

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 230, 232, 239, 240 and 249**

**[Release Nos. 33-11070; 34-95025; File Nos. S7-16-21 and S7-24-20]**

**RINs 3235-AM15 and 3235-AM78**

**Updating EDGAR Filing Requirements and Form 144 Filings**

**AGENCY: Securities and Exchange Commission.**

**ACTION:** Final rule.

**SUMMARY:** We are adopting rule and form amendments that mandate the electronic filing or submission of documents that are currently permitted electronic submissions, including the “glossy” annual report to security holders, notices of exempt solicitations and exempt preliminary roll-up communications, notices of sales of securities of certain issuers, filings of required reports by foreign private issuers and filings made by multilateral development banks on our Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system. We are also adopting rules that will mandate the electronic submission of the “glossy” annual report to security holders, the electronic filing of the certification made pursuant to the Exchange Act and its rules that a security has been approved by an exchange for listing and registration, the use of Inline eXtensible Business Reporting Language (“Inline XBRL”) for the filing of the financial statements and accompanying notes to the financial statements required in the annual reports of employee stock purchase, savings and similar plans, and that will allow for the electronic submission of certain foreign language documents.

**DATES:** *Effective dates:* The final rules are effective JULY 11, 2022.

*Compliance dates:* See Section II.F. for further information on transitioning to the final rules.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning electronic filing requirements, please contact the Office of Rulemaking in the Division of Corporation Finance at (202)

551-3430. For technical questions concerning Inline XBRL, please contact the Office of Structured Disclosure in the Division of Economic and Risk Analysis at (202) 551-5494.

**SUPPLEMENTARY INFORMATION:** We are adopting amendments to:

Commission Reference		CFR Citation(17 CFR)
Regulation S-T		§§ 232.11 through 232.903
	Rule 101	§ 232.101
	Rule 306	§ 232.306
	Rule 311	§ 232.311
	Rule 405	§ 232.405
Securities Act of 1933 <sup>1</sup> (“Securities Act”)		
	Rule 158	§ 230.158
	Form SE	§ 239.64
	Form 144	§ 239.144
Securities Exchange Act of 1934 <sup>2</sup> (“Exchange Act”)		
	Rule 12d1-3	§ 240.12d1-3
	Rule 14a-3(c)	§ 240.14a-3(c)
	Rule 14c-3(b)	§ 240.14c-3(b)
	Form 20-F	§ 249.220f
	Form 40-F	§ 249.240f
	Form 6-K	§ 249.306
	Form 10-K	§ 249.310
	Form 11-K	§ 249.311

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<sup>1</sup> 15 U.S.C. 77a *et seq.*

<sup>2</sup> 15 U.S.C. 78a *et seq.*

In addition, we are adopting technical amendments to 17 CFR 239.40 (“Form F-10”), 17 CFR 239.42 (“Form F-X”) and 17 CFR 239.800 (“Form CB”) to remove certain outdated references in these forms. The rule text of these technical changes has been included with the adopted amendments.

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**I. INTRODUCTION**

Registrants and individuals submit most documents required to be filed or otherwise submitted to the Commission under the Federal securities laws in electronic format using the Commission’s EDGAR

system. EDGAR filings are available to the public on our website.<sup>3</sup> During the 2021 calendar year, electronic filers submitted approximately 916,000 filings on EDGAR. These electronic filings enable investors and other EDGAR users to access more quickly the information contained in registration statements, periodic reports, and other filings made with the Commission. In contrast, investors or other parties wishing to access and review paper filings must do so in person at the Commission’s public reference room, or subscribe to a third-party information service that scans and distributes the information after a paper filing is made. As such, it can be time consuming and/or costly to obtain these filings in paper.<sup>4</sup>

In 1993, when the Commission began to mandate the electronic filing of documents on EDGAR, it adopted Regulation S-T and other rule and form amendments to implement the operational phase of EDGAR.<sup>5</sup> When the Commission adopted Regulation S-T it did not mandate electronic filing for all documents that are required to be filed under the Federal securities laws.<sup>6</sup> Currently, 17 CFR 232.101(a) (“Rule 101(a)”) mandates the electronic filing of over 400 different forms, schedules, reports, and applications. However, 17 CFR 232.101(b) (“Rule 101(b)”) identifies a number of documents that filers may choose (but are not required) to submit in electronic format via EDGAR and 17 CFR 232.101(c) (“Rule 101(c)”) identifies a number of documents that are not permitted to be filed in electronic format via EDGAR.

Since implementation of EDGAR, the Commission has increasingly sought to make the system more comprehensive by including more filings in the mandated electronic filing category. For example, in 2002, the Commission adopted amendments to require foreign private issuers and foreign governments

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<sup>3</sup> EDGAR filings are also available through some third-party information providers that obtain filings from EDGAR and disseminate them through their own websites.

<sup>4</sup> In this regard, the Commission’s public reference room is currently closed in recognition of the health and safety concerns related to COVID-19. *See infra* note 14.

<sup>5</sup> *See Rulemaking for EDGAR System*, Release No. 33-6977 (Feb. 23, 1993) [58 FR 14628].

<sup>6</sup> As one example, the Commission recognized that, at that time, certain documents, due to the graphical content or the format of data contained in the document, and the limitations of information technology, could be difficult to convert into an electronic format.

to submit electronically via EDGAR many of the documents that they are required to file.<sup>7</sup> In 2003,<sup>8</sup> the Commission adopted rule and form amendments to mandate the electronic filing of Forms 3, 4, and 5.<sup>9</sup>

In furtherance of this objective, on November 4, 2021, we proposed amendments to update additional EDGAR filing requirements.<sup>10</sup> Specifically, we proposed rule and form amendments that would: (1) mandate the electronic filing or submission of most of the documents that are currently permitted electronic submissions under Rule 101(b) of Regulation S-T; (2) mandate the electronic submission of the “glossy” annual report to security holders; (3) mandate the electronic filing of the certification made pursuant to 15 U.S.C. 78l(d) (“Section 12(d) of the Exchange Act”) and 17 CFR 240.12d1-3 (“Exchange Act Rule 12d1-3”) that a security has been approved by an exchange for listing and registration; (4) mandate the use of Inline XBRL for the filing of the financial statements and accompanying notes to the financial statements required by Form 11-K; and (5) allow for the electronic submission of certain foreign language documents.

In addition, on December 22, 2020, as part of a broader rule proposal relating to 17 CFR 230.144 (“Rule 144”), we proposed to mandate electronic filing of Form 144 with respect to securities issued by issuers subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.<sup>11</sup>

We are now adopting amendments reflecting the above rule and form proposals, substantially as proposed. We believe that these changes will continue and further the Commission’s ongoing efforts to

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<sup>7</sup> See *Mandated EDGAR Filing for Foreign Issuers*, Release No. 33-8099 (May 14, 2002) [67 FR 36678].

<sup>8</sup> See *Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5*, Release No. 33-8230 (May 7, 2003) [68 FR 25788].

<sup>9</sup> 17 CFR 249.103; 17 CFR 249.104; 17 CFR 232.105.

<sup>10</sup> See *Updating EDGAR Filing Requirements* Release No. 33-11005 (Nov. 4, 2021) [86 FR 66231] (“Updating EDGAR Proposing Release”).

<sup>11</sup> See Rule 144 Holding Period and Form 144 Filings, Release No. 33-10991 (Dec. 22, 2020) [85 FR 79936] (“Rule 144 Proposing Release”). We are not taking any action concerning the remaining proposals in the Rule 144 Proposing Release at this time. In particular, we are not adopting the proposal 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. As such, affiliates relying on Rule 144 when the issuer of the securities is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act 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. Accordingly, we are adopting a conforming amendment to Rule 144 (new Rule 144(h)(2)) to reflect that non-reporting issuers will continue to file in paper.

make the EDGAR system more comprehensive by including more filings in the mandated electronic filing category.

## II. DISCUSSION OF FINAL AMENDMENTS

### A. Mandating the Electronic Filing or Submission of Permissible Electronic Submissions

Rule 101(b) of Regulation S-T currently permits filers to submit the following documents either electronically or in paper format:

- Annual reports to security holders (colloquially referred to as the “glossy” annual reports) furnished for the information of the Commission pursuant to 17 CFR 240.14a-3(c) (“Exchange Act Rule 14a-3(c)”) or 17 CFR 240.14c-3(b) (“Exchange Act Rule 14c-3(b)”), or under the requirements of Form 10-K for registrants reporting pursuant to 15 U.S.C. 78o(d) (“Section 15(d) of the Exchange Act”),<sup>12</sup> or by foreign private issuers on Form 6-K pursuant to Exchange Act Rules 17 CFR 240.13a-16 or 17 CFR 240.15d-16;
- Notices of exempt solicitation furnished for the information of the Commission pursuant to 17 CFR 240.14a-6(g), and notices of exempt preliminary roll-up communications furnished for the information of the Commission pursuant to 17 CFR 240.14a-6(n);
- Annual reports for employee benefit plans on 17 CFR 249.311 (“Form 11-K”),<sup>13</sup>

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<sup>12</sup> In 2016, the Division of Corporation Finance indicated that it would not object if a registrant posts an electronic version of its “glossy” annual report to security holders to its corporate website by the applicable date specified in Exchange Act Rule 14a-3(c), Exchange Act Rule 14c-3(b), or in Form 10-K, in lieu of mailing paper copies or submitting it on EDGAR if the report remains accessible for at least one year after posting. *See* Proxy Rules and Schedule 14A (Regarding Submission of Annual Reports to SEC Under Rules 14a-c(3) and 14c-3(b)), U.S. Sec. & Exch. Comm’n (Nov. 2, 2016), available under “Compliance and Disclosure Interpretations – Proxy Rules and Schedule 14A” at <https://www.sec.gov/divisions/corpfin/guidance/exchange-act-rule-14a3-14c3.htm> (“2016 Staff Guidance”). The 2016 Staff Guidance will be withdrawn upon the compliance date of amended Rule 101(a)(1)(xxiii) of Regulation S-T as it is superseded by the rule amendments. EDGAR will serve as a repository for electronic copies of the “glossy” annual reports to security holders, whether or not registrants post the reports on their corporate websites.

<sup>13</sup> Registrants who satisfy their Form 11-K filing obligations by filing an amendment to Form 10-K, as provided by 17 CFR 240.15d-21 (“Exchange Act Rule 15d-21”) Exchange Act Rule 15d-21, may also file these amendments in paper or electronic format.

- Notice of proposed sale of securities on 17 CFR 239.144 (“Form 144”) where the issuer of the securities is subject to the reporting requirements under Section 13 or 15(d) of the Exchange Act;<sup>14</sup>
- Periodic reports and reports with respect to distributions of primary obligations 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 (collectively, the “Development Banks”);<sup>15</sup>
- Reports or other documents submitted by a foreign private issuer under cover of 17 CFR 249.306 (“Form 6–K”) that the foreign private issuer must furnish and make public under the laws of the jurisdiction in which the issuer is incorporated, domiciled or legally organized (the foreign private issuer’s “home country”), or under the rules of the home country exchange on which the foreign private issuer’s securities are traded, as long as the report or other document is not a press release, is not required to be and has not been distributed to the issuer's security holders, and, if discussing a material event, has already been the subject of a Form 6-K or other Commission filing or submission on EDGAR; and
- Documents filed with the Commission pursuant to 15 U.S.C. 80a-32 (“Section 33 of the Investment Company Act”).<sup>16</sup>

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<sup>14</sup> In April 2020, in recognition of several logistical difficulties related to the submission of Form 144 in paper pursuant to Rules 101(b)(4) or 101(c)(6) of Regulation S-T, as well as ongoing health and safety concerns related to COVID-19, the Division of Corporation Finance issued a statement announcing a temporary no-action position that it would not recommend enforcement action to the Commission if Forms 144 for the period from and including April 10, 2020 to June 30, 2020 were submitted as a complete PDF attachment and emailed to the Commission in lieu of filing the form in paper. Subsequently, on June 25, 2020, the Division of Corporation Finance indefinitely extended this statement from the period beginning on April 10, 2020. *See Division of Corporation Finance Statement Regarding Requirements for Form 144 Paper Filings in Light of COVID-19 Concerns*, U.S. Sec. & Exch. Comm’n (June 25, 2020), available at <https://www.sec.gov/corpfin/announcement/form-144-paper-filings-email-option-update>. The 2020 statement will be withdrawn upon the compliance date of amended Rules 144(h)(2) and 101(a)(1)(xxvi) of Regulation S-T as it is no longer necessary due to the rule amendments.

<sup>15</sup> Pursuant to rules adopted by the Commission, the Development Banks are required to file annual and quarterly reports with the Commission in connection with the distribution of primary obligations issued by the Development Banks. In addition, the Development Banks are required to file a distribution report with the Commission on or prior to the date on which any distribution of primary obligations are issued to the public in the United States. *See* 17 CFR 285-290.

<sup>16</sup> *See* Rule 101(b)(9) of Regulation S-T [17 CFR 232.101(b)(9)].

## 1. Proposing Releases

In two separate rule proposals,<sup>17</sup> we proposed to amend Rule 101 of Regulation S-T to mandate the electronic filing of the documents listed above; all of which are currently permitted electronic filings under Rule 101(b).

In the Updating EDGAR Proposing Release, we proposed amendments that would remove the permitted electronic submissions listed in Rule 101(b)(1) through paragraph (b)(6), with the exception of current paragraph 101(b)(4) relating to Rule 144 filings, as well as paragraph (b)(9)<sup>18</sup> and add those items to the list of mandated electronic submissions contained in Rule 101(a)(1) of Regulation S-T.<sup>19</sup>

In the Rule 144 Proposing Release,<sup>20</sup> we proposed to remove the permitted electronic submission of all Form 144 filings for the sale of securities of Exchange Act reporting companies in Rule 101(b)(4) of Regulation S-T and add that item to the list of mandated electronic submissions contained in Rule 101(a)(1) of Regulation S-T.<sup>21</sup> We also proposed to amend Rule 144(h)(1) to delete the requirement that

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<sup>17</sup> See the Updating EDGAR Proposing Release, *supra* note 10 and the Rule 144 Proposing Release, *supra* note 11.

<sup>18</sup> See *in this regard* Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV-NR; Amendments to Form 13F Release No. 34-93518 (Nov. 4, 2021) [86 FR 64839] in which we proposed to update the filing requirements for certain Investment Company Act and Investment Advisor Act forms and applications.

<sup>19</sup> In addition to the proposed changes to Rules 101(a) and 101(b), in the Updating EDGAR Proposing Release we also proposed corresponding amendments to Rules 158, 306, 311, 405, 12d1-3, 14a-3 and 14c-3, as well as Forms 6-K, 10-K, 11-K, 20-F, and 40-F to implement these changes. We are also adopting the corresponding changes as proposed.

<sup>20</sup> Under Securities Act Rule 144(h), an affiliate who intends to resell restricted or control securities of the issuer in reliance upon Securities Act Rule 144 during any three-month period in a transaction that exceeds either 5,000 shares or has an aggregate sales price of more than \$50,000 must file a Form 144 concurrently with either the placing of an order with a broker to execute the sale or the execution of a sale directly with a market maker. Rule 101(b) of Regulation S-T permits Form 144 to be filed electronically or in paper if the issuer of the securities is subject to Exchange Act reporting requirements. In calendar year 2021, approximately 30,000 Forms 144 were filed. Although the vast majority (approximately 99%, or 29,700) of these Form 144 filings can be made electronically on EDGAR (because the issuer of the securities is subject to Exchange Act reporting requirements), only 234 Form 144 filings were electronically filed on EDGAR. The remainder were filed in paper or as a PDF via email. If the issuer of the securities is not subject to Exchange Act reporting requirements, Rule 101(c)(6) of Regulation S-T requires Form 144 to be filed in paper. See *also supra* note 17.

