

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 232**

**[Release Nos. 33-10821, 34-89633, 39-2532, IC-33974, S7-11-20]**

**RIN 3235-AM77**

**Administration of the Electronic Data Gathering, Analysis, and Retrieval System**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** We are publishing for comment a proposed new rule under Regulation S-T. The proposal would specify several actions that the Commission, in its administration of the Electronic Data Gathering, Analysis, and Retrieval system (“EDGAR”), may take to promote the reliability and integrity of EDGAR submissions. In addition, the proposed rule would set forth a process for the Commission to notify filers and other relevant persons of its actions under the proposed rule as soon as reasonably practicable.

**DATES:** Comments should be received on or before [insert date 30 days after publication in the *Federal Register*].

**ADDRESSES:** Comments may be submitted by any of the following methods:

**Electronic comments:**

- Use the Commission’s Internet comment form (<https://www.sec.gov/rules/proposed.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-11-20 on the subject line.

**Paper comments:**

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number S7-11-20. This file number should be included on the subject line if email is used. To help us process and review comments more efficiently, please use only one method of submission. We will post all comments on our website (<http://www.sec.gov/rules/other.shtml>). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Eastern Time. All comments received will be posted without change. Persons submitting comments are cautioned that the Commission does not redact or edit personal identifying information from comment submissions. Please submit only information that you wish to make available publicly.

We or the staff may add studies, memoranda, or other substantive items to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at *www.sec.gov* to receive notifications by email.

**FOR FURTHER INFORMATION CONTACT:** Rosemary Filou, Chief Counsel; Monica Lilly, Senior Special Counsel; or Jane Patterson, Senior Counsel; EDGAR Business Office at 202-551-3900, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

## SUPPLEMENTARY INFORMATION:

We are proposing to add 17 CFR 232.15 (new “Rule 15”) to Regulation S-T, General Rules and Regulations for Electronic Filings.<sup>1</sup>

### I. INTRODUCTION

In 1993, the Commission adopted rules mandating that certain filings be made with the Commission electronically through the newly launched EDGAR system.<sup>2</sup> Since then, the Commission has further prescribed requirements and procedures for EDGAR submissions.

Regulation S-T addresses, among other things, certain administrative issues related to EDGAR submissions. For example, Rule 13 of Regulation S-T allows a filer to request that the Commission adjust a filing date when the filing is delayed due to technical difficulties beyond the filer’s control.<sup>3</sup> In addition, pursuant to Rule 106, the Commission may remove from EDGAR an entire accepted submission or document if it contains executable code.<sup>4</sup> Regulation S-T further allows a filer to submit an amendment or a notice of withdrawal of the filer’s submission to remedy a submission issue (“filer corrective disclosure”).<sup>5</sup>

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<sup>1</sup> 17 CFR 232.10 *et seq.*

<sup>2</sup> *See, e.g.*, Release No. 33-6977 (Mar. 18, 1993) [58 FR 14628] (establishing rules and procedures applicable to electronic submissions processed by the Divisions of Corporation Finance and Investment Management); Release No. IC-19284 (Mar. 18, 1993) [58 FR 14848] (adopting electronic submission filing rules applicable to investment companies and institutional investment managers under the Investment Company Act of 1940 (“Investment Company Act”) and the Securities Exchange Act of 1934 (“Exchange Act”)); and Release No. 33-6986 (Apr. 9, 1993) [58 FR 18638] (adoption of the EDGAR Filer Manual).

<sup>3</sup> *See* 17 CFR 232.13(b).

<sup>4</sup> *See* 17 CFR 232.106. Rule 106 of Regulation S-T prohibits submissions to EDGAR that contain executable code, and indicates that attempted submissions identified as containing executable code will be suspended unless the code is in a PDF document that may be deleted.

