

# Electronic Form 144 Filings: Reminder of April 13th Deadline

## WRITTEN BY

Rob Evans

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As April 13th approaches, in-house counsel at public companies should prepare for the electronic Form 144 filing requirement beginning on that date. Form 144 is the filing that officers and directors of public companies file under Rule 144 when they sell shares of their company's stock (other than pursuant to a resale registration statement or for sales at or under 5,000 shares and \$50,000 in value).

Currently, Form 144 is typically filed by mailing a paper form on or before the date a sale order is entered, often with the assistance of the seller's broker. While some brokers are gearing up to assist with electronic Form 144 filings by soliciting consents and obtaining the necessary EDGAR filing codes from their public company officer and director clients, we understand that other brokers will no longer file on behalf of officers and directors.

For public companies that file their officers' and directors' Section 16 reports, the transition to electronic filing of Form 144 is likely to lead to officers and directors requesting that they file Form 144 or requesting they provide the individual EDGAR codes (CIK# and CCC#) necessary for brokers to make the electronic filing.

For any officers and directors who personally file their own Section 16 reports on Forms 4 and 5, the shift to electronic filing of Form 144 is likely to be fairly simple. The SEC has provided guidance and support; the EDGAR filing codes are the same ones used for Section 16 reports. See, <https://www.sec.gov/edgar/filer-information/form-144-resources-filing-electronically>.

When the company or a broker files on behalf of an officer or director, they use their own EDGAR codes to access the filing system. However, for an individual filing on their own, there are requirements in addition to the CIK# and CCC#, including an EDGAR password that must be updated every year (so if they have not sold any stock or filed a Form 4 or 5 recently, their password may be stale). Also, they will need their EDGAR passphrase (different from the password, though easily confused) and a PMAC (password management code).

While it is typical for public companies to consider only their executive officers and directors who are subject to Section 16 reporting to be "affiliates" of the company, there may be some situations where other officers are considered affiliates and will have to file electronic Form 144 when they sell their shares. Also, any other control persons that are considered affiliates that sell under Rule 144 will be required to file an electronic Form 144. In each case, they may need to obtain EDGAR codes if they do not already have them for Schedule 13D or 13G filings.<sup>[1]</sup>

## Takeaways

- In-house counsel at public companies may want to review their approach in advance of the April 13th deadline and consider reminding their officers and directors about the deadline and its consequences, including that the new electronic Form 144 will be immediately public on EDGAR once filed. There are many services that track and publicize insider sales, so the public knowledge of their sales will not be a surprise, but the speed and availability of that public knowledge will be enhanced.
- In-house counsel should update their D&O trading policies and guidance, if necessary, to reflect the new electronic form filing requirement.
- Companies that choose to file Form 144 on behalf of their Section 16 insiders may benefit from expanding their form of power of attorney now used for Section 16 reports to grant power to sign Form 144.
- For officers, directors or other affiliates who have not yet obtained EDGAR codes, they (or the company) will need to file an application with the SEC to receive those codes. The application on Form ID must be signed by the officer in front of a notary, and the SEC staff will take at least two business days to process the application and issue the necessary codes. Those steps need to be done before a sale is made to be able to meet the filing requirement, or risk a broken trade.

If you have any questions about these changes, your regular Locke Lord contact or any of the authors can discuss these matters with you.

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[1] Officers and directors of non-US companies with their principal listing on the NYSE or Nasdaq and that qualify as “foreign private issuers” are not required to file Section 16 reports, so are unlikely to have the necessary EDGAR codes. As a result, in-house counsel at those companies are more likely to be asked to get them ready for electronic filing of Form 144. For foreign private issuers with their principal trading market outside the US, sales in the home market under Regulation S will not require a Form 144 filing (and the attendant publicity).

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