

## SEC Adopts Amendments to Update Electronic Filing Requirements

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On June 3, 2022, the Securities and Exchange Commission (SEC) [announced](#) that it [adopted amendments](#) to update electronic filing requirements through the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system for certain documents that previously were permitted to be filed or submitted in paper format. Rule 101 of Regulation S-T establishes the rules for electronic filings. Rule 101(b), which previously identified documents that could be filed either electronically or in paper format, is now amended so most of the documents listed in Rule 101(b) will be required to be filed electronically. The amended rules will require the electronic filing or submission of forms including glossy annual reports, Form 144, and Form 11-K. The amendments also seek to improve the SEC's ability to track and process filings and allow for easier public access to benefit investors and other users of the documents. This will especially be true for the previously difficult to access Form 144, which will now be readily available to the public.

The rule amendments became effective on July 11, 2022. However, a transition period commenced to provide filers with adequate time to prepare electronic filings in accordance with the EDGAR Filer Manual and to apply for the relevant filer codes on EDGAR.

### **Glossy Annual Reports**

Domestic public companies must file annual reports to shareholders, often called “glossy” annual reports that disclose certain corporate information. In the past, the SEC allowed companies to satisfy the annual report requirement by publishing the glossy annual report in their corporate websites. However, the SEC will no longer allow companies to satisfy their reporting obligations by posting the glossy annual report to the corporate website alone. The company must also file the report electronically through EDGAR no later than the date when the report is first distributed to the shareholders.

The filing of glossy annual reports on EDGAR must be done in a PDF format without being reformatted, resized, or otherwise redesigned from the original content. Such submissions will be deemed to be “furnished,” not “filed,” unless the company explicitly incorporates the report by reference.

The transition period for glossy annual reports will last until January 11, 2023.

### **Form 144**

Form 144 is used by affiliates of a company, such as executive officers and directors, who sell their stock. Form 144, which historically has been predominantly filed on paper or as a PDF via email, will be required to be submitted electronically through the EDGAR system. The past paper filing method required the public to review the form in-person at the SEC. Now, the public will have ready access to view the Form 144 on EDGAR. The electronic filing method will also remove the requirement under Rule 144(h)(1) to send a copy of the Form 144 notice to the principal exchange. Form 144 will be an online fillable document and will delete certain personally identifiable information in the form.

The amended rules do not apply to Form 144 filings relating to the sale of securities of private companies that are not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

Notably, it may now become the General Counsel's responsibility to prepare Form 144 filings. Because the role of preparing form IDs and obtaining CIK numbers is often completed by company counsel and most Form 144 filers will now need to electronically file a Form ID for the first time, company counsel may face greater demands because of these amendments.

The transition period for 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. It is expected that the Commission would consider adoption in September 2022, and publication in the Federal Register would occur thereafter.

### **Form 11-K**

These amended rules will also require the use of Inline eXtensible Business Reporting Language ("XBRL") for the filing of the financial statements required by Form 11-K, whether the financial information is prepared in accordance with Regulation S-X or the reporting requirements under ERISA.

The transition period for Form 11-K filings will last until January 11, 2023 for filings related to annual reports for employee benefit plans, and until July 11, 2025 for filings related to notes accompanying financial statements in XBRL.

For questions regarding the SEC's adopted rule amendments for electronic filing requirements and related changes, please contact your GableGotwals attorney or a member of our [Corporate & Securities team](#).



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