

Reminder: Deadlines for Changes to Forms 4 and 5 Reporting and Electronic Filing of Form 144

March 2023

New Checkbox for Forms 4 and 5 Reporting – Effective April 3, 2023

Starting **April 3, 2023**,¹ all **Forms 4 or 5** filed by insiders of domestic issuers must **include a new checkbox** to identify any transactions made pursuant to a Rule 10b5-1 plan, as we had previewed in our [prior client alert](#).

All Forms 4 and 5 filed on or after this April 3rd date should contain the new checkbox, even if not checked to report any transaction made pursuant to a Rule 10b5-1 plan.

The checkbox below should be included at the top left corner immediately below the existing checkbox:

Check this box to indicate that a transaction was made pursuant to a contract, instruction or written plan that is intended to satisfy the affirmative defense conditions of Rule 10b5-1(c). See Instruction 10.

In addition, where a Form 4 or 5 reports a Rule 10b5-1 plan transaction, the date of adoption of the plan must be disclosed at the bottom of the form in the “Explanation of Responses.”

Required Reporting of Gifts on Form 4 – Effective February 27, 2023

As a reminder, **since February 27, 2023, bona fide gifts have been reportable on Form 4 within 2 business days** (rather than being eligible for deferred reporting on Form 5, which is due 45 days after fiscal year end). For more information see our [prior client alert](#).

Electronic Filing of Form 144 – Effective April 13, 2023

Starting **April 13, 2023** all Forms 144 (which must be filed with the SEC by any “affiliate” of a reporting company relying on Rule 144 for certain resale transactions²) must be filed electronically on EDGAR, rather than through a paper filing. The deadline for a Form 144 is by 10 p.m. on the day the affiliate places their order to sell stock. Further information is in our [prior client alert](#).

Importantly, affiliates required to file Forms 144 should obtain and/or confirm their EDGAR codes needed to make the required electronic filings well ahead of a planned sale. For directors and executive officers selling issuer

¹ The new requirements are technically effective April 1, 2023; however, the first possible date to file is April 3, 2023, since April 1 is a Saturday. Any Rule 10b5-1 plan transactions made starting March 30, 2023 will be captured.

² Specifically, a Form 144 is required to be filed by an “affiliate” when the amount to be sold under Rule 144 during any three-month period exceeds (i) 5,000 shares or units or (ii) has an aggregate sales price greater than \$50,000. An “affiliate” is defined as a person in a relationship of control with the issuer. This traditionally includes executive officers and directors of the issuer, as well as large shareholders.

equity securities, issuers should be prepared to obtain and/or confirm those codes on their behalf, and should also check with brokers used by the company and insiders to confirm that the necessary steps are being taken to make the electronic Form 144 filings on a timely basis.

Directors and executive officers of foreign private issuers (“FPIs”) do not typically have EDGAR codes; therefore, before Form 144 electronic filings become mandatory, FPIs will need to apply for and receive EDGAR codes for all of their directors and executive officers who may rely on Rule 144 for sales of issuer equity securities.¹ For detailed instructions on EDGAR code generation for directors and officers of FPIs, see “Other Reporting Season Considerations: Electronic Form 144 Filings and EDGAR Codes” in our prior memo, [“Key Considerations for the 2023 Annual Reporting Season: Form 20-F and other FPI-Specific Considerations.”](#)

The SEC has created a [Form 144—Resources for Filing Electronically](#) webpage to support Form 144 filers and filing agents in applying for access to EDGAR and in preparing and submitting the electronic Form 144.

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