<sup>21</sup> We also proposed minor changes to Form 144 to update the form to reflect these changes and to eliminate certain personally identifiable information (“PII”) and immaterial information fields that are unnecessary. Specifically, we proposed to delete the fields requiring the home address of the person for whose account the securities are to be sold and the IRS identification number of the issuer of the securities. For purposes of Form 144, we have determined that we can achieve our regulatory objectives without the PII. Furthermore, the IRS identification number of the issuer is redundant as this information is required to be disclosed on the cover page of registration statements and periodic reports and would be available through these forms. We are also adopting these changes as proposed.



an affiliate send one copy of the Form 144 notice to the principal exchange, if any, on which the restricted securities are admitted to trading, as this provision was designed for paper Form 144 filings. We proposed to provide a six-month transition period after the effective date of the amendments to Regulation S-T to give Form 144 paper filers who would be first-time electronic filers on EDGAR sufficient time to apply for access to file on EDGAR. Additionally, the Rule 144 Proposing Release noted that we would make Form 144 available online as a fillable document that could be used by filers.

## 1. Public Comments

We received eight comment letters on the Updating EDGAR Proposing Release. One was supportive of the mandate to make the glossy annual report a mandatory EDGAR filing;<sup>22</sup> two addressed the electronic filing of forms that were not part of the proposal;<sup>23</sup> one addressed substantive disclosure requirements not addressed in, and beyond the scope of, the proposal,<sup>24</sup> one addressed a filing process that was not proposed,<sup>25</sup> and one requested a longer comment period.<sup>26</sup> We did not receive any comments opposing this proposal.

We received twelve comment letters on the Rule 144 Proposing Release addressing the proposed amendment to mandate electronic filing of Form 144, most of which expressed support for mandating the electronic filing of Form 144. For example, several of these commenters stated that proposed amendments would allow for a more convenient and improved filing process.<sup>27</sup> A number of

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<sup>22</sup> See letter dated Dec. 2, 2021 from Parker Smith.

<sup>23</sup> See letter dated Dec. 17, 2021 from Dorothy Donohue, Deputy General Counsel - Securities Regulation, Investment Company Institute and letter dated Dec. 17, 2021 from Martha Redding, Associate General Counsel, Assistant Secretary, NYSE Group, Inc.

<sup>24</sup> See letter dated Jan. 4, 2022 from Andrew MacInnes, BrilLiquid LLC.

<sup>25</sup> See letter dated Nov. 17, 2021 from Joseph Snyder

<sup>26</sup> See letter dated Jan. 10, 2022 from Patrick McHenry, Ranking Member, House Committee on Financial Services, and Pat Toomey, Ranking Member, Senate Committee on Banking, Housing, and Urban Affairs. Neither of the remaining two letters addressed mandating electronic filings. One noted that “people everywhere deserve free and open markets,” and another requested that the Commission “shut down dark pools.”

<sup>27</sup> See letter dated Mar. 16, 2021 from the Basile Law Firm P.C., letter dated Feb. 15, 2021 from Hamilton & Associates Law Group, P.A. (“Hamilton”), letter dated Mar. 11, 2021 from Sydney Linnick (“Linnick”), letter dated Mar. 17, 2021 from Rachel Mullinax (“Mullinax”), and letter dated Mar. 17, 2021 from North American Securities Administrators Association, Inc. (“NASAA”).

commenters noted that filing Form 144 in paper makes it difficult for investors and other users of the disclosures (such as researchers and other regulatory bodies) to access the information contained in these filings.<sup>28</sup>

One commenter stated that the importance of the information contained in Form 144 is demonstrated by the activities of third party vendors that regularly visit the Commission's Reading Room to scan, digitize, and disseminate Forms 144 to clients that pay for the information.<sup>29</sup> This commenter stated the Commission's Form 144 paper filing regime has created a two-tiered disclosure system that makes public disclosure of Form 144 essentially only accessible to large institutional clients that have the resources pay for this information, but inaccessible to individual investors.<sup>30</sup>

Another commenter, although supportive of the goals of this proposal, expressed concern that the proposed amendments would present significant logistical challenges for broker-dealers that prepare and submit Form 144 filings on behalf of their clients and may result in firms deciding to cease providing such services.<sup>31</sup> This commenter stated that mandating the electronic filing of Form 144 will require firms to log-in and log-out of the SEC's system using a Form 144 filer's EDGAR credentials, "which will be extremely time-consuming and labor-intensive" given the number of Form 144 filings that this commenter indicated are filed by broker-dealers.<sup>32</sup> This commenter also stated that an electronic filing mandate would require a brokerage firm to develop and maintain processes to collect, securely store, and properly update all of the EDGAR access credentials for each of its clients that are required to file a

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<sup>28</sup> See letter dated Mar. 18, 2021 from the Council of Institutional Investors, letters from Hamilton, Linnick, Mullinax, NASAA, letter dated Mar. 10, 2021 from Alan D. Jagolinzer, Professor of Financial Accounting of the University of Cambridge's Judge Business School; Head of the Accounting Faculty Subject Group; and Co-Director of Cambridge Centre for Financial Reporting & Accountability, and letter dated Mar. 10, 2021 from David Larcker, Graduate School of Business, Stanford University, Director, Stanford Corporate Governance Research Initiative; Daniel Taylor, The Wharton School, University of Pennsylvania, Director, Wharton Forensic Analytics Lab; and Bradford Lynch, The Wharton School, University of Pennsylvania ("Prof. Larcker *et al.*").

<sup>29</sup> See letter from Prof. Larcker et al.

<sup>30</sup> *Id.*

<sup>31</sup> See letter dated Mar. 22, 2021 from the Securities Industry and Financial Markets Association.

<sup>32</sup> *Id.* (noting that, according to data from the Washington Service Bureau, dealers filed 20,864 Form 144 filings in 2020).

Form 144. This commenter recommended, as an alternative, that the Commission adopt an approach that would allow brokerage firms to bulk file Forms 144 on a daily or every-other-business-day basis (or whatever time period the Commission considers appropriate) and that the Commission also provide a twelve-month transition period.<sup>33</sup>

## 2. Final Rules

After considering the public comments, we are adopting the amendments to mandate electronic filing as proposed, with the exception of the compliance date for the electronic filing of Form 144, which is discussed further in Section II.F, below. We believe that mandating the electronic filing of these documents will benefit investors and other users by making the information contained in these filings accessible to the public almost immediately after filing on EDGAR. It will thus enable investors, market participants, and other EDGAR users to retrieve and use the information in these documents promptly, as compared to a paper filing, facilitating their analysis of this information. The use of EDGAR will also facilitate efficient storage of this information, improve the Commission's ability to track and process filings, and modernize the Commission's records management process. Moreover, eliminating the permitted electronic submissions of documents that are filed or furnished pursuant to Rules 101(b)(1)-(3), (5), (6) and (9) will eliminate a paper option that as a practical matter is not used by the vast majority of registrants.<sup>34</sup>

In addition, Form 144 filers will benefit from the planned changes to make the form an online fillable document that would facilitate electronic filing. An online fillable form will enable the convenient input of information, and support the electronic assembly of such information and transmission to EDGAR, without requiring a Form 144 filer to purchase or maintain additional software

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<sup>33</sup> *Id.*

<sup>34</sup> For example, in calendar years 2020 and 2021 combined, there were more than 48,000 Forms 6-Ks filed electronically and only two filed in paper. Similarly, for the same two-year period, there were approximately 20,000 Forms 11-K filed electronically and only 22 filed in paper. *See also infra* note 42.

or technology. The fillable form will be similar to other fillable forms that are currently available to file other Form-specific XML filings on EDGAR such as Forms D, 3, 4, and 5.<sup>35</sup> As such, the Form 144 data will be machine-readable and thus available for automated and efficient analysis.

We acknowledge the concerns voiced by one commenter about potential logistical challenges for brokers and dealers.<sup>36</sup> We note that EDGAR allows for bulk filing of forms, including forms for multiple different CIKs, simultaneously. As such, a single broker-dealer could bulk file Forms 144 simultaneously for multiple clients.<sup>37</sup> In addition, we are providing a longer transition period than what was proposed for Form 144 paper filers to file the forms electronically on EDGAR. Specifically, we are adopting a six-month transition period commencing from the date when the Commission adopts a version of the EDGAR Filer Manual that addresses the updates to Form 144.<sup>38</sup>

## **B. Mandating the Electronic Submission of the “Glossy” Annual Report to Security Holders**

Exchange Act Rules 14a-3(c) and 14c-3(b) require registrants subject to these rules to furnish to the Commission, for its information, seven copies of their “glossy” annual report to security holders.<sup>39</sup> Form 10-K contains a similar provision that requires registrants that are required to file a Form 10-K pursuant to Section 15(d) of the Exchange Act to furnish to the Commission four copies of their

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<sup>35</sup> We are also adopting the proposed amendment to Rule 144(h)(1) to delete the requirement that an affiliate send one copy of the Form 144 notice to the principal exchange, if any, on which the restricted securities are admitted to trading. This requirement was designed for paper Form 144 filings and will no longer be necessary now that we are mandating the electronic filing of Form 144.

<sup>36</sup> *See supra* note 31.

<sup>37</sup> In addition, the Commission recently issued a request for comment regarding potential technical changes to EDGAR filer access and filer account management processes. The request for comment may be relevant to the commenter’s concerns about managing the EDGAR accounts of multiple Form 144 filers, for which broker-dealers would provide filing services. *See Request for Comment on Potential Technical Changes to EDGAR Filer Access and Filer Account Management Processes*, Release No. 34-93204 (Sept. 30, 2021) [86 FR 55029]; *see also* <https://www.sec.gov/edgar/filer-information/edgar-next>.

<sup>38</sup> *See infra* Section II.F.

<sup>39</sup> In 1967, the Commission amended Exchange Act Rules 14a-3(c) and 14c-3(b) to require registrants to furnish to the Commission, solely for its information, seven copies of their “glossy” annual report to security holders. *See Proxy and Stockholder Information Rules*, Release No. 34-8029 (Jan. 24, 1967) [32 FR 1035]. Prior to these amendments, registrants were required to furnish to the Commission four copies of their “glossy” annual report to security holders.

“glossy” annual report to security holders.<sup>40</sup> In addition, foreign private issuers are often required to furnish to the Commission their “glossy” annual report to security holders in response to the requirements of Form 6-K.<sup>41</sup>

Rule 101(b)(1) of Regulation S-T permits all of these registrants to satisfy the above requirements by submitting to the Commission their “glossy” annual report to security holders in either paper or electronically on EDGAR. During the 2020 and 2021 calendar years, we received minimal paper submissions and very few electronic submissions of annual reports.<sup>42</sup>

We proposed to require registrants to submit to the Commission their “glossy” annual report to security holders via an electronic submission on EDGAR, in accordance with the EDGAR Filer Manual, by adding Rule 101(a)(1)(xxiii) of Regulation S-T and removing Rule 101(b)(1) of Regulation S-T.<sup>43</sup> Registrants would no longer be permitted to submit their “glossy” annual report to security holders to the Commission in paper.

We are now adopting the amendments as proposed. We believe the requirements to furnish these reports to the Commission in paper format under Exchange Act Rule 14a-3(c), Exchange Act Rule 14c-3(b) and Form 10-K are unnecessary. We also believe that, in addition to helping inform the Commission, investors will benefit from the ability to access electronic copies of the “glossy” annual reports to security holders on EDGAR.

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<sup>40</sup> See Form 10-K, Supplemental Information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Act by Registrants Which Have Not Registered Securities Pursuant to Section 12 of the Act. Form 10-K also currently requires registrants required to file a Form 10-K pursuant to Section 15(d) of the Exchange Act to furnish to the Commission every proxy statement, form of proxy or other proxy soliciting material sent to more than ten of the registrant’s security holders with respect to any annual or other meeting of security holders.

<sup>41</sup> See *supra* Section II.A.

<sup>42</sup> We received 23 and 18 electronic submissions of glossy annual reports in calendar years 2020 and 2021, respectively. The staff no longer tallies the number of these reports submitted in paper format. We believe, however, that the number is minimal as issuers typically avail themselves of the 2016 Staff Guidance. See *supra* note 12 (discussing the 2016 Staff Guidance regarding a registrant posting an electronic version of its “glossy” annual report to security holders to its corporate website in lieu of mailing paper copies or submitting it on EDGAR).

<sup>43</sup> We also proposed corresponding amendments to Rules 14a-3(c), 14c-3(b), and 158(b)(2), as well as Forms 20-F, 6-K and 10-K to implement these changes and are adopting these changes as proposed.

Going forward, EDGAR will serve as a repository for electronic copies of the “glossy” annual reports to security holders, whether or not registrants decide to post the reports on their corporate websites.<sup>44</sup> An archive of electronic copies of the “glossy” annual reports to security holders will ensure long-term access to these reports in a centralized database available to the public and will avoid the burden for investors of having to search individual corporate websites and other resources for this information. In addition, electronic submission of the “glossy” annual report to security holders should capture the graphics, styles of presentation, and prominence of disclosures (including text size, placement, color, and offset, as applicable) contained in the reports.<sup>45</sup>

In addition to deleting Rule 101(b)(1) of Regulation S-T, we are also amending Exchange Act Rule 14a-3(c), Exchange Act Rule 14c-3(b), and Form 10-K to eliminate the option for registrants to furnish to the Commission paper copies of their “glossy” annual report to security holders. Instead, we are requiring the electronic submission of these reports in accordance with the EDGAR Filer Manual. We are also amending Securities Act Rule 158(b)(2) to replace the reference to the furnishing of copies of the “glossy” annual report to security holders to the Commission with a reference to furnishing the report to the Commission in accordance with the EDGAR Filer Manual.<sup>46</sup>

Notwithstanding these amendments, our 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 the Commission’s website.<sup>47</sup>

With respect to foreign private issuers, we are similarly amending Form 6-K to remove references to the paper submission to the Commission of a “glossy” annual report to security holders and instead

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<sup>44</sup> See *supra* note 12 (these amendments will supersede the 2016 Staff Guidance, which will be withdrawn).

<sup>45</sup> Under the amendments, the “glossy” annual report to security holders should not be re-formatted, re-sized, or otherwise re-designed for purposes of the submission on EDGAR. Currently, the only format that EDGAR supports is portable data format (“PDF”). If EDGAR is upgraded to accommodate other formats appropriate for electronic filing of the “glossy” annual report, the Commission will communicate the upgrade by adopting an updated EDGAR Filer Manual that supports such formats.

<sup>46</sup> See 17 CFR 230.158(b)(2) (“Securities Act Rule 158(b)(2)”).

<sup>47</sup> See Exchange Act Rule 14a-16(b) [17 CFR 240.14a-16]; see also Shareholder Choice Regarding Proxy Materials, Exchange Act Release No. 34-56135 (July 26, 2007) [72 FR 42222].

will require foreign private issuers to satisfy their Form 6-K requirement to furnish such a report by submitting the report electronically on EDGAR, in accordance with the EDGAR Filer Manual.

### **C. Requiring the Electronic Filing of Certifications of Approval of Exchange**

#### **Listing**

For securities to be listed on an exchange, Exchange Act Rule 12d1-3 requires the national securities exchange to file a certification with the Commission that the security has been approved by the exchange for listing and registration pursuant to Section 12(d) of the Exchange Act.<sup>48</sup> The certification must specify (1) the approval of the exchange for listing and registration; (2) the title of the security so approved; (3) the date of filing with the exchange of the application for registration and of any amendments thereto; and (4) any conditions imposed on such certification.

