

The U.S. EDGAR securities filing system and database

An overview and some lessons learned

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1 Introduction

The Electronic Data Gathering, Analysis, and Retrieval system ('EDGAR') is the primary system through which public companies and other market participants submit documents required by law, to be filed with the U.S. Securities and Exchange Commission ('SEC'). Nearly all documents required to be filed with the SEC under the U.S. federal securities laws must be submitted electronically through EDGAR,¹ including mandatory filings by publicly-traded companies disclosing material financial information and ownership reports by certain significant shareholders and public company insiders. Documents filed through EDGAR are, with few exceptions, posted publicly to the EDGAR database on the SEC's website² within minutes of filing.³ The EDGAR database is free to access through the internet, and allows users to review the latest SEC filings and to search and review historic SEC filings made by public companies and others dating back to the mid-90s of the last century (when EDGAR became operational).⁴

1 Rule 101(a) of Regulation S-T adopted under the Securities Act of 1933 identifies the documents that must be filed with the SEC electronically through EDGAR, which includes almost all documents required to be filed with the SEC under the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, and the Investment Company Act of 1940. Rule 101(c) of Regulation S-T specifies the documents that may not be submitted through EDGAR, which are generally limited to confidential treatment requests and information with respect to which the confidential treatment is requested, certain shareholder proposals, SEC staff no-action and interpretive letter requests, and certain documents relating to SEC investigations and litigation. In addition, certain filings required to be made with the SEC under the Investment Advisers Act of 1940, including applications for registration as an investment adviser and applications for withdrawal from registration, are submitted electronically through the Investment Adviser Registration Depository, a system separate from EDGAR.

2 <https://www.sec.gov/edgar/search-and-access>.

3 See, e.g., SEC Webmaster Frequently Asked Questions (last modified Aug 5, 2021) (noting that filings submitted through EDGAR 'are often available on sec.gov within 1-3 minutes of the EDGAR system timestamp. The lag time can increase significantly with high server load.') (available at <https://www.sec.gov/os/webmaster-faq>). See also 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, Fama-Miller Working Paper (Jan. 1, 2017) (finding that of 4,782 Form 4 filings submitted to through EDGAR from March 1 to December 31, 2012, the average (median) time from acceptance of the filing by EDGAR to posting on sec.gov was 40 (36) seconds with a standard deviation of 24 seconds, indicating that there are some large outliers) (available at <https://ssrn.com/abstract=2513350>). [hereinafter Chicago Booth Research Paper].

4 <https://www.sec.gov/edgar/search-and-access>.

Prior to the launch of EDGAR, all filings with the SEC were made in paper form. EDGAR, by providing for electronic filing, improved the speed and efficiency of submitting filings to the SEC along with the SEC staff's processing of those filings. The greater impact of EDGAR, however, is the online EDGAR database, which serves as an efficient means to disseminate to the public newly-filed documents (some of which contain time-sensitive corporate information) and a searchable repository of historic SEC filings that is easily accessible to the public. Neither of which existed prior to EDGAR.

As noted recently by the SEC's Chief Operating Officer, Kenneth Johnson: '[i]nformation is the lifeblood of our markets and EDGAR provides the backbone.'⁵

2 Background: U.S. federal securities laws, a disclosure regime

To fully appreciate the role of EDGAR, it is important to understand that the U.S. federal securities regulations rely largely on mandatory disclosure.

'[U.S.] federal securities laws are designed to protect investors and the integrity of capital markets by mandating disclosure that enables informed investor decision making, boosts investor confidence, and reduces agency costs. In developing the federal mandatory disclosure system, [U.S.] Congress⁶ has eschewed a regulatory regime in which some arm of the government, such as an expert administrative agency like the [SEC], makes investment decisions for individuals or otherwise allocates our economy's financial capital, for example by passing judgment on the merits of securities offerings or on companies more broadly. Instead, the disclosure regime of the federal securities laws is designed to disseminate information to investors, who in turn use this information in making investment decisions.'⁷

Indeed, one of the SEC's primary purposes in developing EDGAR was to 'provide investors, securities analysts, and the public with instant access to corporate disclosure documents, to make more informed investment decisions possible.'⁸

2.1 Principal U.S. securities laws and the SEC

The current U.S. federal securities disclosure regime was created when U.S. Congress enacted the Securities Act of 1933 (the '*Securities Act*') and the Securities Exchange

5 SEC Press Release: Jed Hickman Named SEC's EDGAR Business Office Director (Dec. 30, 2020) (available at <https://www.sec.gov/news/press-release/2020-344>).

6 U.S. Congress is the legislature of the U.S. federal government.

7 Troy A. Paredes, *Blinded by the Light: Information Overload and Its Consequences for Securities Regulation*, 81 WASH. U.L.Q. 417, 422-23 (2003). The SEC has explained the philosophy of mandatory disclosure as follows: '[A] disclosure law would provide the best protection for investors. In other words, if the investor had available to him all the material facts concerning a security, he would then be in a position to make an informed judgment whether or not to buy.' Adoption of Rule 144, Securities Act Release No. 33-5223, 37 Fed. Reg. 591, 592 (Jan. 11, 1972).