<sup>5</sup> Regulation S-T anticipates that filers may address their own substantive, and in some cases, administrative, submission issues through filer corrective disclosure. *See, e.g.*, 17 CFR 232.103 (providing that filers are not subject to the liability and anti-fraud provisions of the federal securities laws with respect to errors or omissions resulting solely from electronic transmission errors beyond the control of the filer if such filer files an amendment as soon as reasonably practicable after becoming aware of the error or omission); 17 CFR 232.105, Instruction 2 to paragraph (d) (providing that filers must correct an inaccurate or nonfunctioning link or hyperlink to an exhibit in certain circumstances by filing an amendment to the registration statement containing the inaccurate or nonfunctioning link or hyperlink); 17 CFR 232.501(a)(3) and 17 CFR 232.501(b)(3) (providing that filers may correct or amend a modular submission or a segmented filing only by resubmitting the entire modular submission or segmented filing).

In recent years, as the volume of EDGAR submissions has grown, the Commission has increasingly confronted administrative issues that impact the Commission's ability to promote the reliability and integrity of EDGAR submissions and that are not easily addressed by existing rules or filer corrective disclosure. When these issues arise, they can create confusion for filers, investors, and other users of EDGAR. To promote the reliability and integrity of EDGAR submissions and to provide transparency about our practices, we are proposing to specify actions that the Commission may take to facilitate the resolution of such issues. The proposed rule would confirm and clarify the Commission's existing approach to addressing the administrative issues that arise in connection with EDGAR submissions.

Specifically, proposed Rule 15 would provide that in its administration of EDGAR, the Commission may take the following actions to promote the reliability and integrity of EDGAR submissions:<sup>6</sup>

- redact, remove, or prevent dissemination of sensitive personally identifiable information that if released may result in financial or personal harm;
- prevent submissions that pose a cybersecurity threat;
- correct system or Commission staff errors;
- remove or prevent dissemination of submissions made under an incorrect EDGAR identifier;
- prevent the ability to make submissions when there are disputes over the authority to use EDGAR access codes;
- prevent acceptance or dissemination of an attempted submission that it has reason to believe may be misleading or manipulative while evaluating the circumstances

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<sup>6</sup> The Commission may delegate certain functions of proposed Rule 15 to the Commission staff.

surrounding the submission; and allow acceptance or dissemination if its concerns are satisfactorily addressed;

- prevent an unauthorized submission or otherwise remove related access; and
- remedy similar administrative issues relating to submissions.

In addition, the proposed rule would set forth a process for the Commission to notify filers and other relevant persons of its actions under the proposed rule as soon as reasonably practicable.

The proposed rule would not change filers' obligations under the federal securities laws to ensure the accuracy and completeness of information in their EDGAR submissions.

Moreover, in the vast majority of administrative and substantive EDGAR submission issues, filers would continue to address an error by submitting a filer corrective disclosure.<sup>7</sup> We intend to continue to rely upon filer corrective disclosure to remedy most submission errors.

## **II. DISCUSSION OF THE PROPOSED RULE**

Proposed Rule 15 would specify that in its administration of EDGAR, the Commission may take actions to promote the reliability and integrity of EDGAR submissions. The following is a discussion of the types of actions the Commission may take pursuant to the proposed rule to achieve those objectives.

### **A. Sensitive Personally Identifiable Information**

Proposed Rule 15(a)(1) would specify that the Commission may (i) redact submissions containing personally identifiable information that if released may result in financial or personal harm to an individual ("Sensitive PII"); (ii) remove submissions containing Sensitive PII; and/or (iii) prevent dissemination of submissions containing this information.<sup>8</sup> When such steps are

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<sup>7</sup> See, e.g., 17 CFR 232.103, 232.105 and 232.501(a)(3).

<sup>8</sup> Sensitive PII may comprise a single item of information (for example, a Social Security Number) or a combination of two or more items (for example, a full name and financial, medical, criminal, or employment history). See proposed Rule 15(a)(1).

taken, the Commission may communicate as necessary with the filer to facilitate submission of a version in which such information is redacted.