This certification is not included in any of the EDGAR filing requirements or exceptions in Rule 101 of Regulation S-T. In December 2017, the Commission modified EDGAR to permit the voluntary electronic submission of the certifications on EDGAR.<sup>49</sup> During the 2020 calendar year, the Commission received 1,184 certifications from national securities exchanges. All of the certifications were submitted electronically, except one. In light of the overwhelming use of this option, we proposed to amend Exchange Act Rule 12d1-3 and Rule 101(a) of Regulation S-T to mandate the electronic filing of these certifications. We received no comments on this aspect of the proposed amendments. We are adopting the amendments as proposed.<sup>50</sup>

### **D. Mandating the Use of Inline XBRL for the Filing of Financial Statements and Accompanying Notes to the Financial Statements Required by Form 11-K**

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<sup>48</sup> Exchange Act Rule 12d1-3(c) specifies that the certification may be made by telegram but in such case must be confirmed in writing, and all certifications in writing and all amendments thereto must be filed with the Commission in duplicate.

<sup>49</sup> Among other things, EDGAR Release 17.4 updated EDGAR to allow, but not require, national securities exchanges to submit a new certification form type on EDGAR to evidence the approval of securities for listing on an exchange. *See* Adoption of Updated EDGAR Filer Manual, Release No. 33-10444 (Dec. 8, 2017) [83 FR 2369]. Prior to the 2017 modification, we received only paper certifications that a security has been approved for listing and registration.

<sup>50</sup> Amended Rule 101(a) of Regulation S-T will require the filing of the certification electronically as is currently permitted.

In 2009, the Commission adopted rules requiring operating companies to submit the information from the financial statements included in certain registration statements and periodic and current reports in a structured, machine-readable data language using XBRL.<sup>51</sup> In 2018, the Commission adopted modifications to these requirements by requiring issuers to use Inline XBRL, which is both machine-readable and human-readable, to reduce the time and effort associated with preparing XBRL filings and improve the quality and usability of XBRL data for investors.<sup>52</sup> Since then, the Commission has completed phasing-in the adopted Inline XBRL requirements and has expanded the scope of disclosures that must be tagged using Inline XBRL.<sup>53</sup>

Form 11-K is the form used for annual reports of employee stock purchase, savings and similar plans that are filed with the Commission pursuant to Section 15(d) of the Exchange Act. Currently, annual reports on Form 11-K are not subject to structured data reporting requirements. Accordingly, the financial statements required by Form 11-K are not machine-readable. These financial statements, which must be prepared in accordance with the applicable provisions of Article 6A of Regulation S-X (17 CFR 210.6A-01—.6A-05), include:

- An audited statement of financial condition as of the end of the latest two fiscal years of the plan (or such lesser period as the plan has been in existence); and
- An audited statement of comprehensive income (either in a single continuous financial statement or in two separate but consecutive financial statements; or a statement of net income if there was no other comprehensive income) and changes in plan equity for each of the latest three fiscal years of the plan (or such lesser period as the plan has been in existence).

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<sup>51</sup> See Interactive Data to Improve Financial Reporting, Securities Act Release No. 9002 (Jan. 30, 2009) [74 FR 6776 2009] (requiring submission of an Interactive Data File to the Commission in exhibits to such reports); see also Securities Act Release No. 9002A (Apr. 1, 2009) [74 FR 15666].

<sup>52</sup> See Inline XBRL Filing of Tagged Data, Securities Act Release No. 10514 (June 28, 2018) [83 FR 40846, 40847] (“Inline XBRL Adopting Release”). Inline XBRL allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit. Inline XBRL is both human-readable and machine-readable for purposes of validation, aggregation, and analysis. *Id* at 40851.

<sup>53</sup> See, e.g., Filing Fee Disclosure and Payment Methods Modernization, Release No. 33-10997 (Oct. 13, 2021) [86 FR 770166].



Form 11-K also provides filers with the option to file plan financial statements and schedules prepared in accordance with the financial reporting requirements of 29 U.S.C. 18 et seq (the “Employee Retirement Income Security Act of 1974” or “ERISA”).<sup>54</sup> When filers elect this option, plan financial statements are embedded within the filing or filed as exhibits in a non-structured format.<sup>55</sup>

We proposed to require registrants to present the financial information required by Form 11-K, whether prepared in accordance with Regulation S-X or the financial reporting requirements of ERISA, in Inline XBRL.<sup>56</sup> Under the proposed amendments 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. As such, every data point in the financial statements required by Form 11-K would be tagged in Inline XBRL. Further, where there are narrative disclosures (e.g., notes to the financial statements), registrants would be required, like filers of Forms 10-K, 20-F, and 40-F, to apply block tags to the narrative disclosures and detailed tags to any numeric amounts presented in the narrative text.

We received no comments on this aspect of the proposal and are adopting these amendments as proposed.<sup>57</sup> Structuring this data will enable analytical tools to extract tagged information in an efficient, automated manner. As a result, plan participants, analysts, and the Commission will be better able to access, organize, and evaluate the information presented by filers. As amended, the tagging requirement will be specified in the Instructions to Form 11-K and in Rule 405 of Regulation S-T.<sup>58</sup>

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<sup>54</sup> 29 U.S.C. 18 *et seq.* Plan financial statements required under ERISA are prepared on Form 5500. *See* Form 5500, Annual Return/Report of Employee Benefit Plan, available at <https://www.dol.gov/sites/dolgov/files/EBSA/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500/2020-form-5500.pdf>.

<sup>55</sup> Under paragraph 4 of Required Information of Form 11-K, plans may include all or a portion of Form 5500 into the Form 11-K filing with the Commission.

<sup>56</sup> *See supra* Note 13. The proposed amendments would also apply to financial statements required by Form 11-K that are filed in accordance with Exchange Act Rule 15d-21.

<sup>57</sup> As discussed in Section II.A., *supra*, we are also mandating the electronic submission of Form 11-K.

<sup>58</sup> We are not adopting the proposed changes to the definition of Related Official Filing in Rule 11 of Regulation S-T. We have determined that it is not necessary to change that definition, as the amendments to Rule 405 of Regulation S-T that we are adopting are sufficient to reflect this new requirement.

## E. Electronic Submission of Certain Foreign Language Documents

Generally, all filings and submissions to the Commission must be in English.<sup>59</sup> Rule 306(a) of Regulation S-T prohibits the electronic filing or submission of a document that is in a foreign language.<sup>60</sup> If an electronic filing or submission requires the inclusion of a foreign language document, the document must either be translated into, or (if it is an exhibit or attachment to a filing or submission) summarized in English and submitted in electronic format.<sup>61</sup>

Currently, Rules 306(b) and (c) of Regulation S-T govern the submission of a foreign language document by an electronic filer.<sup>62</sup> Rule 306(b) 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. Rule 306(c) 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. We proposed to amend Rule 306 to eliminate paper submission of the above two types of foreign language documents.<sup>63</sup> Instead, these documents would be required to be submitted electronically in an appropriate format that EDGAR supports, currently as PDFs.<sup>64</sup>

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<sup>59</sup> See 17 CFR 230.403; 17 CFR 240.12b-12; and Rule 306 of Regulation S-T.

<sup>60</sup> Rule 306(d) of Regulation S-T provides for one exception to Rule 306(a) and allows for the electronic filing of certain documents that contain both French and English by Canadian issuers [17 CFR 232.306(d)].

<sup>61</sup> See 17 CFR 230.403(c); 17 CFR 240.12b-12(d); and 17 CFR 232.306(a).

<sup>62</sup> Currently, electronic filers may not submit these untranslated foreign language documents in electronic format. 17 CFR 232.101(c)(8) ("Rule 101(c)(8) of Regulation S-T") states that documents and symbols in a foreign language shall not be submitted in electronic format and, thus, may only be submitted in paper.

<sup>63</sup> We also proposed to amend Rule 311 of Regulation S-T and Form SE to clarify that these two types of foreign language documents may no longer be submitted in paper under the cover of Form SE. We are adopting these amendments as proposed.

<sup>64</sup> We similarly proposed to remove and reserve Rule 101(c)(8) of Regulation S-T. As noted above, Rule 101(c)(8) prohibits the electronic submission of documents and symbols in a foreign language. We are also adopting this amendment as proposed. We note in this regard that even with the removal of this prohibition, Rule 306(a) of Regulation S-T will still generally require all electronic filings and submissions to be in English.

We did not receive any comments on these amendments and are now adopting these amendments as proposed. We believe that these changes will reduce the number of paper submissions we receive and increase the public's access to these foreign language documents.

#### **F. Transition Periods**

We are adopting the proposed six-month transition period after the effective date of the amendments for when filers will be required to file or submit electronically “glossy” annual reports to security holders (in PDF), notices of exempt solicitations and exempt preliminary roll-up communications, annual reports for employee benefit plans on Form 11-K, periodic reports and reports with respect to distributions of primary obligations filed by the Development Banks, reports or other documents submitted by a foreign private issuer under cover of Form 6-K, certain foreign language documents (in PDF), and certifications made pursuant to the Exchange Act and its rules that a security has been approved by an exchange for listing and registration. We believe that this transition period will provide registrants with sufficient time to prepare to submit these documents electronically in accordance with the EDGAR Filer Manual, including providing paper filers who would be first-time EDGAR filers adequate time to apply for access to file on EDGAR on behalf of their clients and/or apply for a filing agent CIK in order to make electronic filings.

In response to the comment requesting a longer transition period to allow a firm to collect EDGAR filing credentials from its Form 144 filing clients and to establish adequate new processes governing the filing of the forms and the maintenance of EDGAR credentials,<sup>65</sup> we are adopting a longer transition period than what we proposed for when filers will be required to file Forms 144 on EDGAR for sales of securities of issuers subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. Specifically, the requirement to file Form 144 electronically on EDGAR will commence six months from the date of publication in the Federal Register of the Commission release that adopts the version of the EDGAR Filer Manual addressing updates to Form 144. We currently expect that the Commission

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<sup>65</sup> See *supra* note 31.

would consider adoption of the relevant version of the EDGAR Filer Manual addressing updates to Form 144 in September 2022, and publication in the Federal Register would occur thereafter. We believe this extended transition period will provide sufficient time for broker-dealers to transition clients for whom they prepare and submit Form 144 filings, including time for those clients who do not currently have access to EDGAR to apply for EDGAR access.

We are providing Form 11-K filers a three-year transition period after the effective date of the amendments in which to comply with the requirement to submit the financial statements and accompanying notes to the financial statements required by Form 11-K in Inline XBRL. We believe that a three-year transition period will provide employee stock purchase, savings and similar plans with sufficient time to prepare for Inline XBRL submissions taking into account that such registrants are not currently obligated to submit any information in XBRL or Inline XBRL.<sup>66</sup>

### **III. OTHER MATTERS**

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated these rules not a “major rule,” as defined by 5 U.S.C. 804(2).

### **IV. ECONOMIC ANALYSIS**

#### **A. Introduction**

The Commission is adopting rule and form amendments to update filing requirements under the EDGAR system. We are mindful of the costs imposed by, and the benefits obtained from, our rules and

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<sup>66</sup> In this regard, the three-year transition period is consistent with the transition times provided in other rules where registrants would be newly obligated to tag financial information in Inline XBRL. *See, e.g.*, Inline XBRL Filing of Tagged Data, Securities Act Release No. 10514 (June 28, 2018) [83 FR 40846, 40847].

the amendments.<sup>67</sup> The discussion below addresses the potential economic effects of the amendments. These effects include the likely benefits and costs of the amendments and reasonable alternatives thereto, as well as any potential effects on efficiency, competition, and capital formation. We attempt to quantify these economic effects whenever possible; however, due to data limitations, we are unable to do so in many cases. For example, we are unable to quantify the value to the public of being able to more quickly access a document on EDGAR compared to accessing it on paper. When we cannot provide a quantitative assessment, we provide a qualitative discussion of the economic effects instead.

The Commission is adopting these rule and form amendments to facilitate the efficient submission of documents to the Commission; to reduce burdens and inefficiencies associated with the filing, dissemination, storage, and retrieval of non-electronic and paper submissions; to allow for quicker public access to information; to improve the Commission's ability to track and process such filings; and to modernize the Commission's records management processes.

The rule and form amendments would:

- Mandate the electronic filing of several documents that are currently permitted electronic submissions under Regulation S-T, including all filings on Form 6-K and filings made by Development Banks;
- Mandate that certain registrants electronically file their "glossy" annual report to security holders;
- Mandate the electronic filing of the certification made pursuant to Section 12(d) of the Exchange Act and Exchange Act Rule 12d1-3 that a security has been approved by an exchange for listing and registration;

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<sup>67</sup> Section 2(b) of the Securities Act [15 U.S.C. 77b(b)] and Section 3(f) of the Exchange Act [15 U.S.C. 78c(f)] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. In addition, Section 23(a)(2) of the Exchange Act [15 U.S.C. 78w(a)(2)] requires us to consider the effects on competition of any rules that the Commission adopts under the Exchange Act and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

- Mandate the electronic filing of Form 144 and remove the requirement that an affiliate send one copy of the Form 144 notice to the principal exchange, if any, on which the restricted securities are admitted to trading.
- Mandate the use of the Inline XBRL structured data language for annual financial statements and schedules for employee benefit plans required by Form 11-K; and
- Allow for the electronic submission format of certain foreign language documents and remove the option to submit these documents in paper.

## **B. Economic Baseline**

The economic baseline, from which we measure the likely economic effects of the amendments, reflects current regulatory practice as it pertains to the method of submission to the Commission of certain forms and documents that currently may be, but are not required to be, submitted to the Commission via EDGAR.

Filers currently have the option to submit the following documents electronically via EDGAR: Annual reports to security holders furnished for the information of the Commission;<sup>68</sup> notices of exempt solicitation furnished for the information of the Commission pursuant to Exchange Act Rule 14a-6(g) and notices of exempt preliminary roll-up communications furnished for the information of the Commission pursuant to Exchange Act Rule 14a-6(n); annual reports for employee benefit plans on Form 11-K; Form 144 for sales of securities of issuers subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act; certain reports from Development Banks; reports or other documents submitted by a foreign private issuer under cover of Form 6-K; documents filed with the Commission pursuant to Section 33 of the Investment Company Act; and certifications made pursuant to Section 12(d) of the Exchange Act and Exchange Act Rule 12d1-3 that a security has been approved by an exchange for listing and registration. In addition, annual reports for employee benefit plans on Form 11-

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<sup>68</sup> See *supra* note 12.

K currently are not required to be submitted using the Inline XBRL structured data language.

For certain forms with an electronic filing option via EDGAR, a large percentage of filers use that option. Indeed, in Calendar Year (CY) 2021, the Commission received over 25,000 submissions combined of the following documents: Form 6–K, notices of exempt solicitation furnished for the information of the Commission pursuant to Rule 14a–6(g), and annual reports on Form 11–K. For forms 6-K and 11-K, more than 99 percent of submissions were filed electronically on EDGAR, even though filers had the option to submit these documents in non-electronic format. Likewise, in CY 2021 nearly all of the certifications filed by an exchange pursuant to Section 12(d) of the Exchange Act and Exchange Act Rule 12d1-3, and all documents filed pursuant to Section 33 of the Investment Company Act were submitted electronically on EDGAR, even though these documents could have been submitted in non-electronic format.

