

SEC Finally Mandates E-Filings for Forms 144 and Glossy Annual Reports

Given how old that the SEC's Edgar now is, it's always surprising to realize that the SEC still allows some forms to be filed on paper. But those days will soon be behind us as the SEC recently [amended its rules](#) to require electronic filing of additional forms, including:

1. Forms 144 – Effective six months after the SEC adopts a new version of the Edgar Filer Manual that addresses Form 144 (which is expected to happen sometime this Fall).
 - E-filing currently optional. Some folks have been voluntarily making these filings electronically, but the vast majority have been filing them on paper.
 - New form and simplified e-filing process. The SEC is developing an online fillable form for making these filings and is amending the information required in the filings to eliminate the need to provide personally identifiable information (like home addresses) and other immaterial information.
 - E-filing will make insider sales more transparent. Form 144 is due at different times than Form 4 (e.g., upon entering into a Rule 10b5-1 trading plan vs. when sales under the plan actually occur) and requires insiders to report different information (e.g., maximum shares that may be sold under a Rule 10b5-1 trading plan during the three-month period and information regarding the source and consideration paid for the shares being sold).

This electronic filing requirement will represent a significant change for many officers, directors, and other public company "affiliates" who must make Form 144 filings for most sales (those that exceed certain thresholds within a three-month period). Paper Form 144 filings have long been accessible only through doing a search at the SEC's reading room or subscribing to a vendor that regularly scans and digitizes copies of the filings, so universal e-filing will make this additional information about insider sales more accessible.

- Public companies will need to update insider compliance processes. While most Form 144 filers work with their brokers to make these filings, some in-house and outside counsel also assist with them. In-house counsel should educate insiders on this change, and also alert communications and IR departments as seeing the electronic Form 144 filings may confuse investors who are accustomed to only Section 16 filings being made on Edgar.
 - Some Form 144 filers may not already have Edgar codes. In-house counsel at "foreign private issuers" might also need to assist officers and directors in obtaining Edgar codes. People in these positions are not subject to Section 16 filings, and so they may not already have Edgar codes, but they are subject to the Form 144 requirements, including the new e-filing requirement.
2. Glossy Annual Reports – Effective six months after the effective date of the rule changes (the effective date being 30 days after the amendments are published in the Federal Register). Companies will be required to submit their glossy annual report to the SEC on Edgar in a PDF. The Edgar submission will be due not later than the date on which the report is first sent or given to security holders, and will *not* be considered "filed" with the SEC.
 - Website posting no longer sufficient. In 2016, Corp Fin adopted a [CDI](#) permitting companies to post a PDF of the glossy annual report to their corporate websites to satisfy the Rule 14a-3 requirement

to mail the annual report to the SEC. This CDI will be withdrawn in connection with the rule change.

- Public companies should update disclosure controls. In-house counsel should consider adding a reminder of this rule change *now* into their proxy statement checklist and procedures for next year to avoid forgetting about the new submission requirement.
3. Form 11-K – Effective three years after the effective date of the rule changes, Form 11-K filings (annual reports that are required for some types of employee benefit plans) will be required to use Inline XBRL for financial statements and accompanying notes. Form 11-K filings will also be required to be filed electronically, although there is little practical difference here as the vast majority are already filed on Edgar.

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