The Commission has sought to reduce the risk that Sensitive PII included in EDGAR submissions may result in financial or personal harm to individuals. For example, in April 2018, the Commission adopted amendments to certain SEC forms to eliminate any reference to or request for Sensitive PII.<sup>9</sup> The amendments eliminated form fields requesting Social Security numbers and other Sensitive PII that the Commission indicated could create “costs [for filers] related to ongoing identity protection and monitoring, as well as reputational costs, operational costs, and losses from theft in the event misappropriated PII is used by bad actors.”<sup>10</sup> Similarly, the proposed rule would clarify that the Commission may take further steps to ensure that Sensitive PII does not reside in EDGAR and communicate as necessary with filers to facilitate submissions in which Sensitive PII is redacted.<sup>11</sup> Whether the Commission removes, redacts, or prevents dissemination of the Sensitive PII in the submission would be based on when the Commission first becomes aware of the Sensitive PII.

## **B. Cybersecurity Threats**

Proposed Rule 15(a)(2) would specify that the Commission may prevent the submission to EDGAR of any submission that poses a cybersecurity threat, including but not limited to, those containing any malware or virus, and communicate as necessary with the filer regarding the submission. Commission action to address cybersecurity threats in EDGAR submissions should benefit all EDGAR users and promote the reliability and integrity of EDGAR

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<sup>9</sup> See Amendments to Forms and Schedules to Remove Provision of Certain Personally Identifiable Information, Release No. 33-10846 (Apr. 25, 2018) [83 FR 22190] (“PII Form Amendments Release”) available at <https://www.sec.gov/rules/final/2018/33-10486.pdf>.

<sup>10</sup> *Id.* at 4-5.

<sup>11</sup> Although the Commission may take steps to ensure that Sensitive PII does not reside in EDGAR, the burden of the responsibility to redact such information from submissions continues to lie with the filer and not the Commission.

submissions.

### **C. System and Commission Staff Errors**

Proposed Rule 15(a)(3) would specify that if the Commission determines that a submission has not been processed by EDGAR, or has been processed incorrectly by EDGAR or contains an error attributable to the Commission staff, the Commission may correct and/or prevent dissemination of the submission and communicate as necessary with the filer to facilitate filer corrective disclosure. In each of these circumstances, under the Commission's existing practice, the Commission first attempts to correct the error without unduly burdening filers. Most frequently, for submissions not processed by EDGAR, for example, due to a system outage, the Commission may assign the filing date that would have been received had the EDGAR outage not occurred, without first communicating directly with the filer. For other isolated system or staff errors, such as when the Commission determines a filing was not processed correctly, the Commission may also resolve the error without contacting the filer. When necessary, the Commission may work proactively with filers to accomplish filer corrective disclosure.<sup>12</sup>

### **D. Incorrect EDGAR Identifiers**

Proposed Rule 15(a)(4) would specify that the Commission may remove and/or prevent public dissemination of a submission made under an incorrect EDGAR unique identifying number,<sup>13</sup> and communicate as necessary with the filer and others to facilitate a filer corrective

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<sup>12</sup> Rule 103 of Regulation S-T addresses concerns that filers may have about liability when issues arise that are not the fault of the filer. *See* 17 CFR 232.103. Moreover, Rule 13(b) of Regulation S-T makes clear that if a filer in good faith attempts to timely file but the filing is delayed due to technical difficulties beyond the filer's control, the filer may request an adjustment of the filing date of the document.

<sup>13</sup> EDGAR provides each entity a unique identifying number, and submissions made by an entity are associated with that number. If an individual who has access to more than one unique identifying number (for example, a filing agent) were to make a submission for one entity using another entity's number, it erroneously would appear to EDGAR users that the submission is a filing by the unique identifying number holder. *See* 17 CFR 232.10(b).

disclosure. From time to time, filings are incorrectly submitted and not associated with the correct unique identifying number, which can create confusion for filers, investors and other EDGAR users. When such errors cannot be resolved by filer corrective disclosure, the Commission may need to remove the erroneous submission.

