

MEMO# 32710

August 26, 2020

SEC Proposes Rule to Promote the Reliability and Integrity of EDGAR Submissions

[32710]

August 26, 2020 TO: ICI Members

Disclosure Working Group

Operations Committee

SEC Rules Committee SUBJECTS: Compliance

Disclosure

Operations RE: SEC Proposes Rule to Promote the Reliability and Integrity of EDGAR Submissions

On August 21, the Securities and Exchange Commission issued a proposal to allow the Commission or staff to take actions to promote the reliability and integrity of the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) submissions.^[1] In addition, the proposed rule would establish a process for the Commission to notify filers and other relevant persons of its actions under the proposed rule as soon as reasonably practicable.

Comments on this proposal are due to the Commission 30 days after its publication in the Federal Register. The Commission specifically requests comment on notifying filers if the Commission takes action under the proposed rule and whether there are alternative or additional steps to promptly resolve administrative issues related to EDGAR submissions.

Proposed Commission Actions to Resolve EDGAR Submission Issues

Proposed Regulation S-T Rule 15^[2] would permit the Commission to take actions to promote the reliability and integrity of EDGAR submissions, including:

- Redacting, removing, or preventing dissemination of sensitive personally identifiable information that, if released, may result in financial or personal harm;
- Preventing submissions that pose a cybersecurity threat;
- Correcting errors in the system or by the Commission Staff;
- Removing or preventing dissemination of submissions that are made under an incorrect EDGAR identifier;
- Preventing the ability to make submissions when there are disputes over the authority

to use EDGAR access codes;^[3]

- Preventing acceptance or dissemination of an attempted submission that the Commission believes may be misleading or manipulative while evaluating the circumstances surrounding the submission, and allowing acceptance or dissemination if its concerns are satisfactorily addressed;^[4] and
- Preventing an unauthorized submission or removing related access.

The proposed rule also would allow the Commission or staff to take “further appropriate steps” to remedy administrative issues related to submissions. These include circumstances where 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 Commission actions under proposed Rule 15 discussed above.

The proposed rule would not change filers’ responsibilities to ensure the accuracy and completeness of EDGAR submissions. For most issues involving submissions, filers would continue to address errors by submitting a filer corrective disclosure. The Commission intends to continue relying on such corrective disclosures in order to remedy submission errors.

Proposed Notice to Filers of Commission Action

The proposed rule would permit the Commission to address submission issues without advance notice to filers or other relevant persons although it would typically communicate with filers before addressing submission issues. The Commission notes, however, that “there are times when the Commission needs the flexibility to respond promptly to submission issues” to avoid harm to investors and other EDGAR users. For example, this may be necessary to avoid potential threats to EDGAR, to prevent disseminating unauthorized or potentially false or misleading submissions, or to prevent the improper use of filers’ EDGAR accounts.

The Commission proposes to provide notice to the filer and other relevant persons as soon as reasonably practicable after taking action under the proposed rule.

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endnotes

^[1] See Administration of the Electronic Data Gathering, Analysis, and Retrieval System, Investment Company Act Release No. IC-33974 (Aug. 21, 2020), *available at* <https://www.sec.gov/rules/proposed/2020/33-10821.pdf>.

^[2] Proposed 17 CFR 232.15.

^[3] To resolve these issues in the past, Commission staff has asked the disputing parties to

either resolve the dispute themselves or have the matter adjudicated under the relevant state corporation law.

[4] The Commission provides examples where they may have reason to believe that a submission may be misleading or manipulative, including “the filer’s title or role described in the submission 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.”

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