

Reminder: “Glossy” Annual Reports Must Be Furnished to the SEC via EDGAR

January 13, 2023

Effective January 11, 2023, reporting companies are required to furnish their “glossy” annual reports electronically on EDGAR in PDF format no later than the date on which the report is first sent or given to stockholders.

Under Regulation 14A of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), a reporting company is required to deliver an annual report to its stockholders if it is soliciting proxies for a stockholder meeting at which directors will be elected. The annual report can take different forms: historically, many companies prepared a standalone “glossy” annual report—so-called because of the paper on which the report was printed—though it has become common for companies to use their Annual Report on Form 10-K to satisfy the Exchange Act’s annual report requirement, sometimes including a “10-K wrap” where several glossy pages—such as a cover page and a letter to stockholders—are wrapped around the Form 10-K.

In June 2022, the Securities and Exchange Commission (the “SEC”) adopted amendments to Rule 101 of Regulation S-T that mandate the electronic submission of certain documents on EDGAR, including annual reports. The amended rule applies to both standalone “glossy” annual reports and annual reports that use the “10-K wrap” approach. The amendments supersede the SEC’s 2016 guidance permitting a company to post their annual report on their corporate website for at least one year in lieu of furnishing paper copies to the SEC. While posting the annual report on the corporate website is now optional under the amended rules, companies are still required to post a copy of the annual report to a website other than EDGAR pursuant to Rule 14a-16(b) of the Exchange Act. Further, companies are no longer permitted to submit the annual report in paper format to the SEC.

With these amendments, the SEC hopes EDGAR will serve as a “repository for electronic copies of the ‘glossy’ annual reports to security holders, whether or not registrants decide to post the reports on their corporate websites.” The amended rules require annual reports to be submitted in PDF format using EDGAR Form ARS. The PDF must reflect the same graphics, styles of presentation and prominence of disclosures (including text size, placement, color and offset, as applicable) as are

contained in the annual report sent to stockholders—*i.e.*, the annual report should not be reformatted, resized or redesigned when submitted to EDGAR. Companies should consult the EDGAR Filer Manual for technical specifications on how to submit the annual report to the SEC.

We are available to discuss this update and other considerations relating to the annual report to stockholders. Please do not hesitate to contact us with any questions.



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