#### **E. EDGAR Access Code Disputes**

Proposed Rule 15(a)(5) would specify that the Commission may prevent a filer's ability to make submissions if the Commission determines that a dispute exists as to which persons have the authority to make submissions on behalf of the filer, until the dispute is resolved by the disputing parties or by a court of competent jurisdiction. These disputes may arise, for example, when two or more parties each claim control of a filing entity and each demand access to the entity's EDGAR account. Resolution of such disputes often turns on matters of state corporation law or other factors outside the scope of the federal securities laws. Accordingly, in these situations, the Commission staff has asked the disputing parties to either resolve the dispute themselves or have the matter adjudicated under the relevant state corporation law.<sup>14</sup> The proposed rule would affirm the Commission's ability to take action to ensure that only persons authorized to make submissions on behalf of the filer may do so.

#### **F. Potential Manipulation**

If the Commission has reason to believe that a submission or an attempted submission may be misleading or manipulative, proposed Rule 15(a)(6) would specify that the Commission may prevent acceptance or dissemination of the submission while evaluating the circumstances surrounding the submission. For example, the filer's title or role described in the submission

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<sup>14</sup> When a dispute arises between parties, each of whom claims to be the legitimate corporate representative--which may occur after a leadership change at a filing entity--the Commission staff typically prevents future submissions until the parties can reach an agreement, or a party is able to provide a court order designating the appropriate corporate representative.



may not be for the correct entity or may be otherwise inaccurate. Additionally, the filer may include statements in the submission that do not relate to the form or provide responsive information. The proposed rule also specifies that the Commission may allow acceptance or dissemination if its concerns are satisfactorily addressed. In such circumstances, the filer would receive the filing date it would have received had the delay by the Commission not occurred, assuming the submission does not implicate other provisions of Rule 15.

#### **G. Unauthorized Submissions**

Proposed Rule 15(a)(7) would specify that the Commission may prevent the use of EDGAR access codes if it has reason to believe that there has been an unauthorized submission or an attempt to make an unauthorized submission on EDGAR. Currently, when questions arise as to whether a particular submission or attempted submission was authorized, the Commission staff seeks to better understand the circumstances surrounding the submission and evaluate what steps, if any, to take in response. The proposed rule would specify that in such situations the Commission may prevent any further submissions by the filer or otherwise remove the filer's access to EDGAR. If its concerns are satisfactorily addressed, the Commission would lift the suspension of EDGAR access codes and allow the submission to proceed, assuming the submission does not implicate other provisions of Rule 15.

#### **H. Additional Remedial Steps**

Because the Commission cannot anticipate every submission issue that may arise in the future, proposed Rule 15(a)(8) would specify that in certain circumstances the Commission may take further appropriate steps to address a matter and communicate as necessary with the filer regarding the submission. Specifically, under the proposed rule, the Commission may take such further steps if the Commission has reason to believe that, to promote the reliability and integrity

of EDGAR submissions, it must address a submission issue that cannot be addressed solely by filer corrective disclosure or by the actions set forth in paragraphs (a)(1) through (7) of Rule 15.

### **I. Notice**

Finally, the proposed rule provides that the Commission may act without advance notice to filers or any other person. Typically, the Commission communicates and works with filers to address submission issues, but there are times when the Commission needs the flexibility to respond promptly to submission issues in order to avoid harm to investors and other EDGAR users who depend upon the accuracy of the information disseminated by EDGAR. In other circumstances, immediate action may be necessary to avoid potential threats to EDGAR, to prevent the dissemination of unauthorized or potentially false or misleading submissions, or to prevent the improper use of filers' EDGAR accounts.

At the same time, we are mindful that administrative actions under the proposed rule should not unduly hinder or delay the EDGAR submission process. Accordingly, proposed Rule 15(b) would specify a method for the Commission to provide notice of its actions under the proposed rule to a filer and any person the Commission determines is relevant to the matter ("relevant person") as soon as practicable after those actions are taken. Specifically, the proposed rule provides that, as soon as reasonably practicable after taking action pursuant to Rule 15 without providing advance notice, the Commission would provide written notice and a brief factual statement of the basis for the action to the filer and relevant persons. The Commission would send the notice and factual statement by electronic mail to the email address on record in the filer's EDGAR account, and the email address of any relevant persons. The Commission may also send, if necessary, the notice and factual statement by registered, certified, or express mail to the physical address on record in the filer's EDGAR account and the physical

address of any relevant persons. We are proposing to notify other relevant persons of the action because code disputes, submissions made in another entity's account, and similar scenarios may involve parties other than the filer itself. Informing such parties of our actions would provide them an opportunity to bring relevant information in their possession to the Commission's attention and help facilitate prompt resolution of submission issues.

