

## **LEGAL UPDATES AND NEWS**

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### **SEC Adopts Mandatory EDGAR Filing Requirement for Form 144**

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Recently, the Securities and Exchange Commission (the “SEC”) adopted a rule change mandating that Form 144 be filed electronically using the SEC’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system. A Form 144 is required to be filed by an affiliate of a reporting company relying on Rule 144 under the Securities Act of 1933 for a resale transaction, when the amount to be sold by such affiliate under Rule 144 during any three-month period exceeds (i) 5,000 shares or (ii) has an aggregate sales price greater than \$50,000. An affiliate is defined as a person in a relationship of control with the issuer; this traditionally includes directors, executive officers, large stakeholders, and other insiders.

Prior to the rule change, Form 144 was permitted to be submitted either electronically via EDGAR or in paper form. However, historically Forms 144 have been submitted almost exclusively in paper form (including by email). Such paper filings are typically only available for the public to review in person at the SEC. The rule change will make future trading details filed on a Form 144 more readily available to the public and searchable on EDGAR – issuers should advise insiders of this change.

The electronic Form 144 will be an online fillable document that will remove certain identifiable personal information. This new filing process will be more streamlined by eliminating the burden of separately sending a copy of a Form 144 to the principal exchange where the class of securities sold is listed and establish a publicly available database on EDGAR for increased efficiencies in record management, maintenance, and compliance.

Historically, broker-dealers have often submitted Form 144 paper filings on behalf of their clients. However, even though EDGAR allows for bulk filing of forms, the rule change may create logistical challenges for broker-dealers resulting in firms no longer providing such services, which could cause insiders to request assistance from the issuer. Issuers should communicate with insiders so insiders have time to determine if their broker-dealer will continue assisting with Form 144 filings or if they will need support from the issuer.

To prepare for the new compliance requirement, affiliates required to file a Form 144 should obtain and/or confirm their EDGAR codes needed to make the required electronic filings well ahead of a planned sale. For insiders selling company equity securities, companies should be prepared to obtain and/or confirm those codes on their behalf.

The deadline to comply with the new electronic filing requirement is April 13, 2023, which is intended to give filers time to transition to the new EDGAR filing requirement.

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Please contact any of our attorneys below if you have any questions regarding the information contained in this newsletter.

<b>John Gorman</b>	(202) 274-2001	<a href="mailto:jgorman@luselaw.com">jgorman@luselaw.com</a>
<b>Larry Spaccasi</b>	(202) 274-2037	<a href="mailto:lspaccasi@luselaw.com">lspaccasi@luselaw.com</a>
<b>Kip Weissman</b>	(202) 274-2029	<a href="mailto:kweissman@luselaw.com">kweissman@luselaw.com</a>
<b>Benjamin Azoff</b>	(202) 274-2010	<a href="mailto:bazoff@luselaw.com">bazoff@luselaw.com</a>
<b>Michael Brown</b>	(202) 274-2003	<a href="mailto:mbrown@luselaw.com">mbrown@luselaw.com</a>
<b>Scott Brown</b>	(202) 274-2013	<a href="mailto:sbrown@luselaw.com">sbrown@luselaw.com</a>
<b>Victor Cangelosi</b>	(202) 274-2028	<a href="mailto:vcangelosi@luselaw.com">vcangelosi@luselaw.com</a>
<b>Jeffrey Cardone</b>	(202) 274-2033	<a href="mailto:jcardone@luselaw.com">jcardone@luselaw.com</a>
<b>Thomas Hutton</b>	(202) 274-2027	<a href="mailto:thutton@luselaw.com">thutton@luselaw.com</a>
<b>Kent Krudys</b>	(202) 274-2019	<a href="mailto:kkrudys@luselaw.com">kkrudys@luselaw.com</a>
<b>Steven Lanter</b>	(202) 274-2004	<a href="mailto:slanter@luselaw.com">slanter@luselaw.com</a>
<b>Gary Lax</b>	(202) 274-2031	<a href="mailto:glax@luselaw.com">glax@luselaw.com</a>
<b>Marc Levy</b>	(202) 274-2009	<a href="mailto:mlevy@luselaw.com">mlevy@luselaw.com</a>
<b>Ned Quint</b>	(202) 274-2007	<a href="mailto:nquint@luselaw.com">nquint@luselaw.com</a>
<b>Max Seltzer</b>	(202) 274-2038	<a href="mailto:mseltzler@luselaw.com">mseltzler@luselaw.com</a>
<b>Gregory Sobczak</b>	(202) 274-2026	<a href="mailto:gsobczak@luselaw.com">gsobczak@luselaw.com</a>
<b>Agata Troy</b>	(202) 274-2025	<a href="mailto:atroy@luselaw.com">atroy@luselaw.com</a>