8 GAO: SEC Needs to Resolve Key Issues Proceeding with Its EDGAR System (Oct. 1986) (available at <https://www.gao.gov/assets/imtec-87-2.pdf>).

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Act of 1934 (the ‘Exchange Act’),⁹ which remain the two principal U.S. federal securities laws today.¹⁰

The Securities Act prohibits, with express exceptions, the offering or sale of a company’s securities in the United States until a registration statement containing specific disclosures required under SEC rules has been filed with the SEC and become effective.¹¹ The Exchange Act governs subsequent trading of those securities in secondary markets, requiring any company with securities listed on a U.S. securities exchange,¹² or any company with more than \$10 million in assets that has a class of equity securities held by 500 or more persons,¹³ to register those securities and files with the SEC periodic reports designed to keep current the information provided in its initial registration statement.¹⁴

The Exchange Act also created the SEC, the primary U.S. securities regulator, and charged it with administering and enforcing the federal securities laws.¹⁵ The SEC has primary responsibility for adopting rules and regulations defining the disclosure obligations of publicly-held companies under the federal securities laws,¹⁶ and for reviewing¹⁷ and disseminating disclosures, financial statements, and other information filed with the SEC by various filers.

9 Allison Grey Anderson, , The Disclosure Process in Federal Securities Regulation: A Brief Review, 25 Hastings L.J. 311, 315 (1974); Tom C.W. Lin, A Behavior Framework for Securities Risk, 34 Seattle University Law Review 325, 329 (2011).

10 The other U.S. federal securities laws are the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the Sarbanes-Oxley Act of 2002.

11 Securities Act Section 5.

12 Exchange Act Section 12(a).

13 The requirement is technically triggered when the securities are held by 500 or more investors who are not ‘accredited investors’ (Exchange Act Section 12(g)). ‘Accredited investor’ is defined in Rule 501(a) of the Securities Act, and includes any natural person with a net worth (including joint net worth with a spouse) exceeding \$1,000,000, any natural person with an individual income exceeding \$200,000 (or \$300,000 jointly with a spouse), and organizations with total assets in excess of \$5,000,000. If all shareholders are accredited investors, then the investor threshold is 2,000 shareholders.

14 See Exchange Act Sections 12 (setting forth registration requirements) and 13 (requiring periodic reporting). Exchange Act Section 15(d) also requires any issuer that has filed a registration statement that has become effective pursuant to the Securities Act, but that does not have securities listed on an exchange and does not meet the \$10,000,000 total asset and 2,000 investor (500 non-accredited investor) thresholds of Exchange Act Section 12(g), to file periodic reports with the SEC under Exchange Act Section 13 for so long as the securities subject to the registration statement are held of record by at least 300 holders (or at least 1,200 holders in the case of a bank, a bank holdings company, or a savings and loan company).

15 See Exchange Act Section 4(c).

16 See, e.g., Exchange Act Section 13(b)(1) (authorizing the SEC prescribe the information that must be included in periodic filings required under Exchange Act Section 13(a)); see also Law of Securities Regulation, Overview of the SEC Section 16:1.

17 See, e.g., Section 408 of the Sarbanes-Oxley Act of 2002, requiring the SEC to review disclosures made by companies reporting under Section 13(a) of the Exchange Act (including reports filed on Form 10-K), and which have a class of securities listed on a national securities exchange, at least once every three years.

2.2 Example public company reporting obligations

The Securities Act, the Exchange Act, and related rules and regulations detail mandated disclosure requirements primarily through the use of standard ‘forms’ and ‘schedules.’ The forms and schedules specify the information that must be included in a particular filing. While a full list of all of the forms and schedules required to be filed with the SEC through EDGAR is beyond the scope of this article, by way of example, the table below lists the primary disclosure forms that a U.S. company conducting an initial public offering (IPO) of its equity securities in the United States would be required to file with the SEC through EDGAR.¹⁸

Form	
S-1	<i>Registration Statement</i> – Filed to register the public offering of a company’s securities with the SEC. Includes the company’s prospectus and requires disclosure of the company’s audited financial statements (typically for the preceding two years), discussion of the company’s business, a description of material risk factors related to an investment in the company, management’s discussion and analysis of the company’s financial results and condition, and intended use of the offering proceeds.
10-K	<i>Annual Report</i> – Filed annually after the end of each fiscal year. Includes the company’s audited annual financial statements, discussion of the company’s business, updated material risk factors related to an investment in the company, and management’s discussion and analysis of the company’s financial results and condition for its prior fiscal year.
10-Q	<i>Quarterly Reports</i> – Filed following the first three quarters of the company’s fiscal year. Includes the company’s unaudited quarterly financial statements, updated material risk factors related to an investment in the company, and management’s discussion and analysis of the company’s financial results and condition for the prior quarter.
8-K	<i>Current Reports</i> – Required to be filed to publicly disclose recent material events that would be important to investors or the SEC, such as entering into or terminating a material agreement, a significant acquisition or sale of assets, results of operations and financial condition (e.g., earnings press releases), change in accountants, or elections/appointments or departures of company directors and certain company officers. These filings are typically required to be submitted within four business days of the material event.