### **III. REQUEST FOR PUBLIC COMMENT**

We request and encourage any interested person to submit comments on any aspect of the proposed amendments, other matters that might have an impact on the proposed amendments, and suggestions for additional changes. In particular, we request comment on the proposed method for the Commission to provide notice to a filer or relevant person of the Commission's actions under the proposed rule and whether there are alternative or additional steps the Commission could take to facilitate the prompt resolution of administrative issues related to EDGAR submissions. Comments are of particular assistance if accompanied by analysis of the issues addressed in those comments and any data that may support the analysis. We urge commenters to be as specific as possible.

### **IV. ECONOMIC ANALYSIS**

We have carefully considered the economic effects of proposed Rule 15.<sup>15</sup> The proposed rule seeks to increase transparency for filers, investors, and other users of EDGAR by specifying the actions the Commission may take to resolve certain administrative issues. Increased

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<sup>15</sup> Section 2(b) of the Securities Act of 1933 ("Securities Act"), Section 3(f) of the Exchange Act, and Section 2(c) of the Investment Company Act require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act requires the Commission to consider the effects on competition of any rules the Commission adopts under the Exchange Act and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

transparency about Commission actions would create benefits for both filers and users, because filers and users would know the types of actions they can expect the Commission to take to promote the reliability and integrity of EDGAR submissions. However, we anticipate these benefits would be limited as the proposed rule largely reflects existing Commission practice. Similarly, we do not expect filers to incur additional costs since the proposed rule reflects corrective action the Commission, as the administrator of EDGAR, currently takes to promote the reliability and integrity of EDGAR submissions. Further, we anticipate the proposed rule would marginally improve efficiency, but would not have a significant effect on competition or capital formation. Because we generally cannot predict the need for or extent of corrective actions the proposed rule would address, we cannot quantify the anticipated economic effects of future corrective actions. Therefore, the analysis that follows provides primarily a qualitative assessment of the likely economic effects.

#### **A. Economic Baseline**

The Commission's current processes and procedures for resolving the enumerated administrative issues listed in the proposed rule and discussed above serve as the baseline against which we assess the proposed rule. This section discusses, as it relates to this rulemaking, filers' current usage of EDGAR and the Commission's processes for administering EDGAR.

Because of the variety of administrative issues that may arise in connection with EDGAR submissions, the Commission has developed procedures for identifying and addressing the issues described above, although the Commission has not published those procedures. Where possible, the Commission currently communicates with relevant filers to facilitate filer corrective disclosure to address problematic submissions. While filer corrective disclosure addresses the majority of known EDGAR submission issues, there are circumstances in which working with a

filer does not address problematic submissions, such as when the filer is uncooperative or the Commission cannot validate a filer's authorization to make submissions. Additionally, in limited cases, the Commission has responded promptly to submission issues without first consulting relevant filers in order to avoid harm to investors and other EDGAR users who depend upon the accuracy of the information disseminated by EDGAR. For these submissions, the Commission acts expediently to minimize the time the public and the Commission are exposed to such harm. While the Commission typically notifies these filers of its actions afterwards, some filers may not know specifically why the Commission took action or the nature of the issue with the submission.

#### **B. Costs and Benefits**

The proposed rule specifies the actions the Commission may take with respect to specific administrative issues that impact the Commission's ability to promote the reliability and integrity of EDGAR submissions. We believe the proposed rule would provide increased transparency about the Commission's administrative processes, which in turn would benefit filers and improve the Commission's efficiency in administering EDGAR. We believe, however, that the proposed rule would have limited economic effects because the proposed rule largely reflects existing Commission practice.

