

MORE ON NEW SEC ELECTRONIC FILING REQUIREMENTS – FORM 11-KS AND “GLOSSY” ANNUAL REPORTS

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Earlier this month, the SEC announced the amendment of its electronic filing rules. In addition to Form 144 filings, which we discussed in our [June 22 post](#), the amendments will affect Form 11-Ks and “glossy” annual reports, among other filings.

The rule changes become effective 30 days after publication in the Federal Register, subject to the following transition periods:

- Form 11-Ks – three years after the effective date
- “Glossy” annual reports and other documents (other than Form 144s) – six months after the effective date
- Form 144s – six months after the date of publication in the Federal Register of the updates to the form (expected to be in Fall 2022)

Form 11-Ks

The amendments will require filers to tag the financial statements and schedules required in annual reports for employee benefit plans required by Form 11-K in the Inline XBRL structured data language.

Fortunately, the three-year transition period provides ample time to get ready. Companies should plan on applying for EDGAR codes and otherwise implementing appropriate procedures sufficiently in advance to be ready to submit 11-Ks by the effective date. The new tagging requirements mirror those for financial information contained in Form 10-Ks. This means that several days may be needed to convert financial statements into Inline XBRL and proofread the data.

As a reminder, Form 11-Ks are required for any employee stock purchase, savings or similar plan for which interests in such plan have been registered under the Securities Act of 1933 – most often, a company’s 401(k) plan with a company stock fund.

“Glossy” Annual Reports

Effective six months after the 30th day after publication of the amendments in the Federal Register, companies will be required to furnish their “glossy” annual reports to shareholders to the SEC electronically in PDF format; they will no longer be able to satisfy that requirement by posting an electronic version on their websites or submitting a paper copy.

Under the amendments, the “glossy” annual report to security holders should not be re-formatted, re-sized, or otherwise redesigned for purposes of the EDGAR submission.

The SEC noted that it has received minimal paper submissions and very few electronic submissions in recent years, recognizing that companies generally rely on the staff’s 2016 interpretative guidance allowing website posting instead. The SEC will be withdrawing that guidance in light of the amendments. The SEC intends for EDGAR to serve as a repository for electronic copies of glossy annual reports, whether or not posted on company websites.

Note that companies utilizing eproxy rules will continue to be required to publish their proxy materials, including the “glossy” annual report, on a website other than the SEC’s website pursuant to Rule 14a-16(b).

Other Filings

Other filings covered by the amendments include (x) notices of exempt solicitations and notices of exempt preliminary roll-up communications, (y) reports submitted by foreign private issuers on Form 6-K and (z) certain foreign language documents. Additionally, the amendments cover filings made by multilateral development banks; filings made pursuant to Section 33 of the Investment Company Act of 1940; and certain certifications that a security has been approved by an exchange for listing and registration.

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