In contrast, for two of the types of forms, a much smaller percentage of filers currently submit electronically via EDGAR. In CY 2021, Development Banks electronically filed on EDGAR just 46 reports (34 percent).<sup>69</sup> In CY 2021 Form 144 filers electronically submitted 234 filings (0.8 percent) on EDGAR. Similarly, only a minimal number of “glossy” annual reports to security holders were submitted to the Commission in 2021; of those, very few were submitted electronically to the Commission, and even fewer were filed in paper format.<sup>70</sup>

Existing Commission rules permit Form 144 to be submitted either electronically via EDGAR or in paper form only for forms reporting proposed sales of reporting issuers. In 2020, in response to COVID-19 conditions, Commission staff announced a no-action position that temporarily affords Form 144 filers a third option to submit paper Form 144s via email.<sup>71</sup> In CY 2021, using a full year of data

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<sup>69</sup> Among the Development Banks, there were six unique filers.

<sup>70</sup> See *supra* note 42.

<sup>71</sup> See *supra* note 14

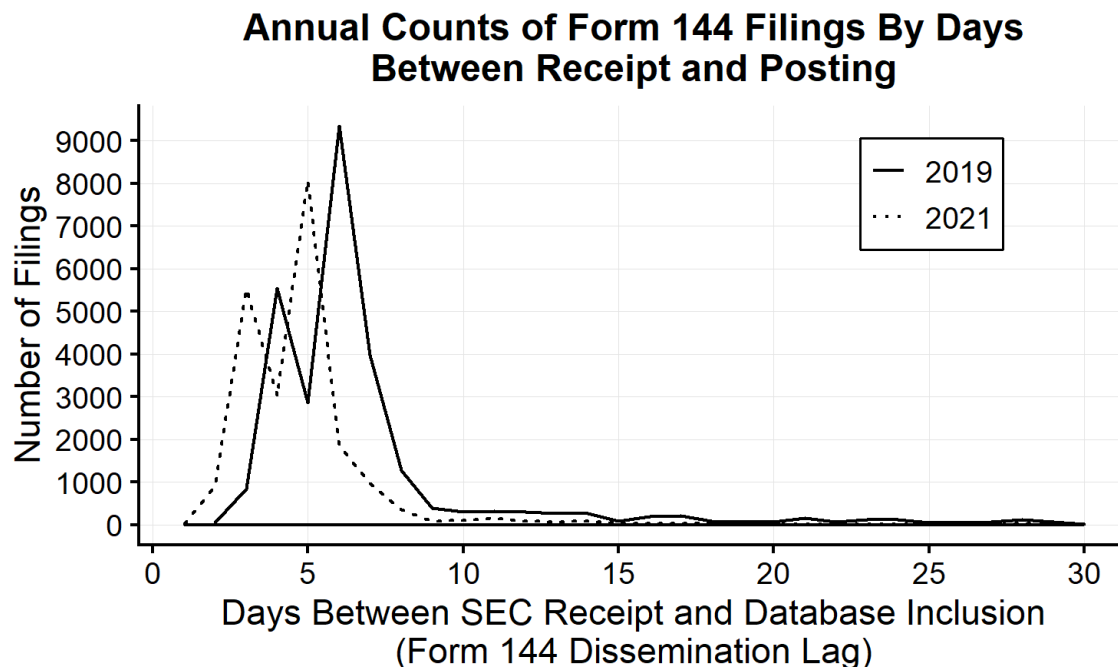
following the announcement, the Commission received 30,021 Form 144 submissions: 52.9 percent in paper form, 46.3 percent electronically via email, and 0.8 percent electronically on EDGAR. Thus, while when given the option, many paper filers have elected to submit their forms via email, very few filers have opted to file Form 144 electronically on EDGAR. Figure 1 examines the lag between when the Commission received a Form 144 filing and when it appeared in a commercial database, a proxy for the speed of dissemination to the public, for 2019 and 2021.<sup>72</sup> More specifically, the figure displays frequency counts of this dissemination lag (in days) for 2019 and 2021, before and after the announcement that filers could submit Form 144 via email. After the Commission allowed Form 144 to be submitted by email, the dissemination lag shortened (a leftward shift in the count distribution) by 1 day (16 percent) for the median submission, suggesting shifting away from the submission of paper Form 144 submissions improves the speed of dissemination. Electronic filings on EDGAR would likely further reduce the dissemination lag in Form 144 filings as they would be made public more quickly relative to the processing of electronic PDFs by third-party data providers.

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<sup>72</sup> The chart does not include 2020 as financial market conditions and broader logistical difficulties surrounding COVID-19 pandemic may be a confounding factor for 2020 data. Furthermore, comparing a full year of data for 2021 relative to 2019 means that seasonality effects do not affect our estimates. In contrast, estimates that compare data before and after the April 2020 Commission announcement that filers could submit Form 144 via email may be correlated with seasonality effects.



Figure 1.<sup>73</sup>



For Form 144 filers, it is our understanding that the majority of affected filers currently prepare and file these forms individually or with the assistance of a broker or personal counsel.<sup>74</sup> As the majority of Form 144 filings are currently paper or email filings, most filers would have to modify their processes for submitting their Form 144 filings under the amendments. Based on past filings, we estimate that approximately 12,250 filers would be required to switch to electronic filings on EDGAR.<sup>75</sup>

Finally, for Commission staff, receiving and processing paper or email submissions is often more time intensive than processing electronic submissions on EDGAR. When the Commission receives a paper or email submission, the document usually requires several manual steps, involving staff in various offices and divisions to process and retain the documents for recordkeeping purposes. As less

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<sup>73</sup> Based on Form 144 filings accessed via Thomson Reuters Insiders Data with the field “SEC Receipt” dated in 2019 or 2021.

<sup>74</sup> See letter from Jesse Brill (dated Dec. 18, 2013), available at <https://www.sec.gov/rules/petitions/2013/petn4-671.pdf>; see also letter dated Mar. 22, 2021 from the Securities Industry and Financial Markets Association.

<sup>75</sup> These estimates assume that filers of Form 144 submissions in our data are not also affiliates of other issuers. Because we lack data on the holdings of filers in securities of issuers other than those disclosed in the Form 144, we are unable to identify any filers that are such affiliates.

than one percent of all Form 144 submissions per year are filed electronically on EDGAR, the amended rules will likely increase significantly the volume of Form 144 filings made electronically on EDGAR and thus will reduce staff processing time.<sup>76</sup>

### **C. Economic Effects**

This section discusses the benefits and costs of the rule and form amendments, as well as their potential effects on efficiency, competition, and capital formation. Some of the amendments reflect current practice,<sup>77</sup> so they will likely not have significant economic effects. In addition, where certain benefits or costs of electronic filing apply to multiple amendments, we discuss those benefits or costs together instead of repeating such discussion for each amendment.

We recognize that the potential costs and benefits of electronic filing are sensitive to various assumptions, including the number of affected filers; the time burden of filing using EDGAR, including the type and cost of staff used, if any; and printing and mailing costs incurred under current rules. The economic effects on individual filers may vary across all filers depending on variables such as filer size, number of filings submitted, existing filing practices (e.g., current reliance on electronic document preparation; current experience with using EDGAR; use of in-house staff, brokers, or outside counsel for filing; number, types, and cost of in-house staff involved in paper filing; actual hours and printing and mailing costs required for paper filings). They may also vary depending on the amount of time required for filers to be trained in the use of EDGAR and any required related processes, and the amount of time to resolve any technical issues related to electronic filing on EDGAR.

#### **1. Benefits**

##### **a. Electronic Submission of Form 6–K, Notices of Exempt Solicitation, Notices of Exempt Preliminary Roll-up, Annual Reports on Form 11–K, Form 144,**

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<sup>76</sup> A rate of change based on the current one percent EDGAR submission rate may slightly overestimate the changes in volume. Further, based on the observed EDGAR filing behavior of affiliates who use an issuer's existing access to EDGAR, the number of new Form IDs required to be processed could be reduced, but would not otherwise affect the increase in submission volume.

<sup>77</sup> For example, certain amendments that would mandate electronic filings for specific documents, like listing certifications, that are currently largely submitted electronically.

## **Development Bank Reports, Certifications of Approval of Exchange Listing, and Certain Foreign Language Documents**

Currently, filers have the option to electronically submit in EDGAR, among other things, documents under cover of Form 6–K, notices of exempt solicitation furnished for the information of the Commission pursuant to Exchange Act Rule 14a–6(g), notices of exempt preliminary roll-up communications furnished for the information of the Commission pursuant to Exchange Act Rule 14a–6(n), annual reports for employee benefit plans on Form 11–K, Form 144 for securities of reporting issuers, periodic reports and reports with respect to distributions of primary obligations from Development Banks, certifications made pursuant to Section 12(d) of the Exchange Act and Exchange Act Rule 12d1-3 that a security has been approved by an exchange for listing and registration, and documents filed with the Commission pursuant to Section 33 of the Investment Company Act. The amendments would mandate the electronic submission in EDGAR of all of these documents to the Commission. In addition, certain foreign language documents currently are filed in paper format, but would be filed electronically under the amendments. There are several benefits to investors, filers, and the Commission of electronic submissions in EDGAR, relative to current submission methods.

Electronic submissions on EDGAR will benefit the users of the information because the submissions, whether on the Commission’s website or through third-party websites, are posted faster compared to non-EDGAR submissions. Thus, the public may be able to find and review a filing more quickly, as a result of the amendments, than they are able to access paper filings. In addition, the costs associated with obtaining documents filed electronically on EDGAR will likely be reduced for those investors who currently access paper documents via third-party entities.

To the extent that these documents inform investors’ decisions, this reduction in search costs may allow investors to incorporate more information or make quicker decisions.<sup>78</sup> Further, the use of an

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<sup>78</sup> The format requirement for electronic filings on EDGAR under the amendments would be dictated by the EDGAR Filer Manual, which allows for HTML or ASCII submissions subject to certain exceptions. *See* EDGAR Filer Manual (Volume II) version 61 (Mar. 2022), at 2.1 and 5.2. For select submissions, the EDGAR Filer Manual accepts PDF format. *See*

online fillable form for Form 144 will benefit investors and other data users by standardizing the inputted data into a structured, machine-readable custom XML format, making it easier to extract and process that data.

Electronic filings on EDGAR also increase the likelihood that the Commission receives documents promptly by limiting the possibility and risk of delay (e.g., a document getting lost in the mail). An increase in the certainty and timeliness of submissions ensures that the EDGAR system accurately reflects the status of submissions to the Commission.

In addition, after initial transition costs, if any, filers are expected to broadly benefit from the amendments. Specifically, filers are expected to realize direct benefits in the form of reduced time required to file forms electronically on EDGAR, compared to a paper filing, and avoid copying and mailing expenses. For example, the use of a fillable Form 144 on EDGAR will enable the convenient input of information and support the electronic assembly of such information and transmission to EDGAR, without requiring a Form 144 filer to purchase or maintain additional software or technology, thus minimizing compliance costs. This modification of the data format language of Form 144 would also benefit data users by standardizing the inputted data into a structured, machine-readable custom XML-based format data language specific to Form 144, thus making it easier to extract and process that data.

Filers who make multiple submissions are likely to benefit the most. Electronic filing using EDGAR will make the filing process more efficient and less costly for filers because it will assure timely receipt of the filing (e.g., filers would have no reason to pay for premium services such as delivery

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EDGAR Filer Manual (Volume II) version 61 (Mar. 2022), at 5.2.3. The revised EDGAR Filer Manual will include foreign language documents and certifications that a security has been approved by an exchange for listing and registration among the list of PDF submissions. The benefits and costs discussed in this section with respect to electronic filings instead of the current paper or email submissions are those that we would expect to be realized from HTML, ASCII, or PDF submissions on EDGAR. These benefits and costs substantially arise to the same extent regardless of whether the filer uses the ASCII, HTML, or PDF format. All three formats are widely used, and none of them requires significant special expertise for their preparation, submission, or intake.

confirmation).<sup>79</sup> Furthermore, electronic submissions allow filers to produce and submit documents more easily during disruptive events— such as the COVID-19 pandemic —if their physical work facilities are inaccessible.

Electronic submissions likewise increase efficiencies in record management and maintenance as well as compliance with the Commission’s record keeping requirements as electronic submissions are easier to store, access, search, and track. A reduction in search costs related to electronic submissions may improve regulatory oversight.

Overall, for the documents currently submitted primarily electronically on EDGAR, the amendments would likely only yield incremental benefits for investors, filers, and Commission staff and would likely result in small aggregate economic effects. The aggregate economic effects would likely be greater with respect to forms filed by Development Banks and Form 144, as fewer of those are currently filed on EDGAR.

#### **b. “Glossy” Annual Reports to Security Holders**

The amendments also mandate that certain registrants electronically file their “glossy” annual reports to security holders. This could result in several benefits for investors, filers, and the Commission.

First, the amendments would ensure that investors have long-term access to “glossy” annual reports to security holders in a centralized location. Current rules do not require the preservation of these reports in a centralized location. To the extent that registrants are currently posting these reports on their websites consistent with the 2016 Staff Guidance, these registrants could remove these reports from their firm websites after one year (e.g., at the registrant’s discretion or due to registrant failures, mergers, etc.). If a registrant were to take its “glossy” annual report to security holders off its website, it could be difficult and/or costly to obtain a copy (e.g., via a third-party entity) or impossible if no third-party has a

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<sup>79</sup> The amendments also benefit filers by avoiding uncertainty about how to comply with paper filing obligations in events similar to the current COVID-19 pandemic.

saved copy. Under the amendments, documents would be freely available and centrally located on EDGAR, and investors would incur only minimal search costs for these reports.

A glossy annual report repository on EDGAR will also benefit investors who may want to review and analyze “glossy” annual reports to security holders in bulk. For these investors, a unified file format for “glossy” annual reports to security holders in a centralized location (i.e., EDGAR) would create opportunities for data processing relative to the baseline.

Further, we expect that this amendment would yield benefits to filers similar to those discussed above with respect to electronic submissions on EDGAR. For example, some registrants will save on print and delivery costs. Such cost savings are likely small, but any such benefits may accrue to investors to the extent that these registrants allocate the savings to increase firm efficiency or return capital to investors. In addition, the amended rules will ensure that investors and Commission staff are able to access the “glossy” annual reports to security holders easily, including when navigating disruptive events, such as COVID-19, when physical offices may be inaccessible.

### **c. Inline XBRL Requirement for Form 11-K**

The amendments require filers to tag the financial statements and schedules required in annual reports for employee benefit plans pursuant to Form 11-K using the Inline XBRL structured data language. Currently, reports on Form 11-K that are filed electronically must be filed in HTML or ASCII.<sup>80</sup>

Requiring Form 11-K disclosures to be submitted in Inline XBRL could benefit those participating in employee benefit plans by facilitating analysis of the plan’s annual financial disclosures over time and relative to other plans.<sup>81</sup> Investors in the plans’ sponsoring companies may also benefit from structured

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<sup>80</sup> See Rules 101(b)(3) and 301 of Regulation S-T and the EDGAR Filer Manual (Volume II) version 61 (Mar. 2022), at 2.1 and 5.2.

<sup>81</sup> Currently, operating company financial disclosures in certain periodic reports and registration statements are required to be structured in XBRL or Inline XBRL, depending on the filing date. Research analyzing XBRL and Inline XBRL disclosures have found informational benefits relative to unstructured disclosures. See, e.g., Steven F. Cahan, Seokjoo Chang, Wei Z.

