readable. This tagging requirement will mirror the Inline XBRL requirements for financial information contained in annual reports on Forms 10-K, 20-F, and 40-F. This new requirement will apply whether the financial information is prepared in accordance with Regulation S-X or the financial reporting requirements of ERISA.

## Certain foreign language documents filing requirements

With limited exceptions, documents filed or submitted to the SEC must be in English or, if originally in a foreign language, either translated into or summarized in English and submitted in electronic format. Currently, Rule 306(b) of Regulation S-T permits the paper submission of an unabridged foreign language document if an English translation or summary of that document has already been provided in an electronic filing or submission. Additionally, Rule 306(c) of Regulation S-T requires the paper submission of a foreign language version of a foreign government or its political subdivision's latest annual budget if an English translation of the budget is unavailable and such an exhibit is required by Form 18 or Form 18-K. As amended, Rule 306 of Regulation S-T will require these documents currently eligible for paper submission to be submitted electronically in a format that EDGAR supports, currently as PDFs.

## What to do now?

Many of the impacted forms are mostly submitted electronically via EDGAR under current rules and practice, and the amendments will therefore have little practical effect for filers who have previously elected to submit these forms electronically. However, the amendments are expected to have a meaningful impact on the majority of Form 144 notice filers, as well as companies required to furnish "glossy" annual reports and employee benefit plans required to file annual reports on Form 11-K.

Public companies should update their disclosure controls and mark their proxy season calendars, particularly with respect to the requirement to electronically file glossy annual reports as this will most likely be in effect for the upcoming 2023 proxy season.

The SEC estimates that approximately 12,250 paper filers of Form 144 notices may be required to switch to electronic filings. To the extent necessary, affiliates relying on Rule 144 should proceed to obtain their EDGAR access codes well in advance of the compliance date in preparation for the new electronic filing requirements.

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