2.3 Disclosure of ownership and trades by insiders

The Exchange Act also requires shareholders owning more than 5% of a class of a company’s voting equity securities registered under the Exchange Act to disclose this ownership or certain changes in such ownership promptly through filing ownership reports with the SEC through EDGAR on either Schedule 13G (for passive investors) or Schedule 13D (for investors who are not passive).¹⁹

In addition, directors and senior officers of companies with equity securities registered under the Exchange Act, along with shareholders owning more than 10% of such securities, are required to file initial reports disclosing their ownership

18 For a complete list of Form and Schedule types filed through EDGAR, see Section 3.2 of the EDGAR Filer Manual – Volume II, Edgar Filing (version 62, Jun. 2022) (available at <https://www.sec.gov/info/edgar/specifications/edgarfm-vol1-v40.pdf>). [hereinafter EDGAR Filer Manual II]

19 Exchange Act Sections 13(d) and 13(g).

of the company's securities and subsequent reports to disclose changes in such ownership.²⁰ These ownership reports are filed through EDGAR using Form 3 (initial ownership reports), Form 4 (certain changes in ownership) and Form 5 (annual ownership reports).

3 *SEC filings prior to EDGAR: submission and dissemination*

As noted above, all filings were submitted to the SEC in paper form prior to the launch of EDGAR. This resulted in the SEC receiving millions of pages of paper filings each year – estimated in 1985 to be seven million pages (excluding copies) annually²¹ – all of which had to be manually logged and processed by the SEC staff. This also led to a larger problem: the SEC had no efficient method to disseminate this enormous volume of filed paper documents to the investing public. This was not ideal for a regulatory regime that relies largely on the public availability of disclosure documents filed with the SEC to protect investors.

Filers, prior to the launch of EDGAR, would file documents with the SEC by mailing or otherwise delivering paper copies to the SEC's headquarters in Washington, D.C., where the SEC staff would manually log and process the paper filings. The SEC would then disseminate filed documents to the public by distributing paper copies to the SEC's three public reference rooms, one each in Washington, D.C., New York, and Chicago. The public could review and (for a fee) make copies of filings at these three public reference rooms.²² In the late 70s of the last century, it reportedly took between twelve to eighteen business days for a Form 10-K (annual report) filing to go from the SEC's mailroom to the SEC's Washington, D.C. public reference room, although this was cut to three business days by 1982.²³

The SEC's distribution of corporate filings through its three public reference rooms technically satisfied its mandate to disseminate filed documents to the public.²⁴ Actually reviewing and obtaining copies of these documents proved cumbersome and expensive, however. An individual investor needed to either visit one of the three public reference rooms to review and (for a fee) copy filings – where users were reportedly 'left to fend for themselves' and copies of filings 'often misplaced or even stolen'²⁵ – or incur the expense of ordering copies of filings from one of the

20 Exchange Act Section 16(a).

21 U.S. Securities and Exchange Commission, EDGAR: A Status Report 1 (Dec. 1985).

22 GAO, Information Access: Improving Securities and Exchange Commission's Public Reference Room Operations (Jun. 1989) (available at <https://www.gao.gov/assets/ggd-89-85.pdf>). [hereinafter GAO Information Access].

23 Kenneth B. Noble, S.E.C. Data: Difficult Hunt, *The New York Times* (May 19, 1982).

24 See, e.g., GAO Information Access (noting that 'SEC is mandated by law to disseminate [disclosure filings] to the public, although the specifics of how this should be accomplished are left to the agency. SEC makes information available at public reference room facilities in its Washington, D.C.; New York; and Chicago offices.').

25 See, e.g., Kenneth B. Noble, S.E.C. Data: Difficult Hunt, *The New York Times* (May 19, 1982); see also GAO Information Access.

several service bureaus that specialized in retrieving and copying these filings from the reference rooms for clients.²⁶

The SEC's use of public reference rooms to publicly disseminate filed documents also created opportunities for those willing to pay a premium to receive time-sensitive information from newly-filed documents before other investors and the larger public. For example, arbitragers would pay service bureaus – who had teams of employees stationed fulltime within the Washington, D.C. reference room (which received copies of filings before the other two reference rooms)²⁷ – to rush them information from filings as they arrived in the reference room relating to potential corporate takeovers, allowing the arbitragers to trade on this time-sensitive information before the news agencies had an opportunity to report on it.²⁸ This became an accepted practice, with several service bureaus even advertising that they could beat the financial news agencies in getting this time-sensitive information to clients.²⁹