More transparency into how the Commission administers EDGAR may benefit filers in two ways. First, by specifying the types of issues for which the Commission would take action, the proposed rule could encourage filers to take additional actions to prevent these issues if they believe the benefits exceed the costs of preventative actions. Second, when the Commission must act to address a problematic submission prior to notifying a filer or when an issue cannot be addressed solely by a filer corrective disclosure, the proposed rule's formal notification

requirement would ensure that filers receive timely notification of Commission action. To the extent that this requirement results in the Commission notifying filers of issues that they can correct, such as incorrect EDGAR identifiers, EDGAR access code disputes, or potentially misleading filings, filers may be able to benefit from rectifying issues sooner than they would have prior to the rule.<sup>16</sup>

Because the proposed rule would inform filers of possible action the Commission may take to promote the reliability and integrity of EDGAR submissions, the proposed rule would improve the efficiency of administering EDGAR. This benefit is likely to be limited because the proposed rule primarily codifies existing procedures and the Commission would continue to resolve most issues by contacting filers to facilitate filer corrective disclosure. Since filers may submit fewer filings with errors and the Commission and filers would be able to more quickly correct errors, the proposed rule could lead to more timely and accurate information in EDGAR, benefiting investors, research analysts, data aggregators, and other financial professionals.<sup>17</sup>

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<sup>16</sup> In addition to filers, the Commission may work with EDGAR filing agents, counsel, and other entities to correct administrative issues. As with filers, these entities may incur lower costs if they can rectify issues with EDGAR submissions sooner.

<sup>17</sup> See generally Michael S. Drake, Darren T. Roulstone, and Jacob R. Thornock, *The Determinants and Consequences of Information Acquisition via EDGAR*, 32 Contemporary Accounting Research 3 (2016) (Most EDGAR users access the database a few times per quarter around corporate events such as restatements, earnings announcements, and acquisition announcements. This activity is related to, but distinct from, financial press articles. A small subset of users access EDGAR daily for multiple filings.); Jonathan L. Rogers, Douglas J. Skinner, and Sarah L. C. Zechman, *Run EDGAR Run: SEC Dissemination in a High-Frequency World*, Chicago Booth Research Paper No. 14-36 (Feb. 17, 2017) (finding that for a sample of Form 4 filings, there was an economically significant advantage to accessing data because of then-existing lags between the Commission's EDGAR website and the public dissemination feed); Brian Gibbons, Peter Iliev, and Jonathan Kalodimos, *Analyst Information Acquisition via EDGAR*, Working Paper (Nov. 15, 2019) (finding that information acquisition from EDGAR is associated with smaller analyst forecast errors); Peter Iliev, Jonathan Kalodimos, and Michelle Lowry, *Investors' Attention to Corporate Governance*, 9th Miami Behavioral Finance Conference 2018 (Jul. 16, 2020) (using EDGAR log files, finding that investors conduct significant research into corporate governance, particularly for large firms, firms with low managerial entrenchment, and those with meetings outside of the proxy season); Huaizhi Chen, Lauren Cohen, Umit Gurun, Dong Lou, and Christopher J. Malloy, *IQ from IP: Simplifying Search in Portfolio Choice*, NBER Working Paper No. 24801 (Apr. 20, 2019) (using EDGAR log data, shows institutional investors tracked management teams and insider-trading filings of firms); and Zhongling Qin, *Measuring Attention: The Case of Amendments to 10K Annual Reports*, Working Paper (Nov. 15, 2019) (showing consistently higher trading volume once there are enough attentive readers of 10-K/A filings, as defined by whether the readers read the original

Moreover, since the Commission, as the administrator of EDGAR, already takes corrective actions to promote the reliability and integrity of EDGAR submissions, we do not expect filers to incur additional costs in connection with these improvements. The Commission generally cannot predict the need for or the extent of corrective actions, so we cannot quantify the informational efficiency benefits from future corrective actions.

To the extent that the proposed rule reduces the number of cybersecurity threats or reduces the administrative frictions in preventing cybersecurity threats, there may be benefits to the users of EDGAR.<sup>18</sup> In particular, users, including investors, analysts, asset managers, and data collection companies, may incur fewer costs associated with cleaning or repairing systems and recovering data.<sup>19</sup> Furthermore, individuals, investors, companies, and asset managers, among others, may benefit from the Commission and filers preventing cybersecurity attacks that disrupt the dissemination of filings through EDGAR or obtain confidential or protected financial information on the Commission's or users' systems.