Form 11-Ks, as structured data may reduce processing and search costs incurred by investors assessing the employee benefit plans' underlying assets and liabilities. In addition, requiring Form 11-K financial disclosures to be submitted in Inline XBRL could enable the development of additional structured data sets and tools to facilitate market analysis and better inform future policy decisions.<sup>82</sup>

## 2. Costs

Requiring electronic submissions may result in costs to filers, including those associated with filing a Form ID for the first time to obtain the access codes needed to submit an application on the Commission's EDGAR system.<sup>83</sup>

With respect to documents that are mostly submitted electronically on EDGAR under current rules (e.g., Form 6-K, Notices of Exempt Solicitation, Certifications of Approval of Exchange Listing), these costs will likely be minimal. For documents that are not generally submitted electronically on EDGAR under current rules but would be required to be electronically submitted on EDGAR under the amended rules (e.g., Form 144 and "glossy" annual reports to security holders), registrants would incur additional costs to upload such documents to EDGAR.<sup>84</sup>

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Siqueira, & Kinsun Tam, *The roles of XBRL and processed XBRL in 10-K readability*. 49 J. BUS. FIN. & ACCT. 33 (2021); Nerissa C. Brown, Brian Gale, and Stephanie M. Grant, *How Do Disclosure Repetition and Interactivity Influence Investors' Judgments?* (working paper Dec. 15, 2021), available at <https://ssrn.com/abstract=3557891> (retrieved from SSRN Elsevier database); Jacqueline L Birt, Kala Muthusamy, and Poonam Bir, *XBRL and the qualitative characteristics of useful financial information*, 30 ACCT. RESEARCH J. 107 (2017), available at <https://www.emerald.com/insight/publication/issn/1030-9616>.

<sup>82</sup> The Commission currently makes XBRL datasets for operating company financial statements and footnotes and mutual fund risk/return summaries available on its website. See DERA Data Library, <https://www.sec.gov/dera/data>.

<sup>83</sup> Filers can set up a Form ID by following the processes detailed in Volume I of the EDGAR Filer Manual. Once a Form ID has been successfully completed and processed, EDGAR establishes a Central Index Key ("CIK") number, which permits each authorized user to create an EDGAR access code, enabling the filer to use EDGAR.

<sup>84</sup> For purposes of the Paperwork Reduction Act (PRA), we estimate that the additional burden to submit an electronic copy of the "glossy" annual report would be 2 internal burden hours per year. See Section V, *infra*.

For Form 144, we estimate that approximately 25 percent of Form 144 filers have already prepared a Form ID and obtained a CIK number through other EDGAR filing obligations.<sup>85</sup> Therefore, we estimate that at most 75 percent of Form 144 filers would need to file a Form ID as a result of the amendments.<sup>86</sup> We believe that such direct costs for these filers would be justified by the anticipated benefits from eliminating paper filing of Form 144. Given that current EDGAR filers represent such a small proportion of those who submit Form 144, our ability to generalize electronic filing behavior from this group to the full population of filers may be of limited reliability. To the extent that such filers' behavior may be similar, however, we estimate that up to one-third of affiliates submitting a Form 144 who do not currently access EDGAR may be able to use an issuer's existing connection to EDGAR or rely upon other support by issuers in meeting their Form 144 electronic filing obligations. These filers likely will incur lower costs as a result of the amendments than filers who cannot or will not use an issuer's existing connection to EDGAR. We lack the data to quantify the difference in costs.

We do not expect that the requirement to file Form 144 in a structured, XML-based data language specific to Form 144 ("custom XML," here "Form 144-specific XML") will impose any incremental compliance costs on Form 144 filers, as these filers will have the option of entering their disclosures directly into a fillable web form. The fillable web form will render into Form 144-specific XML in EDGAR, rather than filing directly in Form 144-specific XML using the technical specifications published on the Commission's website. We expect that completing this XML-based fillable form will

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<sup>85</sup> Specifically, we observe that approximately 23 percent of calendar year 2019 Form 144 filers also submitted Form 4 filings in EDGAR, while a remaining two percent without Form 4 filings in EDGAR submitted a miscellany of other forms related to beneficial ownership.

<sup>86</sup> This estimate represents an extreme upper bound because it assumes that each named individual who filed at least one Form 144 in calendar year 2019 who is not currently associated with a unique CIK would need to file a Form ID. To the extent that some Form 144 filers are affiliates of issuers who may use the issuer's CIK to file via EDGAR, the estimate likely overstates the required number of new Form IDs required and the burden hours associated with such applications.



not require any more time than completing the paper form or filing an HTML or ASCII document (as is required for most other EDGAR forms).<sup>87</sup>

One commenter<sup>88</sup> indicated that entities filing Form 144 on behalf of many clients may experience an increase in costs as a result of the amendments. We believe such costs would be justified by the benefits of mandated electronic Form 144 filing, including the reduction in costs for investors and other market participants to retrieve these documents.

As noted above, there are over 7,400 registrants who would be required to file their “glossy” annual reports to security holders electronically on EDGAR under the amendments. We expect that their costs will be mitigated since these registrants are already electronically filing documents on EDGAR, such as Form 10-K, 20-F, or 40-F. For filers submitting documents electronically to EDGAR for the first time, any initial setup costs would likely be offset by lower ongoing, marginal costs over time.

Requiring Inline XBRL structuring of annual financial statements and schedules required by Form 11-K will result in additional compliance costs for filers relative to the current baseline, as filers will be required to tag and review the required Form 11-K financial disclosures before filing them with the Commission.<sup>89</sup> Various XBRL and Inline XBRL preparation solutions have been developed and used by operating companies and open-end fund filers to fulfill their existing structuring requirements. In

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<sup>87</sup> The Commission’s EDGAR electronic filing system generally requires filers to use ASCII or HTML for their document submissions, subject to certain exceptions. See EDGAR Filer Manual (Volume II) version 61 (Mar. 2022), at 5.1; 17 CFR 232.301 (incorporating EDGAR Filer Manual into Regulation S-T). See also 17 CFR 232.101 (setting forth the obligation to file electronically on EDGAR).

<sup>88</sup> See *supra* note 31.

<sup>89</sup> An AICPA survey of 1,032 reporting companies with \$75 million or less in market capitalization in 2018 found an average cost of \$5,850 per year, a median cost of \$2,500 per year, and a maximum cost of \$51,500 per year for fully outsourced XBRL creation and filing, representing a 45% decline in average cost and a 69% decline in median cost since 2014. See Michael Cohn, *AICPA sees 45% drop in XBRL costs for small companies*, ACCT. TODAY, August 15, 2018, available at <https://www.accountingtoday.com/news/aicpa-sees-45-drop-in-xbrl-costs-for-small-reporting-companies> (retrieved from Factiva database). A NASDAQ survey of 151 listed issuers in 2018 found an average XBRL compliance cost of \$20,000 per quarter, a median XBRL compliance cost of \$7,500 per quarter, and a maximum XBRL compliance cost of \$350,000 per quarter. See letter from Nasdaq, Inc. dated March 21, 2019 to the Request for Comment on Earnings Releases and Quarterly Reports, Release No. 33-10588 (Dec. 18, 2018) [83 FR 65601]. For purposes of the Paperwork Reduction Act (PRA), we estimate that the additional burden on 11-K filers to submit statements and schedules in Inline XBRL would be approximately 65 hours of internal time and \$7,500 for outside professional costs per year. See Section V, *infra*.

addition, some evidence suggests that, for operating companies, XBRL compliance costs have decreased over time.<sup>90</sup>

Further, while Form 11-Ks are filed by employee benefit plans, which are not currently subject to other Inline XBRL filing requirements, the plans' sponsoring companies (i.e., the employers) are subject to Inline XBRL requirements for publicly filed annual and interim financial statements, among other disclosures.<sup>91</sup> To the extent that a plan shares compliance systems with the sponsoring company, the Inline XBRL compliance costs incurred may be somewhat mitigated.

The amendments could reduce revenue for market information aggregators who currently aggregate Form 144 information from non-electronic filings into databases and provide access to such databases to various users of this data for a fee. The reduction in revenue could be mitigated by the lower cost of retrieving information that is filed in an electronic format. Data aggregators could sell fewer subscriptions to make the same profit or lower the fee that they charge which might make their services continue to be attractive even with the electronic availability of the filings.

### **3. Efficiency, Competition, and Capital Formation**

For forms largely already submitted on EDGAR, we expect the amendments to lead to minimal changes in costs and have only incremental benefits. Therefore, the mandatory electronic filing on EDGAR of these forms will likely only marginally affect efficiency, competition, or capital formation. For other documents, such as Form 144, the amendments are expected to make the filing process more efficient by making it easier and less costly for filers to assure timely receipt of the filing.

As previously noted, electronic filings on EDGAR will increase the timeliness or ease with which the public can access the documents. Insofar as investors incorporate these documents into their information sets, easier or quicker access could result in lower search costs or more efficient decision-

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<sup>90</sup> *See id.*

<sup>91</sup> *See* Rules 405 and 406 of Regulation S-T and Items 601(b)(101) and 601(b)(104) of Regulation S-K.

making. To the extent that there is value-relevant information in these filings, prices may become more efficient, which should help to facilitate capital formation (e.g., by enhancing valuation quality). These benefits are potentially magnified during disruptive events, such as COVID-19, which can make it difficult for registrants to make submissions in non-electronic form and thus impede timely access to information. Moreover, as electronic filings often lead to lower ongoing, marginal costs for filers, compared to, for example, paper filings, the filing process may become more efficient, especially over the medium and longer term.

The amendments may, however, reduce some investors' or market information aggregators' competitive advantages. Particularly, market information aggregators whose present role includes converting paper filings of Form 144 to an electronic information source may find that this service is less attractive to data users due to those users' ability to access these filings directly due to the rule changes. These information aggregators' loss of competitive advantage in converting paper filings of Form 144 to an electronic information source may reduce their revenue and thus may affect their ability to offer other ancillary services that are valuable to data users.

#### **D. Reasonable Alternatives**

In formulating the amendments, we considered requiring some, but not all, of the affected documents to be filed electronically on EDGAR. This alternative would reduce the benefits, compared to the amendments, but also would reduce the initial transition burden for filers that do not have other electronic disclosure obligations on EDGAR. As discussed above, however, many of the filers of affected documents already file these or other documents electronically on EDGAR. For Form 144, for which most of the current filings are not made on EDGAR, the benefits of electronic filing on EDGAR for both filers and investors, such as the speed of public dissemination, justify the costs. Further, any setup costs for first time filers are at least partially offset by lower marginal costs.

Given the significant number of submissions via email in response to the temporary Form 144 staff no-action position, we could have made this manner of filing a permanent option for Form 144 filers.

Such an alternative would allow filers to avoid the direct costs of transitioning to filing electronically using EDGAR. Such an alternative, however, would result in filers incurring expenses in scanning the forms and emailing them to the Commission. Additionally, filers would forgo potential direct benefits in the form of reduced time required to file forms electronically. Such costs could be higher for filers who make multiple submissions per year and for filings with multiple pages.

Data users might also incur higher costs under this alternative since the site used to access Form 144 email submissions, for example, is distinct from EDGAR. Specifically, under this alternative, a data user interested in obtaining the information from all Form 144 filings pertaining to a given filer would be required to search both EDGAR and the daily folders posted to the Form 144 website.<sup>92</sup> Furthermore, Form 144 data submitted via email submissions is not structured, therefore analysis that would require aggregating data from multiple submissions would be more difficult or most costly to perform.

As an alternative, we could have required Form 144 to be filed in Inline XBRL, which is designed for business reporting and is both machine-readable and human-readable. Compared to the amendments, the Inline XBRL alternative for Form 144 would have provided more sophisticated validation, presentation, and reference features for filers and data users. However, the Inline XBRL alternative would also have imposed initial implementation costs (e.g., learning how to prepare filings in Inline XBRL, licensing Inline XBRL filing preparation software) upon filers that do not have prior experience in structuring data in Inline XBRL. In contrast, because the amendments will allow filers to submit Form 144 using an online fillable form, filers that lack experience structuring data in a custom XML-based data language will not incur such implementation costs.

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<sup>92</sup> Paper filings submitted via email based on the staff's no-action position are available at <https://www.sec.gov/corpfin/form-144-email>

We also considered permitting registrants to post their “glossy” annual reports to security holders on their websites in lieu of electronic submission consistent with the 2016 Staff Guidance. While this alternative might reduce costs for registrants who currently post “glossy” annual reports to security holders on their websites, we do not anticipate that the costs of submitting these reports on EDGAR would be unduly burdensome for most filers. Further, this alternative would also reduce the benefits compared to the amendment, because it would not offer market participants access to “glossy” annual reports to security holders in a centralized location.

## V. PAPERWORK REDUCTION ACT

### A. Background

Certain provisions of our rules, schedules, and forms that will be affected by the amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>93</sup> The Commission is submitting the final amendments to the Office of Management and Budget (“OMB”) for review in accordance with the PRA.<sup>94</sup> The titles for the collections of information are:

- Schedule 14A (OMB Control Number 3235-0059)<sup>95</sup>
- Schedule 14C (OMB Control Number 3235-0057)<sup>96</sup>
- Form 20-F (OMB Control Number 3232-0288)<sup>97</sup>

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<sup>93</sup> 44 U.S.C. 3501 et seq.

<sup>94</sup> 44 U.S.C. 3507(d); 5 CFR 1320.11.

<sup>95</sup> As described below, our estimates for Schedule 14A and Schedule 14C take into account the burden that would be incurred under the amendments to require electronic submission of the “glossy” annual report to security holders. Schedules 14A and 14C require disclosure under Subpart 400 of Regulation S-K. This disclosure is often incorporated, in relevant part, into Part III of a registrant’s Form 10-K and is provided as part of the “glossy” annual report to security holders. Therefore, we have not separately calculated burden requirements for Form 10-K.

<sup>96</sup> *See id.*

<sup>97</sup> Forms 20-F and 40-F provide the disclosure requirements for the annual reports of foreign private issuers, which are included in the “glossy” annual reports to security holders. Therefore, we have not separately calculated burden requirements for Form 6-K.

- Form 40-F (OMB Control Number 3235-0381)
- Form 11-K (OMB Control Number 3235-0082)
- Form ID (OMB Control Number 3235-0328)<sup>98</sup>

An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed. Schedule 14A, Schedule 14C, Form 20-F, Form 40-F, and Form 11-K were adopted under the Securities Act and the Exchange Act. The schedules and forms set forth the disclosure requirements for periodic and current reports, proxy statements, and information statements filed to help investors make informed investment and voting decisions. Form ID, adopted under the Securities Act, the Exchange Act, the Trust Indenture Act of 1939,<sup>99</sup> and the Investment Company Act of 1940,<sup>100</sup> is used by registrants, individuals, third party filers or their agents to request access codes that permit the filing of documents on EDGAR in accordance with Rule 10 of Regulation S-T.<sup>101</sup> The hours and costs associated with preparing, filing, and sending the schedules and forms constitute reporting and cost burdens imposed by each collection of information.

A description of the final amendments, including the need for the information and its intended use, as well as a description of the likely respondents, can be found in Section II above. A discussion of the economic effects of the amendments can be found in Section IV above.

## **B. Summary of the Comment Letters and the Effect of the Final Amendments on Existing Collections of Information**

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<sup>98</sup> The paperwork implications of the changes to mandate electronic filing of Form 144 would be reflected in Form ID.

<sup>99</sup> 15 U.S.C. 77aaa *et seq.*

<sup>100</sup> 15 U.S.C. 80a *et seq.*

<sup>101</sup> 17 CFR 232.10(b).