When asked in 1989 whether this method of disseminating SEC filings to the public is fair, SEC Commissioner Joseph Grundfest responded: 'I can't imagine a fairer system given a paper-based technology. [...] Given the technology we have today, what else can we do?'³⁰

4 Development of EDGAR

Problems related to managing millions of pages of paper filings and making those filings available to the public, were exactly what the SEC sought to address back 1983 when it began development of an electronic filing and disclosure system, which eventually become EDGAR.³¹ That year, the SEC reported:

'The [SEC] Chairman has established a staff task force to implement a pilot electronic filing, processing and information dissemination system by the fall of 1984. The objective is to permit investors and securities analysts to access such information on home and office computer screens instantly as it is electronically transmitted to the Commission by issuers. This system will use advanced technology to make the delivery, storage and dissemination of

26 History of EDGAR – EDGAR Online & The SEC's EDGAR Filing System (available at <https://help.edgar-online.com/edgar/history.asp>). [hereinafter History of EDGAR]. See also Alexander C. Gavis, *The Offering and Distributions of Securities in Cyberspace: A Review of Regulatory and Industry Initiatives*, 52 *Bus. Law.* 317, 378 (1996) ('Before the EDGAR database became available on the Internet, an investor could have obtained a copy of a publicly filed document either from the SEC's public reference room or through a commercial information service provider.').

27 See GAO Information Access. This would appear to be because of the Washington, DC. public reference room's proximity to the SEC's Washington, D.C. headquarters.

28 See, e.g., Stella Dawson, *Firms in Cut-Throat Race to Rush Out SEC News*, *Reuters* (Aug. 7, 1989).

29 *Id.*

30 *Id.*

31 *Electronic Filing and the EDGAR System: A Regulatory Overview* (October 2006) (available at <https://www.sec.gov/info/edgar/regoverview.htm>).

information more efficient and less costly, thereby improving the flow of information to investors and facilitating the work of the Commission's staff.'

The SEC commenced testing a pilot electronic filing system in September 1984, with approximately 150 companies volunteering to participate.³² By 1986, over 1,000 volunteer pilot participants had filed over 15,000 documents through the EDGAR pilot system.³³

In July 1992, the operational EDGAR system was made available on a voluntary basis to filers who had participated in the EDGAR pilot system.³⁴ And in April 1993, the SEC commenced a three-year phase-in schedule mandating that filers submit required SEC filings electronically through EDGAR.³⁵ Since May 1996, all U.S. reporting companies have been required to make filings with the SEC electronically through EDGAR,³⁶ while foreign private issuers required to make filings with the SEC have been required to submit most filings through EDGAR since November 2002.³⁷

5 Current EDGAR system

The EDGAR system has largely been able to meet the SEC's objective of permitting investors, through their home and office computers, to access documents filed with the SEC (nearly) instantly, or at least within minutes, after those documents have been electronically transmitted to the SEC through EDGAR. EDGAR, through permitting electronic filings, has also streamlined the process of filing information with the SEC and the SEC's internal management and processing of those filings. The SEC reported that, for its 2021 fiscal year, EDGAR received 2.38 million electronic filings and that its electronic filings database received 40.26 billion electronic search requests.³⁸

32 50th annual Report of the U.S. Securities and Exchange Commission for the Fiscal Year Ended September 30, 1984 (available at <https://www.sec.gov/files/1984.pdf>).

33 U.S. Securities and Exchange Commission Fifty-Second Annual Report (1986) (available at <https://www.sec.gov/files/1986.pdf>).

34 James R. Budge, Office of Disclosure Policy, SEC Division of Corporation Finance, Electronic Filing and the EDGAR System: A Regulatory Review (Jun. 29, 1993) (available at <https://www.sec.gov/news/speech/1993/062993budge.pdf>).

35 Id.

36 History of EDGAR.

37 See Mandated EDGAR Filing for Foreign Issuers, Securities Act Release No. 33-8099 (Jan. 11, 1972) (available at <https://www.sec.gov/rules/final/33-8099.htm>). A 'foreign private issuer' includes any non-U.S. company (other than a non-U.S. government) *unless* (a) more than 50% of the company's outstanding voting securities are held of record (directly or indirectly) by U.S. residents and (b) any one of the following is true: (i) the majority of the company's executive officers or directors are U.S. citizens or residents; (ii) more than 50% of the company's assets are located in the United States; or (iii) the company's business is administered principally in the United States (Securities Act Rule 405 and Exchange Act Rule 3b-4(c)).

38 U.S. Securities and Exchange Commission, Fiscal Year 2023 Congressional Budget Justification and Annual Performance Plan, Fiscal Year 2021 Annual Performance Report, p. 86 (available at https://www.sec.gov/files/fy-2023-congressional-budget-justification-annual-performance-plan_final.pdf).