Lastly, because EDGAR submissions generally do not require sensitive PII,<sup>20</sup> and current

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10-K filings, though consistent with gradual diffusion of information). *But see* Stefano DellaVigna and Joshua M. Pollet, *Investor Inattention and Friday Earnings Announcements*, 64 J. of Fin. 2 (Mar. 13, 2009) (finding less immediate response for Friday announcements than for announcements on other days, consistent with investor inattention); and Tim Loughran and Bill McDonald, *The Use of EDGAR Filings by Investors*, J. of Behavioral Fin. Forthcoming (Dec. 4, 2016) (showing that the average publicly-traded firm has its annual report accessed only 28.4 times on the day of and day after the filing, though other filings such as initial public offering filings are more quickly consumed).

<sup>18</sup> Under current practice, the Commission immediately prevents submissions to EDGAR of any submission that poses cybersecurity risks once the Commission identifies them. Furthermore, the Commission has already promulgated a rule addressing the removal of submissions or parts of submissions that contain executable code. 17 CFR § 232.106.

<sup>19</sup> See The Council of Econ. Advisers, *The Cost of Malicious Cyber Activity to the U.S. Economy* (Feb. 2018). Available at: <https://www.whitehouse.gov/wp-content/uploads/2018/03/The-Cost-of-Malicious-Cyber-Activity-to-the-U.S.-Economy.pdf> (estimating that in 2016, malicious cyber activity cost the U.S. economy between \$57 and \$106 billion through denial of service attacks, disruption of business activity, or destruction or theft of proprietary and strategic information).

<sup>20</sup> In 2018, the Commission amended forms and schedules to eliminate requirements to provide certain personally identifiable information. See PII Form Amendments Release, *supra* note 9. Also, in the EDGAR Filer Manual, the Commission advises against including social security numbers in filings submitted to the Commission. See <https://www.sec.gov/info/edgar/edgarfm-vol2-v47.pdf>. Some forms may require Sensitive PII in certain

Commission practices seek to identify and redact sensitive PII, we do not anticipate that the proposed rule specifying that the Commission may redact, remove and/or not disseminate EDGAR submissions containing PII will have a substantial economic effect.

We request comment on all aspects of our economic analysis, including the potential costs and benefits of proposed Rule 15. Commenters are requested to provide empirical data, estimation methodologies, and other factual support for their views.

## **V. ADMINISTRATIVE LAW MATTERS**

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act (“APA”), that the proposed amendments relate solely to agency organization, procedure, or practice. They are therefore not subject to the provisions of the APA requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act of 1980<sup>21</sup> therefore does not apply. Nevertheless, we have determined that it would be useful to publish the proposed amendments for notice and comment before adoption. Because these amendments relate to “agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties,” they are not subject to Small Business Regulatory Enforcement Fairness Act of 1996.<sup>22</sup> These rules do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995.<sup>23</sup>

## **VI. STATUTORY BASIS AND TEXT OF PROPOSED RULE AMENDMENTS**

We are proposing the new rules contained in this document under the authority in

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circumstances. For example, Form 20-F requires dates of birth of a company’s directors and senior management if required to be reported in the home country or otherwise publicly disclosed by the company. Additionally, Forms MA and Funding Portal require IRS Tax numbers if CRD numbers are unavailable. IRS Tax numbers also are required on Form SBSE if CRD numbers, IARD numbers, and foreign business numbers are unavailable.

