

SEC Reporting & Compliance Alert

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SEC Modernizes Electronic Filing Requirements

On June 3, 2022, the U.S. Securities and Exchange Commission (SEC) adopted amendments to modernize how certain information is filed or submitted to the SEC. In particular, the amendments will require, among other things, that the following documents to be submitted electronically on EDGAR:

- “Glossy” annual reports to security holders;
- Certain notices on Form 144; and
- Form 6-K.

The amendments also will require that the financial information required by Form 11-K be tagged using Inline XBRL, including the notes to the financial statements.

The amendments will become effective 30 days after the final rules are published in the Federal Register, but are subject to certain transition periods intended to give filers adequate time to prepare for the rule changes. For most of newly required submissions, including glossy annual reports, electronic submissions will be mandated six months after the effective date. For Form 144, electronic submissions will be required six months from the date of publication in the Federal Register of the SEC’s release adopting relevant changes to the EDGAR Filer Manual.

Background

At present, many documents required by the SEC may be submitted in paper form. Rule 101(a) of Regulation S-T identifies documents that *must* be electronically submitted to the SEC, while Rule 101(b) identifies documents that *may* be electronically submitted to the SEC. The amendments update Rule 101 by moving certain documents, such as glossy annual reports and Forms 144, from Rule 101(b) to Rule 101(a), thereby mandating their electronic submission.

Glossy Annual Reports

Notably, the amendments will introduce a new requirement that all annual reports pursuant to Rule 14a-3 of the Securities Exchange Act of 1934, as amended (Exchange Act) —commonly referred to as “glossy annual reports” — be furnished electronically on EDGAR.

Currently, reporting companies technically are required to furnish copies of their glossy annual reports to the SEC. While this requirement could be satisfied either by mailing copies to the SEC or submitting the gloss annual report on EDGAR, companies typically

SEC Reporting & Compliance Alert

have relied on guidance from the staff of the SEC's Division of Corporation Finance that this obligation could be satisfied by posting the glossy annual report to their corporate websites. Going forward, this guidance will be withdrawn and companies will not be permitted to satisfy their obligations by only posting glossy annual reports to their websites. According to the SEC, EDGAR will serve as the repository for electronic copies of the glossy annual reports whether or not companies continue to post the reports on their corporate websites.

Notably, the requirement to electronically submit glossy annual reports should be in effect for the 2023 proxy season.

Form 144

In another significant change, the amendments will require the electronic submission of Form 144 filings by affiliates of companies subject to Exchange Act reporting. To assist the numerous filers who will need to modify their processes for submitting Form 144 filings, the amendments convert Form 144 to an online fillable document, similar to Forms 3 and 4.

In addition, the amendments also eliminated the requirement to submit a copy of the Form 144 filing to the issuer's principal national securities exchange, given that this requirement was designed for paper Form 144 filings.

Other Documents, Including Form 6-K

- The amendments will also require companies to electronically file or submit the following documents:
- reports or other documents submitted under cover of Form 6-K;
- notices of exempt solicitation;
- notices of exempt preliminary roll-up communications;
- periodic reports and reports with respect to distributions of primary obligations filed by development banks;
- annual reports on Form 11-K;
- documents filed pursuant to Section 33 of the Investment Company Act;
- certifications of approval of exchange listing; and
- certain foreign language documents.

Inline XBRL Tagging of Form 11-K

The amendments will require Inline XBRL tagging of financial statements and accompanying schedules required by Form 11-K. This will apply whether the financial information is prepared in accordance with Regulation S-X or the financial reporting requirements of ERISA.

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