What follows is a summary of how filers access and make filings through EDGAR, the dissemination of those filings through EDGAR, and certain issues that have arisen with respect to the EDGAR system.

5.1 Applying for EDGAR access as a filer

Applying to file documents through EDGAR is relatively easy. An individual or company desiring to make filings through EDGAR must first complete and submit Form ID, along with a notarized authentication form, electronically through the SEC's website and follow the accompanying instructions.³⁹ Form ID is a short form requiring the applicant to enter the applicant's name, tax ID number, address, and other contact information. Once the applicant's Form ID is approved, which typically takes around two business days, the SEC will send an e-mail to the applicant that includes the applicant's central index key (CIK) number. The CIK is a unique, publicly-available number assigned by the SEC to each filer. The applicant must then log in to EDGAR using the EDGAR Filer Management Website to generate its various EDGAR access codes.⁴⁰ A filer can then use its CIK and EDGAR access codes to submit filings through EDGAR.

EDGAR is an open system – the SEC does not vet or otherwise examine applicants seeking EDGAR access – which means anyone can obtain EDGAR filer credentials to make filings. This open system has worked fairly well, although with the occasional false filing.

For example, in May 2015, purported private equity firm PTG Capital Partners LTD. submitted a filing through EDGAR⁴¹ to announce a takeover bid of Avon Products Inc. – a U.S. publicly-traded company (*Avon*) – at a price per share of \$18.75.⁴² This was nearly three times the then-current market price. Avon shares surged up to 21% immediately following this filing, before Avon issued a public statement disclaiming the takeover bid as false information.⁴³ PTG Capital Partners LTD. in fact never existed, and the filing had allegedly been submitted by a man

39 Form ID is available at <https://www.sec.gov/about/forms/formid.html>. Additional information about preparing and submitting Form ID is available at <https://www.sec.gov/page/edgar-how-do-i-prepare-and-submit-my-form-id-application>.

40 SEC Publication, Understand and utilize EDGAR CIKs, passphrases, and access codes – Generating access codes after your Form ID is approved (available at <https://www.sec.gov/page/edgar-how-do-i-understand-and-utilize-edgar-ciks-passphrases-and-access-codes#section2a>).

41 This filing was made on Schedule TO-C, which is a schedule filed with the SEC when any written communication takes place relating to a tender offer under Exchange Act Sections 14(d)(1) or 13(e)(1), and is often referred to as a tender offer statement.

42 An electronic copy of the filed Schedule TO-C is available on EDGAR at <https://www.sec.gov/Archives/edgar/data/8868/000164016015000003/avptoc1.txt>.

43 SEC Complaint against PTG Partners LTD, PST Capital Group LTD, Nedko Nedev, Strategic Capital Partners Muster Limited, and Strategic Wealth Investments, Inc., filed in the U.S. District Court Southern District of New York on Jun. 4, 2015 (available at <https://www.sec.gov/litigation/complaints/2015/comp-pr2015-110.pdf>); *see also* Press Release: SEC Freezes Profits From Scheme to Manipulate Avon Stock (Jun. 4, 2015) (available at <https://www.sec.gov/news/press-release/2015-110>).

living in Bulgaria who had sought to profit from the temporary increase in the value of Avon shares immediately following announcement of the fake Avon bid.⁴⁴

5.2 Submitting filings through EDGAR

• *EDGAR filing times*

EDGAR is open to accept electronic filings every weekday, excluding U.S. federal holidays, from 6:00 a.m. to 10:00 p.m. Eastern Time.⁴⁵ EDGAR will not accept filings outside these hours. With few exceptions, the transmission of a filing must begin prior to 5:30 p.m. to be deemed filed that day.⁴⁶ This 5:30 p.m. cut-off is particularly important for filings that must be deemed filed by a particular date. A filing transmission that commences after 5:30 p.m., but that is completed before 10:00 p.m., on any business day will be accepted by EDGAR, but will be deemed to have been filed the following business day.⁴⁷

• *Submission format – EDGARizing*

Documents to be filed through EDGAR, with few exceptions,⁴⁸ must first be converted to a special electronic format required by the SEC.⁴⁹ That is, a filer cannot simply submit a Microsoft Word document through EDGAR, but must instead

44 Id. See also SEC Press Release, SEC Charges Fake Filer with Manipulating Fitbit Stock (May 19, 2017), for details of a similar scheme involving a November 2016 fake tender offer issued with respect to a different public company, Fitbit Inc. Available at <https://www.sec.gov/news/press-release/2017-107>.

45 Rule 12(c) of Regulation S-T. See also Section 2 of EDGAR Filer Manual – Volume I, General Information (Version 40, Mar. 2022) (available at <https://www.sec.gov/info/edgar/specifications/edgarfm-vol1-v40.pdf>). For a list of federal holidays, see the EDGAR Calendar for 2022/2023, available at <https://www.sec.gov/edgar/filer-information/calendar>. All times described in this article refer to Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect in Washington, D.C.

