

Memorandum

SEC Mandates Electronic Filing for Form 144

March 1, 2023

Following rule amendments adopted by the Securities and Exchange Commission (the “SEC”) in June 2022, all Forms 144 must be filed electronically via the Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) filing system beginning on April 13, 2023. Prior to the rule change, Forms 144 were permitted to be submitted either electronically via EDGAR or in paper form; *however*, in practice they were rarely submitted through EDGAR. As a result, the information in Forms 144 regarding sales (or potential sales) by affiliates (including directors, officers and large stockholders) will become publicly available on EDGAR upon filing and readily searchable in real time. In addition, affiliated security holders will need to obtain SEC EDGAR Filer Access Codes (“EDGAR codes”) well in advance of sales in reliance on Rule 144 under the Securities Act of 1933 (the “Securities Act”).

All affiliates (defined as a person in a relationship of control with the reporting issuer and traditionally includes officers, directors as well as large shareholders) of an SEC-reporting issuer relying on Rule 144 under the Securities Act for a resale transaction must file a Form 144 with the SEC as a notice of a proposed sale of that company’s stock when the amount to be sold under Rule 144 during any three-month period exceeds either (i) 5,000 shares or units or (ii) has an aggregate sales price greater than \$50,000. Form 144 is required to be transmitted for filing with the SEC concurrently with either the placing with a broker of an order to execute a sale of securities in reliance upon this rule or the execution directly with a market maker of such a sale. The EDGAR system will accept Form 144 filings between 6:00 a.m. and 10:00 p.m. (Eastern).

Historically, Forms 144 have typically been prepared in paper form and mailed to the SEC by the broker who executed the sale on behalf of an affiliate. Because the new rules will require Forms 144 to be filed electronically and, as such, will be immediately publicly available, it is uncertain whether all brokers executing sales for affiliates will continue to provide this service. In addition, we expect that some reporting issuers may request advance notice of Form 144 filings, as those filings, particularly if filed during trading hours, could have an impact on trading prices or result in calls to their investor relations departments.

What Are EDGAR Codes?

EDGAR codes are codes created by the SEC and provided when a company or individual registers with the SEC as an EDGAR filer. EDGAR codes are used to submit documents to the SEC via the EDGAR system. Once these documents are submitted to the EDGAR system they are publicly available. Commencing April 13, 2023, EDGAR Codes are required for each Form 144 filer so that they may file their Forms 144 electronically.

Affiliates who might seek to sell pursuant to Rule 144 and do not already have EDGAR codes should apply for these codes now to avoid logistical delays in selling those securities pursuant to Rule 144. Affiliates who have previously been issued EDGAR codes but are not currently filing forms under Section 13(d) or Section 16 should locate their codes and confirm they are still valid. This should be done well ahead of any planned sale as the process for obtaining EDGAR codes takes approximately 3-5 business days and the process for regenerating lost EDGAR codes can take longer.

While directors and executive officers of SEC-reporting U.S. companies already have EDGAR codes that they use for making Section 16 filings, directors and officers of foreign private issuers (“FPIs”) do not typically have EDGAR codes, as they are not required to make Section 16 filings. Therefore, before Form 144 electronic filings become mandatory, FPIs should assist their executive officers and directors in applying for EDGAR codes so that they may sell company securities under Rule 144.

What Should I Be Doing Now?

- Confirm you have valid EDGAR codes for all directors, executive officers or other affiliates or assist them in applying for new EDGAR codes.
- Consider whether the electronic Form 144 filings will be handled internally or by brokers executing the trade for your affiliates.
- Consider signature process for the Form 144 filings and obtain powers of attorney and attestations for electronic signatures for signatories as needed.
- Consider what, if any, impact public Form 144 filings will have on trading strategy and investor relations.

The SEC has created a Form 144—[Resources for Filing Electronically](#) webpage to support Form 144 filers and filing agents in applying for access to EDGAR and in preparing and submitting the electronic Form 144.

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