As described in more detail above, we are adopting final amendments to update filing requirements under our EDGAR system. The amendments would (1) mandate the electronic filing or submission of the documents that are currently permitted electronic submissions under Regulation S-T;<sup>102</sup> (2) mandate the electronic submission of the “glossy” annual report to security holders; (3) mandate the electronic filing of the certification made pursuant to the Exchange Act and its rules that a security has been approved by an exchange for listing and registration; (4) mandate the use of Inline XBRL for the filing of the financial statements and accompanying notes to the financial statements required by Form 11-K; and (5) provide for the electronic submission of certain foreign language documents.

The amendments do not change the nature or extent of any of the information that is currently collected under Rule 101(b), the foreign language documents submitted under Rule 306 of Regulation S-T, or the certifications filed under Exchange Act Rule 12d1-3. However, as discussed below, we expect that the change to require an electronic format will result in certain changes in the information collection burden of associated forms, schedules, reports, and applications. We did not receive any comment letters regarding our PRA estimates related to these amendments from either the Updating EDGAR Proposing Release or the Rule 144 Proposing Release.

### **C. Burden and Cost Estimates Related to the Amendments**

Below we estimate the incremental change in internal burden and outside professional cost as a result of the amendments. These estimates represent the average burden for all registrants, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual registrants based on a number of factors, including the nature of their business. Except for Form ID, we do not believe that the amendments will change the frequency of responses to the existing collections of information; rather, we estimate that the amendments will change only the burden per response.

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<sup>102</sup> See *supra* Section II.A.

The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a registrant to prepare and review the disclosures required under the amendments. For purposes of the PRA, the burden is allocated between internal burden hours and outside professional costs. The table below sets forth the percentage estimates the Commission typically uses for the burden allocation for each form. We also estimate that the average cost of retaining an outside professional is \$400 per hour.<sup>103</sup>

**PRA Table 1: Standard Estimated Burden Allocation for Specified Forms and Schedules.**

<b>Form / Schedule / Other</b>	<b>Internal</b>	<b>Outside Professionals</b>
Schedules 14A and 14C	75%	25%
Forms 20-F and 40-F	25%	75%
Form 11-K	100% <sup>104</sup>	
Form ID	100%	

With respect to the electronic submission of the “glossy” annual report to security holders, we estimate the amendments will impose a new burden that will be borne by all registrants required to submit “glossy” annual reports to security holders to the Commission. We estimate that the amendments will cause a registrant to incur an increase of 2 hours in the reporting burden for the annual report to security holders. We anticipate that this time would be required to prepare, convert into the required electronic format (currently PDF) if PDF is not already used for the report to security holders, and review the “glossy” annual reports to security holders to be submitted electronically in accordance with the EDGAR Filer Manual. This burden would be reflected in Schedules 14A and 14C and Forms 20-F and 40-F as follows:

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<sup>103</sup> We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of \$400 per hour. This estimate is based on consultations with several registrants, law firms, and other entities that regularly assist registrants in preparing and filing documents with the Commission.

<sup>104</sup> While the current standard burden for Form 11-K is 100% internal, as noted below, in light of the nature of these amendments, we estimate that the Form 11-K burden of the amendments will be allocated 75% to internal hours and 25% to outside professional costs.



PRA Table 2: Estimated PRA Burdens for the Electronic Submission of the “Glossy” Annual Report

Schedule /Form	Estimated Number of Affected Responses (A)	Estimated Incremental Burden Hours/Form (B)	Total Incremental Burden Hours (C)= (A) x (B)	Estimated Internal Burden Hours (D) = (C) x (Allocation %)	Estimated Outside Professional Hours (E) = (C) x (Allocation %)	Estimated Outside Professional Costs/Affected Responses (F) = (E) x \$400
Schedule 14A	6,369	2	12,738	9,553	3,185	\$1,274,000
Schedule 14C	569	2	1,138	853	284	\$113,600
Form 20-F	729	2	1,458	364	1093	\$ 437,200
Form 40-F	132	2	264	66	198	\$ 79,200

With respect to the amendment to require the submission of the financial statements in the Form 11-K in Inline XBRL, we do not expect a change in the number of Forms 11-K submitted to the Commission but we do expect an increase in the burden per form. The Commission previously estimated that, per response, operating companies submitting financial information in Inline XBRL required 54 burden hours of internal time to prepare the tagged data and incurred a cost \$6,175 for outside services.<sup>105</sup> The amendments would subject employee purchase plans, savings plans, and similar plans to the same Inline XBRL reporting requirements. Therefore, we assume that these plans would experience similar burden hours and costs as do operating companies. We have however increased that burden estimate to account for the particular circumstances applicable to Form 11-K filers.

As new XBRL filers, we anticipate that Form 11-K filers would experience additional burdens related to the one-time costs associated with becoming familiar with Inline XBRL reporting. These costs would include, for example, the acquisition of new software or the services of consultants, and/or

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<sup>105</sup> See Inline XBRL Adopting Release, *supra* note 52.

the training of staff.<sup>106</sup> We also assume that these one-time costs would decline in the second and third year of compliance with the amendments, as Form 11-K filers become more efficient at preparing submissions using Inline XBRL.<sup>107</sup> We assume that the one-time cost would result in a 50% incremental increase in the internal burdens and external costs of structuring the data in the financial statements and accompanying footnotes of the financial statements to Form 11-K.<sup>108</sup> These additional incremental costs would decline in the second and third years by 75% from the immediately preceding year.<sup>109</sup> Accordingly, we estimate that the amendment to require Form 11-K filers to submit the financial information in Inline XBRL would, for each filer, result in incremental PRA burdens of 11.81 hours of internal time and \$1,350.78 in costs for outside professional services, in addition to the 54 hours and \$6,175 in costs noted above. In aggregate, we estimate these burdens to be 70,153<sup>110</sup> and \$8,021,650,<sup>111</sup> respectively.

We anticipate that the mandated electronic filing of Form 144 with respect to securities issued by issuers subject to Exchange Act reporting requirements will result in a number of filers using EDGAR to file their Form 144 electronically who do not currently do so. Filers who have not previously filed

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<sup>106</sup> Until now, the burden associated with the preparation of Form 11-K has been borne entirely by filers. In other words, registrants have not needed to retain outside professional services to prepare the submission. With the Inline XBRL tagging requirements under the amendments, we anticipate that registrants may retain outside professional services in order to tag the financial statements and accompanying notes to the financial statements properly. Accordingly, we are estimating increases for both burden hours and outside professional costs.

<sup>107</sup> We also expect filers to benefit from access to an established vendor community experienced in applying Inline XBRL tagging to Commission filings.

<sup>108</sup> We estimate, for the Form 11-K financial information Inline XBRL requirement, that in the first year the one-time cost would be an additional 27 hours ( $54 \times 0.5$ ) and \$3,087.5 in external costs ( $\$6,175 \times 0.5$ ).

<sup>109</sup> We estimate that for the second year the additional one-time hour burden and cost of the Form 11-K financial information XBRL requirement would be 6.75 hours ( $27 \text{ hours} - (27 \times 0.75 = 20.25 \text{ hours})$ ) and \$771.87 ( $\$3,087.5 - (\$3,087.5 \times 0.75 = \$2,315.63)$ ). For the third year, we estimate that these hour burdens and costs would be 1.69 hours ( $6.75 \text{ hours} - (6.75 \times 0.75 = 5.06 \text{ hours})$ ) and \$192.97 ( $\$771.87 - (\$771.87 \times 0.75 = \$578.90)$ ). Thus the three year average of the additional incremental burden of the Form 11-K financial information XBRL requirement would be  $(27 + 6.75 + 1.69)/3 = 11.81$  hours of internal in-house time, and  $(\$3,087.5 + \$771.87 + \$192.97)/3 = \$1,350.78$  in external costs.

<sup>110</sup> This estimate was calculated by adding the estimated XBRL hour burden for operating companies (54 hrs) plus the average additional incremental hour burden for Form 11-K filers (11.81), then multiplying the sum by the estimated number of Form 11-K filers (1,066), or  $(54 + 11.81) \times 1,066 = 70,153$ .

<sup>111</sup> This estimate was calculated by adding the estimated XBRL cost burden for operating companies (\$6,175) plus the average additional incremental cost burden for Form 11-K filers (\$1,350), then multiplying the sum by the estimated number of Form 11-K filers (1,066), or  $(\$6,175 + \$1,350) \times 1,066 = \$8,021,650$ .

electronically on EDGAR must apply for access to file on EDGAR on Form ID. As the majority of Form 144 filings currently are paper or email filings, most filers would have to modify their processes for submitting their Form 144 filings. Based on past filings, we estimate that approximately 12,250 filers will be required to switch from paper filings to electronic filing of their Form 144.<sup>112</sup>

Of those 12,250 filers, however, we estimate that 25 percent have already filed a Form ID through other EDGAR filing obligations.<sup>113</sup> A filer must apply for access to file on EDGAR on Form ID. Accordingly, approximately 75 percent of Form 144 filers (9,188 filers<sup>114</sup>) would need to file a Form ID for the first time as a result of the amendment to mandate the electronic filing of Form 144. In addition, there are currently two Development Banks that have not previously made an electronic filing on EDGAR that would also be required as a result of the amendments to file a Form ID to obtain the access codes that are required to file or submit a document on EDGAR.

We estimate that respondents require 0.15 hours to complete the Form ID and, for purposes of the PRA, that 100 percent of the burden of preparation for Form ID is carried by the respondent internally. Therefore, we estimate that this amendment will result in an incremental increase of 1,378.50 annual burden hours for Form ID.<sup>115</sup>

The tables below illustrate the estimated incremental change to the total annual compliance burden of the affected forms, in hours and in costs, as a result of the amendments.

PRA Table 3: Incremental Paperwork Burden under the Amendment:

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<sup>112</sup> These estimates assume that filers of Form 144 submissions in our data are not also affiliates of other issuers. Because we lack data on the holdings of filers in securities of issuers other than those disclosed in the Form 144, we are unable to identify any filers that are such affiliates.

<sup>113</sup> Specifically, we observe that approximately 23 percent of calendar year 2019 Form 144 filers also submitted Form 4 filings in EDGAR, while a remaining two percent without Form 4 filings in EDGAR submitted a miscellany of other forms in EDGAR related to beneficial ownership.

<sup>114</sup>  $12,250 \times 0.75 = 9,187.5$ . This estimate represents an extreme upper bound because it assumes that each named individual who filed at least one Form 144 in calendar year 2019 who is not currently associated with a unique CIK would need to file a Form ID. To the extent that some Form 144 filers are affiliates of issuers who may use the issuer's CIK to file via EDGAR, the estimate likely overstates the required number of new Form IDs required and the burden hours associated with such applications.

<sup>115</sup>  $9,190 \times 0.15 = 1,378.5$ .

	Current Annual Responses (A)	Current Burden Hours (B)	Current Cost Burden (C)	Proposed Change in Annual Responses (D)	Proposed Change in Burden Hours (E)	Proposed Change in Professional Costs (F)	Proposed Annual Affected Responses (G)= (A) + (D)	Proposed Burden Hours for Affected Response (H) = (B)+(E)	Proposed Cost Burdenfor Affected Responses (I)= C)+(F)
Schedule 14A	6,369	777,590	103,678,712	0	9,574	\$1,276,592	6,369	787,164	\$104,465,376
Schedule 14C	569	56,356	7,514,944	0	832	\$111,008	569	57,188	\$7,625,952
Form 20-F	729	479,261	576,824,025	0	364	\$437,400	729	479,625	\$577,261,425
Form 40-F	132	14,237	17,084,560	0	66	\$79,200	132	14,303	\$17,163,760
Form 11-K	1,302	39,060	0	(236)	70,153	\$8,021,650	1,066	109,213	\$8,021,650
Form ID	57,681	8,652	0	9,190	1,379	0	66,871	10,030	0

1. We note that the decrease in responses on Form 11-K reflects the actual number of Forms received in 2020. This decrease is not the result of the amendments which we do not expect to affect the number of responses submitted on Form 11-K.

## VI. FINAL REGULATORY FLEXIBILITY ACT ANALYSIS

The Regulatory Flexibility Act (“RFA”)<sup>116</sup> requires the Commission, in promulgating rules under Section 553 of the Administrative Procedure Act,<sup>117</sup> to consider the impact of those rules on small entities. We have prepared this Final Regulatory Flexibility Act Analysis (“FRFA”) in accordance with Section 604 of the RFA.<sup>118</sup> An initial Regulatory Flexibility Analysis (“IRFA”) was prepared in accordance with the RFA and was included in the Proposing Release. This FRFA relates to the amendments to the rules and forms described in Section II above.

### A. Need for, and Objectives of, the Final Amendments

The main purpose of the amendments is to facilitate more efficient transmission, dissemination, analysis, storage and retrieval of documents that are currently filed in paper. In addition, the amendments are intended to improve investors’ and other EDGAR users’ access to the information in these documents.

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<sup>116</sup> 5 U.S.C. 601 *et seq.*

<sup>117</sup> 5 U.S.C. 553.

<sup>118</sup> 5 U.S.C. 604.

The need for, and objectives of, the amendments are discussed in more detail in Section II above. We discuss the economic impact, including the estimated compliance costs and burdens, of the amendments in Sections IV and V above.

### **B. Small Entities Subject to the Final Amendments**

The final amendments will affect some registrants that are small entities. The Regulatory Flexibility Act defines “small entity” to mean “small business,” “small organization,” or “small governmental jurisdiction.”<sup>119</sup> For purposes of the Regulatory Flexibility Act, under our rules, a registrant, other than an investment company, is a “small business” or “small organization” if it had total assets of \$5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities that does not exceed \$5 million.<sup>120</sup> An investment company, including a business development company,<sup>121</sup> is considered to be a “small business” if it, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year.<sup>122</sup>

We estimate that there are 979 issuers that file with the Commission, other than investment companies, that may be considered small entities.<sup>123</sup> In addition, we estimate that, as of April, 2022, there are approximately 80 investment companies, including 12 business development companies, which would be subject to the proposed amendments that may be considered small entities.<sup>124</sup>

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<sup>119</sup> 5 U.S.C. 601(6).

<sup>120</sup> See 17 CFR 240.0-10(a).

<sup>121</sup> Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act [15 U.S.C. 80a-2(a)(48) and 80a-53-64].

<sup>122</sup> See 17 CFR 240.0-10(a).

<sup>123</sup> This estimate is based on staff analysis of issuers, excluding co-registrants, subsidiaries, or asset-backed issuers, with EDGAR filings of Forms 10-K, 20-F, and 40-F, or amendments to these forms, filed during the calendar year of January 1, 2020, to December 31, 2020 or filed by September 1, 2020 that, if timely filed by the applicable deadline, would have been filed between January 1 and December 31, 2021. Analysis is based on data from XBRL filings, Compustat, and Ives Group Audit Analytics and manual review of filings submitted to the Commission.

<sup>124</sup> See 15 U.S.C. 80a et seq. The estimate is based upon staff analysis of issuers as of December 2021 that have aggregate net assets under \$50 million and whose adviser/sponsor is not affiliated with a larger organization (as defined by Rule 0-10 of the Investment Company Act). It includes registrants that are delinquent or have begun the deregistration process and may include new funds that have not filed their first statement with financials.

### **C. Significant Issues Raised by Public Comments**

In the Proposing Release, we requested comment on all aspects of the IRFA, including the number of small entities that would be affected by the Proposed Rules, the existence or nature of the potential impact of the proposals on small entities discussed in the analysis, and how to quantify the impact of the Proposed Rules. We did not receive any comments specifically addressing the IRFA. We received a number of comments on other aspects of the Proposed Rules<sup>125</sup> and considered those comments in developing the FRFA.