46 Rule 13(a)(2) of Regulation S-T. The exceptions, described in Rules 13(a)(3) and 13(a)(4) of Regulation S-T, are for Forms 3, 4 and 5 (ownership reports) filings, correspondence filings (e.g., letters submitted to respond to SEC staff comments to SEC filings, correspondence regarding draft registration statements, and requests for acceleration of effectiveness of a registration statement), and immediately effective registration statements and post-effective amendments filed under Securities Act Rule 462(b). These documents, if filed by 10:00 p.m. on a business day, will be deemed filed that day.

47 Rule 13(a)(2) of Regulation S-T.

48 For ownership reports reported on Forms 3, 4 and 5, and amendments thereto (Forms 3/A, 4/A and 5/A), and for Form D and amendments to Form D filings (Form D/A), EDGAR provides an online form that a filer can complete and submit electronically. See <https://www.sec.gov/page/edgar-how-do-i-submit-online-formsxy>.

49 The EDGAR system only accepts documents submitted in HyperText Markup Language (HTML), American Standard Code for Information Interchange (ASCII), or, when specific criteria are met, Portable Document Format (PDF). See EDGAR filer information – How do I? – Create an HTML document (available at <https://www.sec.gov/page/edgar-how-do-i-create-html-document>); EDGAR filer information – How do I? – Prepare an EDGAR filing in plain text (available at <https://www.sec.gov/page/edgar-how-do-i-prepare-edgar-filing-plain-text>). See also Sections 5.2, 5.2.1, 5.2.2 and 5.2.3 of EDGAR Filer Manual II. The Form 13F Information table may also be submitted in XML using Excel. See EDGAR filer information – How do I? – Create an XML information table for Form 13F using Excel (available at <https://www.sec.gov/page/edgar-how-do-i-create-xml-information-table-form-13f-using-excel>) and Section 5.2.5 of Filer Manual II.

convert that document into the required EDGAR format prior to submission. The conversion process is known as ‘EDGARizing’ and requires the use of special software. Some filers EDGARize documents themselves (if they have the required software), while others outsource this to a financial printer or other service provider.

EDGARizing a filing is not instantaneous, but can take a day or more depending on the number of pages and formatting complexity. The conversion process can also introduce errors into the converted document, particularly formatting errors in financial statements, tables, and charts. Most filers or their legal counsel will review a version of the converted document, referred to as a ‘proof,’ for errors prior to filing.

Another challenge of the EDGARizing process is, once a document has been converted into the required EDGAR format, it is cumbersome and often costly to then make revisions to the converted document. It therefore advantages filers to have documents be as complete as possible prior to conversion.

The requirement that documents be converted to EDGAR-compatible format prior to filing – a time consuming and costly process – has been subject to criticism and comments that the EDGAR system should instead accept filings in formats that are commonly used by businesses and individuals, such as Microsoft Word, Excel, and PDF.⁵⁰

- *XBRL requirements for financial statements*

Filers are required to tag financial statements included in SEC filings using eXtensible Business Reporting Language (‘XBRL’), which is a detailed, prescribed presentation of financial information both with respect to content and formatting.⁵¹ XBRL requirements affect financial statements included in registration statements,⁵² periodic reports (e.g., Forms 10-K and 10-Q), and current reports on Form 8-K.

XBRL is ‘an interactive data format that renders individual financial items in a company’s financial statements machine-readable by coding them using a standard list of data ‘tags’.⁵³ Effective for fiscal periods ending on or after June 15, 2021, the SEC has required all filers to use Inline XBRL format for their financial statements. ‘With Inline XBRL, companies embed their XBRL data directly into their HTML filings instead of providing this data as an exhibit to those reports, registration statements and other filings.’⁵⁴ For data users:

50 See, e.g., Summary of Comments Concerning the Rule Proposal Mandating Edgar Filing for Foreign Issuers, SEC Release Nos. 33-8016, 34-44868 (Feb. 11, 2002) (noting that ‘commenters [...] criticized the current EDGAR filing hours and the inability to make an official filing in PDF.’) (available at <https://www.sec.gov/rules/extra/fredgrcmtsum.htm>).

51 These XBRL requirements are set forth in Rule 405 of Regulation S-T.

52 For registration statements, the XBRL requirement is triggered once a price (or price range) has been determined. XBRL is not required, however, for registration statements that incorporate financials by reference to other filings only.