<sup>21</sup> 5 U.S.C. 601 *et seq.*

<sup>22</sup> 5 U.S.C. 801 *et seq.*

<sup>23</sup> 44 U.S.C. 3501 *et seq.*



Sections 6, 7, 8, 10, and 19(a) of the Securities Act,<sup>24</sup> Sections 3, 4A, 4B, 12, 13, 14, 15, 15B, 23, and 35A of the Exchange Act,<sup>25</sup> Section 319 of the Trust Indenture Act of 1939,<sup>26</sup> and Sections 8, 30, 31, and 38 of the Investment Company Act.<sup>27</sup>

### **List of Subjects in 17 CFR Part 232**

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

For the reasons discussed above, we propose to amend 17 CFR chapter II as follows:

### **PART 232. REGULATION S-T— GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS**

1. The authority citation for Part 232 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

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2. Add § 232.15 to read as follows:

#### **§ 232.15 Administration of EDGAR.**

(a) In its administration of EDGAR, the Commission may take the following actions to promote the reliability and integrity of submissions made through EDGAR.

(1) If the Commission determines that a submission contains personally identifiable information that if released may result in financial or personal harm to an individual, which may comprise a single item of information or a combination of two or more items, the Commission may redact such information from the submission, prevent dissemination of the submission,

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<sup>24</sup> 15 U.S.C. 77f, 77g, 77h, 77j, and 77s (a).

<sup>25</sup> 15 U.S.C. 78c, 78d-1, 78d-2, 78l, 78m, 78n, 78o, 78o-4, 78w, and 78ll.

<sup>26</sup> 15 U.S.C. 77sss.

<sup>27</sup> 15 U.S.C. 80a-8, 80a-29, 80a-30, and 80a-37.

and/or remove the submission from the Commission's public website, and may communicate as necessary with the filer to facilitate submission of a version in which such information is redacted;

(2) The Commission may prevent the submission to EDGAR of any submission that poses a cybersecurity threat, including but not limited to, submissions containing any malware or virus, and may communicate as necessary with the filer regarding the submission;

(3) If the Commission determines that a submission has not been processed by EDGAR, or has been processed incorrectly by EDGAR, or contains an error attributable to the Commission staff, the Commission may correct and/or prevent public dissemination of the submission and may communicate with the filer as necessary to facilitate the filer's submission of an amendment to, or a notice of withdrawal of, the filer's submission (a "filer corrective disclosure");

(4) If the Commission determines that a submission is made under an incorrect EDGAR unique identifying number, the Commission may remove and/or prevent public dissemination of the submission and may communicate with the filer as necessary to facilitate a filer corrective disclosure;

(5) If the Commission determines that a dispute exists regarding the authority to make submissions on behalf of a filer, the Commission may prevent a filer's ability to make submissions until the dispute is resolved by the disputing parties or by a court of competent jurisdiction;

(6) If the Commission has reason to believe that an attempted submission may be misleading or manipulative, the Commission may prevent acceptance or dissemination of the submission while evaluating the circumstances surrounding the submission. The Commission may allow acceptance or dissemination if its concerns are satisfactorily addressed;

(7) If the Commission has reason to believe that a filer has made an unauthorized submission or attempted to make an unauthorized submission, the Commission may prevent any further submissions by the filer or otherwise remove the filer's access to EDGAR; and

(8) If the Commission otherwise has reason to believe that, to promote the reliability and integrity of submissions made through EDGAR, it must address a submission issue that cannot be addressed solely by filer corrective disclosure or by the actions set forth in paragraphs (a)(1) through (7) above, the Commission may take such further steps as are appropriate to address the matter and communicate as necessary with the filer regarding the submission.

(b) The Commission may act under paragraph (a) without providing advance notice to the filer or any other person. As soon as reasonably practicable after taking action under paragraph (a), the Commission will provide written notice and a brief factual statement of the basis for the action to the filer and any other person the Commission determines is relevant to the matter ("relevant persons"). The Commission will send the notice and factual statement by electronic mail to the email address on record in the filer's EDGAR account, and to the email address of

any relevant persons. The Commission may also send, if necessary, the notice and factual statement by registered, certified, or express mail to the physical address on record in the filer's EDGAR account and the physical address of any relevant persons.

(c) Nothing in this rule prevents a filer from addressing an error or mistake in the filer's submission by making a filer corrective disclosure.

By the Commission.

Dated: August 21, 2020

Vanessa A. Countryman  
Secretary