### **D. Projected Reporting, Recordkeeping, and Other Compliance Requirements**

As noted in Section IV.C., the amendments will not substantively affect the filings currently made under Rules 101(b)(2), (5), (6), or (9) or the foreign language documents submitted under Rule 306. Therefore, the reporting or compliance burdens associated with associated forms, schedules, reports, and applications for small entities will remain unchanged under these amendments.

The amendments will however impose new submission obligations on certain registrants. In particular, the amendments mandate the electronic submission of the “glossy” annual report to security holders and the electronic submission in Inline XBRL format of the financial statements and accompanying notes required by Form 11-K. In addition, to the extent that a filer has not previously filed documents on EDGAR electronically, registrants who previously filed or submitted in paper format under Rule 101(b) would need to apply for access to file on EDGAR on Form ID.

Additionally, the amendments would mandate electronic filing of Form 144 with respect to securities issued by companies subject to Exchange Act reporting requirements. We anticipate that this amendment would cause a number of filers, including small entities, using EDGAR to file their Form 144 electronically who do not currently do so, thereby modestly increasing their compliance obligations.

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<sup>125</sup> See *supra* Section II.

Section II discusses the amendments in detail. Sections IV and V discuss the economic impact, including the estimated costs and benefits, of the amendments to all affected entities. Compliance with certain provisions of the amendments may require the use of professional skills, including legal and technical skills.

#### **E. Agency Action to Minimize Effect on Small Entities**

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse effect on small entities. Accordingly, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements for small entities under our rules as revised by the amendments;
- Using performance rather than design standards; and
- Exempting small entities from coverage of all or part of the amendments.

Partially or completely exempting small entities from the electronic filing requirements would undermine our stated objective of facilitating more efficient transmission, dissemination, analysis, storage and retrieval of documents that are currently filed in paper, and we expect any increased burden associated with most of the proposed amendments to be small. With respect to the amendments to mandate the electronic submission of “glossy” annual reports to security holders and the proposed amendments to mandate the use of Inline XBRL for the filing of financial statements and accompanying notes to the financial statements required by Form 11-K, we are providing six-month and three-year transition periods, respectively, for all registrants, including small entities.

We believe these transition periods will provide adequate time for all filers to prepare for and manage the burdens associated with these new obligations. Moreover, to the extent that the amendments increase the ease and efficiency with which certain documents can be submitted to the Commission, they should benefit all filers, including small entities. In this regard, it appears that few filers currently take

advantage of paper filing options under our current rules. For these reasons, we do not believe that it is necessary to establish different compliance timetables or reporting requirements for small entities or to clarify, consolidate or simplify the requirements.

The amendments use design rather than performance standards in order to promote uniform filing requirements for all registrants.

## **VII. STATUTORY AUTHORITY**

The amendments contained in this document are being adopted under the authority set forth in Sections 6, 7, 8, 10 and 19(a) of the Securities Act, Sections 3, 12, 13, 14, 15(d), 16, 23(a) and 35A of the Exchange Act, and Sections 10 and 38 of the Investment Company Act.

### **List of Subjects in 17 CFR Parts 230, 232, 239, 240 and 249**

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II of the Code of Federal Regulations as follows:

### **PART 230 — GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933**

1. The general authority citation for part 230 continues to read as follows:

**Authority:** 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub. L. 112-106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

\* \* \* \* \*

2. Amend §230.144 by:

- a. Revising paragraph (h)(1);
- b. Redesignating paragraph (h)(2) as (h)(3); and
- b. Adding a new paragraph (h)(2).

The revisions and additions to read as follows:

**§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.**



\* \* \* \* \*

(h) *Notice of proposed sale.* (1) *Reporting issuers.* If the issuer is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and the amount of securities to be sold in reliance upon this rule during any period of three months exceeds 5,000 shares or other units or has an aggregate sale price in excess of \$50,000, a notice on Form 144 (§ 239.144 of this chapter) shall be filed electronically with the Commission.

(2) *Non-reporting issuers.* If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, and the amount of securities to be sold in reliance upon this rule during any period of three months exceeds 5,000 shares or other units or has an aggregate sale price in excess of \$50,000, three copies of a notice on Form 144 (§ 239.144 of this chapter) shall be filed with the Commission.

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3. Amend §230.158 by revising paragraph (b)(2) to read as follows:

**§230.158 Definitions of certain terms in the last paragraph of section 11(a).**

\* \* \* \* \*

(b) \* \* \*

(2) Has filed its report or reports on Form 10-K, Form 10-Q, Form 8-K, Form 20-F, Form 40-F, or Form 6-K, or has submitted to the Commission in electronic format, in accordance with the EDGAR Filer Manual, its annual report sent to security holders pursuant to Rule 14a-3(c) (§ 240.14a-3(c) of this chapter) containing such information. A registrant may use other methods to make an earning statement “generally available to its security holders” for purposes of the last paragraph of section 11(a).

\* \* \* \* \*

**PART 232 — REGULATION S-T — GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS**

4. The general authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

5. Amend §232.101 by:

- a. Revising paragraphs (a)(1)(i) and (iii);
- b. Removing the word “and” at the end of paragraph (a)(1)(xix);
- c. Adding and reserving paragraphs (a)(1)(xxii) through (xxx);
- d. Removing and reserving paragraphs (b)(1) through (6), and (9);
- e. Revising the paragraph (c) heading and introductory text; and
- f. Removing and reserving paragraphs (c)(6) and (8).

The revisions and additions to read as follows:

**§232.101 Mandated electronic submissions and exceptions.**

(a) \* \* \*

(1) \* \* \*

(i) Registration statements and prospectuses filed pursuant to the Securities Act (15 U.S.C. 77a, et seq.) or registration statements filed pursuant to Section 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78l(b) or (g)), and certifications that a security has been approved by an exchange for listing and registration filed pursuant to Section 12(d) of the Exchange Act (15 U.S.C. 78l(d)) and §240.12d1-3 of this chapter (Rule 12d1-3) under the Exchange Act. The certification that a security has been approved by an exchange for listing and registration must be made on EDGAR in the electronic format required by the EDGAR Filer Manual, as defined in §232.11 of this chapter (Rule 11 of Regulation S-T).

Notwithstanding §232.104 of this chapter (Rule 104 of Regulation S-T), the certification filed under this paragraph will be considered as officially filed with the Commission;

\* \* \* \* \*

(iii) Statements, reports and schedules filed with the Commission pursuant to sections 13, 14, 15(d) or 16(a) of the Exchange Act (15 U.S.C. 78m, 78n, 78o(d), 78p(a)), and proxy materials required to be furnished for the information of the Commission pursuant to Rules 14a-3 and 14c-3 or in connection with annual reports on Form 10-K (§ 249.310 of this chapter) filed pursuant to section 15(d) of the Exchange Act;

NOTE 1 to paragraph (a)(1)(iii). Electronic filers filing Schedules 13D and 13G with respect to foreign private issuers should include in the submission header all zeroes (i.e., 00-0000000) for the IRS tax identification number because the EDGAR system requires an IRS number tag to be inserted for the subject company as a prerequisite to acceptance of the filing.

NOTE 2 to paragraph (a)(1)(iii). Foreign private issuers must file or submit their Form 6-K reports (§249.306 of this chapter) in electronic format.

\* \* \* \* \*

(xxii) [Reserved]

(xxiii) [Reserved]

(xxiv) Annual reports to security holders furnished for the information of the Commission under §240.14a-3(c) of this chapter or §240.14c-3(b) of this chapter, under the requirements of Form 10-K (§249.310 of this chapter) filed by registrants under Exchange Act Section 15(d) (15 U.S.C. 78o(d)), or by foreign private issuers filed on Form 6-K (§249.306 of this chapter) under §240.13a-16 of this chapter or §240.15d-16 of this chapter;

(xxv) Notices of exempt solicitation furnished for the information of the Commission pursuant to Rule 14a-6(g) (§240.14a-6(g) of this chapter) and notices of exempt preliminary roll-up communications furnished for the information of the Commission pursuant to §240.14a-6(n) of this chapter (Rule 14a-6(n));

(xxvi) Form 11-K (§249.311 of this chapter);

(xxvii) Form 144 (§ 239.144 of this chapter), where the issuer of the securities is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d), respectively);

(xxviii) Periodic reports and reports with respect to distributions of primary obligations filed by:

(A) The International Bank for Reconstruction and Development under Section 15(a) of the Bretton Woods Agreements Act (22 U.S.C. 286k-1(a)) and part 285 of this chapter;

(B) The Inter-American Development Bank under Section 11(a) of the Inter-American Development Bank Act (22 U.S.C. 283h(a)) and part 286 of this chapter;

(C) The Asian Development Bank under Section 11(a) of the Asian Development Bank Act (22 U.S.C. 285h(a)) and part 287 of this chapter;

(D) The African Development Bank under Section 9(a) of the African Development Bank Act (22 U.S.C. 290i-9(a)) and part 288 of this chapter;

(E) The International Finance Corporation under Section 13(a) of the International Finance Corporation Act (22 U.S.C. 282k(a)) and part 289 of this chapter; and

(F) The European Bank for Reconstruction and Development under Section 9(a) of the European Bank for Reconstruction and Development Act (22 U.S.C. 290l-7(a)) and part 290 of this chapter;

(xxix) A report or other document submitted by a foreign private issuer under cover of Form 6-K (§249.306 of this chapter) that the issuer must furnish and make public under the laws of the jurisdiction in which the issuer is incorporated, domiciled or legally organized (the foreign private issuer's "home country"), or under the rules of the home country exchange on which the issuer's securities are traded, as long as the report or other document is not a press release, is not required to be and has not been distributed to the issuer's security holders, and, if discussing a material event, has already been the subject of a Form 6-K or other Commission filing or submission on EDGAR; and

(xxx) Documents filed with the Commission pursuant to section 33 of the Investment Company Act (15 U.S.C. 80a-32).

\* \* \* \* \*

(c) *Documents that shall not be submitted in electronic format on EDGAR.* Except as otherwise specified in paragraph (d) of this section, the following shall not be submitted in electronic format on EDGAR:

\* \* \* \* \*

6. Amend §232.306 by revising the first sentence of paragraph (a) and paragraphs (b) and (c) to read as follows:

**§232.306 Foreign language documents and symbols.**

(a) All electronic filings and submissions must be in the English language, except as otherwise provided by paragraphs (b) through (d) of this section. \* \* \*

(b) When including an English summary or English translation of a foreign language document in an electronic filing or submission, a party may also submit a copy of the unabridged foreign language document with the filing in the electronic format required by the EDGAR Filer Manual. A filer must provide a copy of any foreign language document upon the request of Commission staff.

(c) A foreign government or its political subdivision must electronically file a fair and accurate English translation, if available, of its latest annual budget as presented to its legislative body, as Exhibit B to Form 18 (§249.218 of this chapter) or Exhibit (c) to Form 18-K (§249.318 of this chapter). If no English translation is available, a foreign government or political subdivision must submit a copy of the foreign language version of its latest annual budget with the filing in the electronic format required by the EDGAR Filer Manual.

\* \* \* \* \*

7. Amend §232.311 by:

- a. Revising paragraphs (b) and (c); and
- b. Removing and reserving paragraphs (d) through (f).

The revisions to read as follows:

**§232.311 Documents submitted in paper under cover of Form SE.**

\* \* \* \* \*

(b) The Form SE shall be submitted in the following manner:

(1) If the subject of a temporary hardship exemption is an exhibit only, the filer must file the exhibit and a Form TH (§§239.65, 249.447, 269.1, and 274.404 of this chapter) under cover of Form SE (§§239.64, 249.444, 269.8, and 274.403 of this chapter) no later than one business day after the date the exhibit was to be filed electronically.

(2) An exhibit filed pursuant to a continuing hardship exemption may be filed up to six business days prior to, or on the date of filing of, the electronic format document to which it relates but shall not be filed after such filing date. If a paper document is submitted in this manner, requirements that the document be filed with, provided with or accompany the electronic filing shall be satisfied.

(c) Any requirements as to delivery or furnishing the information to persons other than the Commission shall not be affected by this section.

\* \* \* \* \*

8. Amend §232.405 by:

- a. Revising the introductory text and paragraphs (a)(2) and (4);
- b. Revising paragraph (b)(1)(ii);
- c. Revising paragraph (c) introductory text and paragraph (e) introductory text; and
- d. Revising Note 1 to §232.405.

The revisions and additions to read as follows:

**§232.405 Interactive Data File submissions.**

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S-K), General Instruction F of Form 11-K (§249.311), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F-10 (§239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20-F (§249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40-F (§249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6-K (§249.306 of this chapter), and General Instruction C.3.(g) of Form N-1A (§§239.15A and 274.11A of this chapter), General Instruction

I of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), General Instruction C.3.(h) of Form N-3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N-4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N-6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N-CSR (§§ 249.331 and 274.128 of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§232.11), as further described in note 1 to this section. This section imposes content, format and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§232.11).

(a) \* \* \*

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S-K), General Instruction F of Form 11-K (§249.311), paragraph (101) of Part II - Information Not Required to be Delivered to Offerees or Purchasers of Form F-10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20-F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40-F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6-K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N-1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), General Instruction C.3.(h) of Form N-3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N-4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N-6 (§§ 239.17c and 274.11d of this chapter), or General Instruction C.4 of Form N-CSR (§§ 249.331 and 274.128 of this chapter), as applicable;

\* \* \* \* \*

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, Item 601(b)(101) of Regulation S-K (§ 229.601(b)(101) of this chapter), General Instruction F of Form 11-K (§ 249.311 of this chapter), paragraph (101) of Part II - Information Not Required to be Delivered to Offerees or Purchasers of Form F-10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to

Exhibits of Form 20-F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40-F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6-K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N-1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), General Instruction C.3.(h) of Form N-3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N-4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N-6 (§§ 239.17c and 274.11d of this chapter); or General Instruction C.4 of Form N-CSR (§§ 249.331 and 274.128 of this chapter).

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) As applicable, all schedules set forth in Article 6A of Regulation S-X (§§ 210.6A-01 - 210.6A-05) and Article 12 of Regulation S-X (§§ 210.12-01 - 210.12-29), and all schedules prepared by plans in accordance with the financial reporting requirements of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) and filed with the Commission on Form 11-K (§ 249.311).

\*\*\*\*\*

(c) *Format - Generally.* An Interactive Data File must comply with the following requirements, except as modified by paragraph (d) or (e) of this section, as applicable, with respect to the corresponding data in the Related Official Filing consisting of footnotes to financial statements or financial statement schedules as set forth in Article 6A of Regulation S-X, Article 12 of Regulation S-X or the financial reporting requirements of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), as applicable:

\* \* \* \* \*

(e) *Format - Schedules - Generally.* The part of the Interactive Data File for which the corresponding data in the Related Official Filing consists of financial statement schedules as set forth in 17 CFR 210.6A-01 through 210.6A-05) (Article 6A of Regulation S-X), §§ 210.12-01 through 210.12-29 of this chapter (Article 12 of Regulation S-X), or the financial reporting requirements of the



Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), as applicable, must comply with the requirements of paragraphs (c)(1) and (2) of this section, as modified by this paragraph (e).