53 Practical Law Practice Note 7-383-5122, Filing Documents with the SEC.

54 Id.

'Inline XBRL provides an easier way to view, access, and explore the contextual information of the underlying data. For example, users can click on individual tagged data points in the filing to find more information about the data, such as citations and hyperlinks to the relevant accounting guidance, narrative definitions for the values, and reporting period information associated with each value.'⁵⁵

- *Confidential submissions of initial draft registration statements*

Certain filings, such as initial draft registration statements for an IPO, may be submitted through EDGAR for confidential SEC staff review.⁵⁶ Documents filed as part of a confidential submission will not be made publicly available through EDGAR or otherwise during the SEC staff review process. There are a number of reasons a filer may choose to submit an initial draft registration statement confidentially, including to avoid negative publicity if the company later determines to withdraw the draft registration statement and not proceed with the IPO. If the company does proceed with the IPO, any draft registration statements submitted as confidential submissions must be resubmitted by the company through EDGAR as public filings prior to the company's registration statement going effective.⁵⁷

- *Redacting certain sensitive information and confidential treatment requests*

In addition, filers are permitted to redact potentially sensitive information included in agreements related to mergers, reorganizations and acquisitions, and in material contracts that are required to be included as exhibits to SEC filings made through EDGAR.⁵⁸ For information to qualify for redaction, the filer must determine that the information is both not material and would be competitively harmful if disclosed. A filer may also redact sensitive personal information from exhibits included with SEC filings 'if disclosure of such information would constitute a clearly unwarranted invasion of personal privacy (e.g., disclosure of bank account numbers, social security numbers, home addresses, and similar information).'⁵⁹ Filers are not required to submit a confidential treatment application to the SEC to redact this information.

In all other cases, a filer desiring to keep confidential any information otherwise required to be included in an SEC filing, or any exhibit included as part of a filing, must apply to the SEC for confidential treatment of that information by submitting a confidential treatment application to the SEC pursuant to Rule 406 of the Securities Act and Rule 24b-2 of the Exchange Act.⁶⁰ The SEC staff has made clear,

55 SEC: Inline XBRL (last modified Apr. 9, 2020) (available at <https://www.sec.gov/structureddata/osd-inline-xbrl.html>).

56 See Securities Act Section 6(e); see also Staff of the Division of Corporation Finance, Draft Registration Statement Procedures Expanded (June 29, 2017, updated August 17, 2017).

57 Id.

58 Rules 601(b)(2) and 601(b)(10) of Regulation S-T.

59 Rule 601(a)(6) of Regulation S-T.

60 See Confidential Treatment Applications Submitted Pursuant to Rules 406 and 24b-2 (dated Dec. 19, 2019; amended Mar. 9, 2021) (available at <https://www.sec.gov/corpfin/confidential-treatment-applications>). These requests are submitted in paper, and not electronically through EDGAR.

however, that absent unusual circumstances, any disclosure specifically required in a filing under SEC rules or other applicable disclosure requirements, is not an appropriate subject for confidential treatment.⁶¹ The SEC staff has also indicated that it will not grant confidential treatment if the information has already been publicly disclosed, even through inadvertent disclosure (such as a missed redaction in an exhibit to an earlier SEC filing).⁶²

5.3 Public availability of documents submitted through EDGAR

• Availability through the EDGAR database

Documents filed through EDGAR between 6:00 a.m. and 5:30 p.m. Eastern Time on weekdays are, with few exceptions, posted publicly to the EDGAR database on the SEC's website within minutes of filing.⁶³ Documents filed with the SEC after 5:30 p.m. but before 10:00 p.m. Eastern Time will typically be posted to the SEC's website at 6:00 a.m. the next business day.⁶⁴ The few exceptions to this include:

- Initial draft registration statements submitted to the SEC for confidential review, discussed above.
- Correspondence submissions (CORRESP), a filing type used by filers to correspond with the SEC staff (such as to respond to SEC staff comments to a particular filing), are not immediately made public by the SEC through EDGAR or otherwise. If the correspondence relates to the SEC staff's review of a particular disclosure filing, the SEC will generally publicly release the correspondence filing through EDGAR 'no earlier than 45 days after the review of the disclosure filing is complete.'⁶⁵
- Certain non-public, SEC-only filings. These filings are generally intended assist the SEC in monitoring risk and to inform SEC research, and are not made public. One example is Form N-PORT, a filing required to be submitted by investment companies to report monthly portfolio holdings and other sensitive portfolio information.⁶⁶ While Form N-PORT requires investment companies to file reports detailing portfolio holdings and other portfolio information for each month, the SEC disseminates to the public only information reported on Form N-PORT for the third month of each fiscal quarter of the filer.⁶⁷

61 SEC Staff Legal Bulletin No. 1 (with Addendum) – Confidential Treatment Requests (February 28, 1997 (Addendum included: Jul. 11, 2001)).

62 Id.

63 See supra note 4.

64 Id.

65 See SEC Press Release 2005-72, SEC Staff to Begin Publicly Releasing Comment Letters and Responses (May 9, 2005) (available at <https://www.sec.gov/news/press/2005-72.htm>).

