

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-92727; FOIA-194]

Freedom of Information Act Regulations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is making an amendment to the Commission’s Freedom of Information Act (“FOIA”) regulations to remove a provision stating that records that the FOIA requires to be made available for public inspection in an electronic format will be available to persons who do not have access to the internet in the Commission’s Public Reference Room. The Commission’s FOIA regulations will continue to provide that persons who do not have access to the internet can obtain the documents required to be made available for public inspection by telephone or email request to the Office of FOIA Services.

DATES: *Effective date:* August 26, 2021.

FOR FURTHER INFORMATION CONTACT: Ray McInerney, FOIA/PA Officer, Office of FOIA Services, (202) 551-6249; Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-5041.

SUPPLEMENTARY INFORMATION: The Commission is adopting an amendment to its FOIA regulations at 17 CFR 200.80(a)(2)(ii).

I. Background

The Freedom of Information Act requires each agency, in accordance with published rules, to make certain records available for public inspection in an electronic format.¹ The Commission's regulation at 17 CFR 200.80(a)(2)(ii) provides that records that the FOIA requires to be made available for public inspection in an electronic format are accessible through the Commission's website. In addition, under the existing regulation, persons without access to the internet may obtain these records by telephone or email request or by visiting the Public Reference Room at the Commission's headquarters in Washington, DC. The FOIA itself does not require that agencies provide access to documents that are available for public inspection in an electronic format in a public reference room.

The Public Reference Room, which is housed within the Commission's Library, contains a computer terminal that members of the public may use to access records that the SEC is required to make publicly available under the FOIA. The Commission's visitor logs and information from the Commission Library staff indicate that no one has used the computer terminal in the Public Reference Room to access records that the FOIA requires to be made available for public inspection in an electronic format from 2018 through the date of this document.² In light of the lack of use of the computer terminal in the Public Reference Room as a means of accessing the records, we are adopting technical amendments to our FOIA rules to remove the reference to obtaining access in the Public Reference Room. The Commission's regulation will continue to provide that persons who do not have access to the internet will be

¹ 5 U.S.C. 552(a)(2).

² Due to the COVID pandemic, the public has not been allowed access to the Public Reference Rooms since April 13, 2020.

able to obtain the documents required to be made available for public inspection via telephone or email request to the Commission's Office of FOIA Services.

II. Administrative Law Matters

The Commission finds, in accordance with the Administrative Procedure Act ("APA"), that these revisions relate solely to agency organization, procedures, or practice and do not constitute a substantive rule. Accordingly, the APA's provisions regarding notice of rulemaking, opportunity for public comment, and advance publication of the amendments are not applicable.³ For the same reason, and because these amendments do not substantially affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable.⁴

Additionally, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, are not applicable. These amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995.

III. Economic Analysis

We are adopting an amendment to remove a provision that states that documents that the FOIA requires to be made available for public inspection in an electronic format will be available to persons who do not have access to the internet in the Commission's Public Reference Room. This amendment does not impose any substantive regulatory obligations on any person. We do not believe the amendment will have any substantial economic effect, including on efficiency, competition, or capital formation. All documents that the FOIA

³ 5 U.S.C. 553.

⁴ 5 U.S.C. 804(3)(C).

requires to be available will remain available to the public via the internet, mail, email, or telephone request. Members of the public who wish to make use of the Commission's Public Reference Room but who must now make use of one of the alternatives could potentially incur net costs if the alternatives are less accessible than using the computer available in the Public Reference Room. However, since the documents at issue are readily available through any computer connected to the internet and can also be obtained by mail and since no person has used the Commission's Public Reference Room for this purpose in at least two years, we believe any such incremental costs will be small and incurred infrequently. Because the amendment imposes no substantial new burdens on private parties, the Commission believes that the amendment will not have any impact on competition for purposes of section 23(a)(2) of the Securities Exchange Act of 1934.⁵

IV. Statutory Authority

The amendments contained herein have been made under the authority set forth in 5 U.S.C. 552 and 15 U.S.C. 78w(a).

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information.

Text of Amendments

For the reasons stated in the preamble, the Commission amends title 17, chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart D—Information and Requests

⁵ 15 U.S.C. 78w(a)(2).

1. The authority citation for part 200, subpart D, continues to read in part as follows:

Authority: 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77s, 77ggg(a), 77sss, 78m(F)(3), 78w, 80a-37, 80a-44(a), 80a-44(b), 80b-10(a), and 80b-11, unless otherwise noted.

Section 200.80 also issued under Public Law 114-185 sec. 3(a), 130 Stat. 538; 5 U.S.C. 552; 15 U.S.C. 77f(d), 77s, 77ggg(a), 78d-1, 78w(a), 80a-37(a), 80a-44(b), 80b-10(a), and 80b-11(a), unless otherwise noted.

* * * * *

2. Amend § 200.80 by revising paragraph (a)(2) to read as follows:

§200.80 Securities and Exchange Commission records and information.

(a) * * *

(2)(i) Records that the FOIA requires to be made available for public inspection in an electronic format (pursuant to 5 U.S.C. 552(a)(2)) are accessible through the Commission’s website, <http://www.sec.gov>. Each division and office of the Commission is responsible for determining which of its records are required to be made publicly available in an electronic format, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. Each division and office shall ensure that its posted records and indexes are reviewed and updated on an ongoing basis.

(ii) Persons who do not have access to the internet may obtain these records by contacting the Commission’s Office of FOIA Services by telephone at 202-551-7900 or by email at foiapa@sec.gov.

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By the Commission.

Dated: August 23, 2021.

Vanessa A. Countryman,
Secretary.