

SEC'S FORM 144 ELECTRONIC FILING MANDATE: ANOTHER TASK FOR COMPANY COUNSEL'S TO-DO LIST?

Jun 22, 2022

The SEC recently adopted amendments mandating that certain documents and forms, including Forms 144, be submitted electronically, rather than in paper form. The Form 144 electronic filing requirement will begin six months after the date of publication in the Federal Register of the SEC release that adopts the version of the EDGAR Filer Manual addressing updates to Form 144 for filing Form 144 electronically on EDGAR (estimated to be March 2023).

The SEC estimated in the adopting release that only approximately 25 percent of Form 144 filers have already prepared a Form ID and obtained a CIK number for EDGAR filings. As a result, approximately 75 percent of Form 144 filers will need to file a Form ID for the first time to obtain a CIK code and gain access to file on EDGAR. In practice, the burden of helping prepare Form IDs and obtain CIK numbers often falls to company counsel rather than the company insider, and the process in recent years has taken several days, due in part to COVID-19 slowdowns and challenges.

Although in the past, broker-dealers executing sales for affiliates generally handled the preparation and submission of paper Form 144 filings, it is unclear whether Form 144 filers and/or company counsel will be comfortable sharing CIK codes and sensitive Form ID information with broker-dealers, who may not have developed processes to collect, securely store, and properly update all of the EDGAR access credentials for each client required to file a Form 144. During the transition period, we expect the market to develop to address the practical challenges of mandated electronic filing of Form 144.

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Eliot W. Robinson

Atlanta

eliot.robinson@bclplaw.com

+1 404 572 6785

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