Such financial statement schedules must be tagged as follows:

\* \* \* \* \*

Note 1 to § 232.405: Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S-K) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to § 239.11 of this chapter (Form S-1), § 239.13 of this chapter (Form S-3), § 239.25 of this chapter (Form S-4), § 239.18 of this chapter (Form S-11), § 239.31 of this chapter (Form F-1), § 239.33 of this chapter (Form F-3), § 239.34 of this chapter (Form F-4), § 249.310 of this chapter (Form 10-K), § 249.308a of this chapter (Form 10-Q), and § 249.308 of this chapter (Form 8-K). General Instruction F of § 249.311 of this chapter (Form 11-K) specifies the circumstances under which an Interactive Data File must be submitted, and the circumstances under which it is permitted to be submitted, with respect to Form 11-K. Paragraph (101) of Part II - Information not Required to be Delivered to Offerees or Purchasers of § 239.40 of this chapter (Form F-10) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form F-10. Paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20-F) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form 20-F. Paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40-F) and Paragraph C.(6) of the General Instructions to § 249.306 of this chapter (Form 6-K) specify the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to § 249.240f of this chapter (Form 40-F) and § 249.306 of this chapter (Form 6-K). Section 229.601(b)(101) (Item 601(b)(101) of Regulation S-K), paragraph (101) of Part II - Information not Required to be Delivered to Offerees or Purchasers of Form F-10, paragraph 101 of the Instructions as to Exhibits of Form 20-F, paragraph B.(15) of the General Instructions to Form 40-F, and paragraph C.(6) of the

General Instructions to Form 6-K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with 17 CFR 210.6-01 through 210.6-10 (Article 6 of Regulation S-X). For an issuer that is a management investment company or separate account registered under the Investment Company Act of 1940 (15 U.S.C. 80a et seq.) or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)), General Instruction C.3.(g) of Form N-1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), General Instruction C.3.(h) of Form N-3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N-4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N-6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N-CSR (§§ 249.331 and 274.128 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

#### **PART 239 — FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

9. The authority citation for part 239 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78o-7 note, 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37; and sec. 107, Pub. L. 112-106, 126 Stat. 312, unless otherwise noted.

\* \* \* \* \*

Sections 239.63 and 239.64 are also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 80a-8, 80a-24, 80a-29, and 80a-37.

10. Amend Form F-10 (referenced in §239.40) by revising General Instruction II.L to read as follows:

**Note: The text of Form F-10 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM F-10**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

**GENERAL INSTRUCTIONS**

\* \* \* \* \*

**II. \* \* \***

L. Where the offering registered on this Form is being made pursuant to the home jurisdiction's shelf prospectus offering procedures or procedures for pricing offerings after the final receipt has been issued, each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission in electronic format via the EDGAR system within one business day after such supplement or supplemented version is filed with the principal jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right hand corner of the cover page the following legend, which may be set forth in longhand if legible: "Filed pursuant to General Instruction II.L. of Form F-10; File No. 33-[insert number of the registration statement]."

*Note:* Offerings registered on this Form, whether or not made contemporaneously in Canada, may be made pursuant to National Policy Statement No. 44 shelf prospectus offering procedures and procedures for pricing offerings after the final receipt has been issued. Rules 415 and 430A under the Securities Act are not available for offerings registered on this Form.

\* \* \* \* \*

11. Amend Form F-X (referenced in §239.42) by:

- a. Revising the introductory text to General Instruction II;
- b. Removing General Instruction II.B.(2) and the corresponding Note on the cover page; and
- c. Redesignating General Instruction II.B.(3) as General Instruction II.B.(2).

The revisions to read as follows:

**Note: The text of Form F-X does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM F-X**

**APPOINTMENT OF AGENT FOR SERVICE OF PROCESS AND UNDERTAKING**

\* \* \* \* \*

**GENERAL INSTRUCTIONS**

\* \* \* \* \*

**II.** A filer must file the Form F-X in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR part 232). For assistance with EDGAR issues, please consult the EDGAR – Information for Filers webpage on SEC.gov.

\* \* \* \* \*

12. Amend Form SE (referenced in §§239.64, 249.444, 269.8, and 274.403) by:
  - a. On the cover page removing the text “\_\_\_ Rule 311 (Permitted Paper Exhibit)”;
  - b. Revising paragraph 1.A of the General Instructions; and
  - c. Revising the first sentence of paragraph 3.B of the General Instructions.

The revisions to read as follows:

**Note: The text of Form SE does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM SE**

**FORM FOR SUBMISSION OF PAPER FORMAT EXHIBITS**

**BY EDGAR ELECTRONIC FILERS**

\* \* \* \* \*

## FORM SE GENERAL INSTRUCTIONS

1. \* \* \*

A. Electronic filers must use this form to submit any paper format exhibit under the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, or the Investment Company Act of 1940, provided that the submission of such exhibit in paper is permitted under Rule 201 or 202 of Regulation S-T (§§232.201 or 232.202 of this chapter).

\* \* \* \* \*

3. \* \* \*

B. If you are filing the exhibit under a continuing hardship exemption under Rule 202 of Regulation S-T (§232.202 of this chapter), you may file the exhibit in paper under cover of Form SE up to six business days before or on the date of filing of the electronic format document to which it relates; you may not file the exhibit after the filing date of the electronic document to which it relates. \* \* \*

\* \* \* \* \*

13. Amend § 239.144 by revising paragraph (a) to read as follows:

(a) Except as indicated in paragraph (b) of this section, each person who intends to sell securities in reliance upon §230.144 of this chapter shall file this form in electronic format by means of the Commission's Electronic Data, Gathering, Analysis, and Retrieval system (EDGAR) in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR part 232 of this chapter).

\* \* \* \* \*

14. Amend Form 144 (referenced in § 239.144) by:

a. Removing the text "ATTENTION: Transmit for filing 3 copies of this form concurrently with either placing an order with a broker to execute sale or executing a sale directly with a market maker." and add in its place "ATTENTION: This form must be filed in electronic format by means of the Commission's Electronic Data Gathering, Analysis, and Retrieval system (EDGAR) in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR part 232), except that where the issuer of the

securities is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, this form must be filed in accordance with Securities Act Rule 144(h)(2). For assistance with EDGAR issues, please consult the EDGAR—Information for Filers webpage on SEC.gov;

b. Removing the text “INSTRUCTION: The person filing this notice should contact the issuer to obtain the I.R.S. Identification Number and the S.E.C. File Number.” and add in its place “INSTRUCTION: The filer should contact the issuer to obtain the S.E.C. File Number.”;

c. Removing the data field box “1(b)”;

d. Redesignating the data field boxes 1(c) through 1(e) as 1(b) through 1(d);

e. Removing the data field box “2(c)”;

f. Removing Instructions 1(b) and 2(c);

g. Redesignating Instructions 1(c) through 1(e) as 1(b) through 1(d); and

**Note: The text of Form 144 does not and this amendment will not appear in the Code of Federal Regulations.**

## **PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

15. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq., and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

\* \* \* \* \*

Sections 240.14a-3, 240.14a-13, 240.14b-1 and 240.14c-7 also issued under secs. 12, 14 and 17, 15 U.S.C. 781, 78n and 78g;

Sections 240.14c-1 to 240.14c-101 also issued under sec. 14, 48 Stat. 895; 15 U.S.C. 78n;

\* \* \* \* \*

16. Amend §240.12d1-3 by revising paragraph (c) to read as follows:

**§240.12d1-3 Requirements as to certification.**

\* \* \* \* \*

(c) The certification must be filed in electronic format via the Commission’s Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in §232 of this chapter (Regulation S-T).

17. Amend §240.14a-3 by revising paragraph (c) to read as follows:

**§ 240.14a-3 Information to be furnished to security holders.**

\* \* \* \* \*

(c) The report sent to security holders pursuant to this rule shall be submitted in electronic format, in accordance with the EDGAR Filer Manual, to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies, or definitive copies, if preliminary filing was not required, of solicitation material are filed with the Commission pursuant to §240.14a-6, whichever date is later. The report is not deemed to be “soliciting material” or to be “filed” with the Commission or subject to this regulation otherwise than as provided in this Rule, or to the liabilities of section 18 of the Act, except to the extent that the registrant specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement or other filed report by reference.

\* \* \* \* \*

18. Amend §240.14c-3 by revising paragraph (b) to read as follows:

**§ 240.14c-3 Annual report to be furnished security holders.**

\* \* \* \* \*

(b) The report sent to security holders pursuant to this rule shall be submitted in electronic format, in accordance with the EDGAR Filer Manual, to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which

preliminary copies, or definitive copies, if preliminary filing was not required, of the information statement are filed with the Commission pursuant to §240.14c-5, whichever date is later. The report is not deemed to be “filed” with the Commission or subject to this regulation otherwise than as provided in this rule, or to the liabilities of section 18 of the Act, except to the extent that the registrant specifically requests that it be treated as a part of the information statement or incorporates it in the information statement or other filed report by reference.

\* \* \* \* \*

#### **PART 249 — FORMS, SECURITIES EXCHANGE ACT OF 1934**

19. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a et seq. and 7201 et seq.; 12 U.S.C. 5461 et seq.; 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112-106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001 Pub. L. 114-94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. 116-222, 134 Stat. 1063 (2020), unless otherwise noted.

Section 249.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. 107-204, 116 Stat. 745, and secs. 2 and 3, Pub. L. 116-222, 134 Stat. 1063.

Section 249.240f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 406 and 407, Pub. L. 107-204, 116 Stat. 745.

\* \* \* \* \*

Section 249.310 is also issued under secs. 3(a), 202, 208, 302, 406 and 407, Pub. L. 107-204, 116 Stat. 745.

\* \* \* \* \*

20. Amend Form 20-F (referenced in §249.220f) by adding Item 10.J to read as follows:

**Note: The text of Form 20-F does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**



**FORM 20-F**

\* \* \* \* \*

**PART I**

\* \* \* \* \*

**Item 10. \* \* \***

**J. Annual Report to Security Holders.** If a registrant is required to provide an annual report to security holders in response to the requirements of Form 6-K (§249.306 of this chapter), the registrant must submit the annual report to security holders in electronic format in accordance with the EDGAR Filer Manual.

\* \* \* \* \*

21. Amend Form 40-F (referenced in §249.240f) by revising General Instruction B.(3) to read as follows:

**Note: The text of Form 40-F does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 40-F**

\* \* \* \* \*

**GENERAL INSTRUCTIONS**

\* \* \* \* \*

**B. \* \* \***

(3) Registrants reporting pursuant to Section 13(a) or 15(d) of the Exchange Act should file under cover of this form the annual information form required under Canadian law and the Registrant's audited annual financial statements and accompanying management's discussion and analysis. Registrants shall furnish under the cover of Form 6-K all other information material to an investment decision that a Registrant:

- (i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile,
- (ii) filed or is required to file with a stock exchange on which its securities are traded, or
- (iii) distributes or is required to distribute to its security holders.

**Note to paragraphs (1) and (3) of General Instruction B:**

If General Instructions B.(1) or (3) of this Form require a registrant to furnish an annual report to security holders, the registrant shall satisfy this requirement by promptly submitting an English version of its annual report to security holders in electronic format in accordance with the EDGAR Filer Manual.

\* \* \* \* \*

22. Amend Form 6-K (referenced in §249.306) by:

a. On the cover page removing the text “Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1): \_\_\_\_\_

**Note:** Regulation S-T Rule 101(b)(1) only permits the submission in paper of a Form 6-K if submitted solely to provide an attached annual report to security holders.

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7): \_\_\_\_\_

**Note:** Regulation S-T Rule 101(b)(7) only permits the submission in paper of a Form 6-K if submitted to furnish a report or other document that the registrant foreign private issuer must furnish and make public under the laws of the jurisdiction in which the registrant is incorporated, domiciled or legally organized (the registrant’s “home country”), or under the rules of the home country exchange on which the registrant’s securities are traded, as long as the report or other document is not a press release, is not required to be and has not been distributed to the registrant’s security holders, and, if discussing a material event, has already been the subject of a Form 6-K submission or other Commission filing on EDGAR.”; and

b. Revising paragraph C(2) of the General Instructions;

c. Revising paragraph C(3) of the General Instructions; and

d. Adding paragraph C(7) of the General Instructions.

The revisions and additions to read as follows:

**Note: The text of Form 6-K does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 6-K**

**REPORT OF FOREIGN PRIVATE ISSUER PURSUANT TO RULES 13a-16 OR 15d-16**

**UNDER THE SECURITIES EXCHANGE ACT OF 1934**

\* \* \* \* \*

**GENERAL INSTRUCTIONS**

\* \* \* \* \*

C. \* \* \*

(2) An issuer may submit a Form 6-K in paper under a hardship exemption provided by Rules 201 or 202 of Regulation S-T (17 CFR 232.201 or 232.202).

**Note to paragraph (2):** An issuer that is or will be incorporating by reference all or part of an annual or other report to security holders, or of any part of a paper Form 6-K, into an electronic filing must file the incorporated portion in electronic format as an exhibit to the filing in accordance with Rule 303(b) of Regulation S-T (17 CFR 232.303(b)).

(3) When submitting a Form 6-K in paper under a hardship exemption, an issuer must provide the appropriate legend required by either Rule 201(a)(2) or Rule 202(c) of Regulation S-T (17 CFR 232.201(a)(2) or 232.202(c)) on the cover page of the Form 6-K.

\* \* \* \* \*

(7) *Annual Report to Security Holders.* If General Instruction B of this form requires an issuer to furnish an annual report to security holders, the issuer shall satisfy this requirement by promptly submitting an

English version of its annual report to security holders in electronic format in accordance with the EDGAR Filer Manual.

\* \* \* \* \*

23. Amend Form 10-K (referenced in §249.310) by revising paragraph (a) that follows the text “Supplemental Information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Act by Registrants Which Have Not Registered Securities Pursuant to Section 12 of the Act”.

The revision reads as follows:

**Note: The text of Form 10-K does not, and this amendment will not, appear in the Code of Federal Regulations.**

(a) Except to the extent that the materials enumerated in (1) and/or (2) below are specifically incorporated into this Form by reference, every registrant which files an annual report on this Form pursuant to Section 15(d) of the Act must furnish to the Commission for its information at the time of filing its report on this form, an electronic submission in accordance with the EDGAR Filer Manual, of the following:

\* \* \* \* \*

24. Amend Form 11-K (referenced in §249.311) by:

- a. Revising General Instruction E; and
- b. Adding paragraph 5 of Required Information.

The revisions and additions to read as follows:

**Note: The text of Form 11-K does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 11-K**

**FOR ANNUAL REPORTS OF EMPLOYEE STOCK PURCHASE, SAVINGS AND SIMILAR PLANS PURSUANT TO SECTION 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

\* \* \* \* \*

## GENERAL INSTRUCTIONS

\* \* \* \* \*

### **E. Electronic Filers**

Reports on this Form must be filed in electronic format. See Rule 101(a)(xxvi) of Regulation S-T (§232.101(a)(xxvi) of this chapter).

### **F. Interactive Data**

All financial statements and schedules required to be included on this report on Form 11-K, including any financial statements and schedules included as an exhibit to this report pursuant to General Instruction D, must be provided as an Interactive Data File in accordance with Rule 405 of Regulation S-T (§232.405 of this chapter).

\* \* \* \* \*

\* \* \* \* \*

25. Amend Form CB (referenced in §239.800 and §249.480) by:

- a. Removing the line “Filed or submitted in paper if permitted by Regulation S-T Rule 101(b)(8) [ ]” and the corresponding Note on the cover page; and
- b. Removing General Instruction II.A.(2) and redesignating General Instruction II.A.(3) and (4) as General Instruction II.A.(2) and (3).

By the Commission.

Dated: June 2, 2022.

Vanessa A. Countryman,  
Secretary.