66 See Form N-PORT (available at <https://www.sec.gov/files/formn-port.pdf>).

67 The SEC also does not publicly disseminate all of the information reported by a filer in Form N-PORT for the third month of each fiscal quarter. See General Instruction F to Form N-PORT.

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- *EDGAR search and access*

The EDGAR database includes filings dating back to 1994/1995, when the SEC began to phase-in requirements for filings to be submitted through EDGAR. The SEC's website also includes a number of tools for searching and accessing these filings through the EDGAR database.⁶⁸ Users may, for example, search SEC filings using keywords and phrases, and filter results by the name of the filing company or individual, filing date, location of the filer's principal officers, filing type (e.g., Form 10-K filings), or by filing category (e.g., registration statements and prospectuses).⁶⁹ Users are also able to search by the name of the filing company or individual to view all filings submitted by that company or individual. The SEC website further permits users to view the latest filings to be submitted and processed through EDGAR.⁷⁰

The SEC also provides Really Simple Syndication (RSS) web feeds for EDGAR filings, permitting those with RSS readers to subscribe to receive electronic alerts when a particular company or individual submits a filing or when certain types of filings are submitted.⁷¹ These RSS feeds are updated every ten minutes.⁷²

- *EDGAR Public Dissemination Service (PDS) System*

EDGAR, in addition to making filings available through its database on the SEC's website, also disseminates this same filing information through the EDGAR Public Dissemination Service (PDS) System.⁷³ The PDS System is a privately-managed subscription service, launched in 1998, that provides paying subscribers with a dedicated feed of all public filings accepted by EDGAR.⁷⁴ Unlike the online EDGAR database, which employs a 'pull technology' wherein a user must request the data (such as by running a search or by refreshing the EDGAR website) and the SEC's webservers respond to that request, the PDS System is a live feed that employs a 'push technology', wherein information from new SEC filings is immediately sent (or pushed) out to PDS System subscribers.⁷⁵

In October 2014, the *Wall Street Journal* published a front page article summarizing two independent studies both finding that PDS System subscribers had often received new SEC filings seconds to more than a minute before the filings were

68 These search tools are available at <https://www.sec.gov/edgar/search-and-access>.

69 <https://www.sec.gov/edgar/search/>.

70 <https://www.sec.gov/cgi-bin/browse-edgar?action=getcurrent>.

71 See SEC Website Structure Disclosure RSS Fees (modified Mar. 11, 2022) (available at <https://www.sec.gov/structureddata/rss-feeds-submitted-filings>).

72 Id. The RSS feeds are updated Monday through Friday, 6:00 a.m. – 10:00 p.m. Eastern Time.

73 See SEC Announcement, EDGAR Public Dissemination Service (PDS) System (modified Mar. 16, 2021) (available at <https://www.sec.gov/oit/announcement/public-dissemination-service-system-contact.html>). See also EDGAR Public Dissemination Service – New Subscriber Document, pp. 2 - 3 (updated Mar. 29, 2019) (available at <https://www.sec.gov/info/edgar/pds-new-subscriber-040819.pdf>).

74 Id. The PDS System is currently managed by Attain, LLC, a privately-owned company.

75 M. Drake, D. Roulstone and J. Thornock, *The Demand for Mandatory Disclosure: Evidence from Investors' use of the EDGAR Database*, p. 9, Working Paper, Ohio State University (Oct. 2011) (available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.221.4531&rep=rep1&type=pdf>).

made available to the public through the EDGAR database.⁷⁶ The studies further found that, when certain time-sensitive filings were distributed to PDS System subscribers first, market trading volumes and stock prices of companies associated with the filings would react when PDS System subscribers received the information and before the information was posted to the EDGAR database.⁷⁷

Shortly after the *Wall Street Journal* published this article, SEC Chairman Mary Jo White, in a letter to Senate Banking Chairman Tim Johnson, stated that the SEC had reviewed its distribution system and is 'implementing an enhancement to our system designed to ensure that EDGAR filings are available to the public on the SEC website before such filings are made available to PDS subscribers.'⁷⁸

- *2016 EDGAR data breach*

The EDGAR system has also been vulnerable to hackers. In September 2017, SEC Chairman Jay Clayton announced that hackers had gained access to non-public information stored through the EDGAR system in 2016, and may have used this non-public information as the basis for illicit gain through trading.⁷⁹ In 2019, the SEC announced charges against nine defendants for participating in this 2016 scheme to hack the EDGAR system and extract non-public information to use for illegal trading.⁸⁰ According to the SEC, from May 2016 and continuing into at least October 2016, the hackers had used a variety of deceptive means to obtain thousands of non-public 'test filings'⁸¹ from the EDGAR system's servers:⁸²

'In some instances, these test filings included submissions by public companies that contained earnings results and other material information that the companies had not yet released to the public. The hacked material nonpublic information was then transmitted to traders who, in connection with approximately 157 earnings announcements, used it to place profitable securities trades before the information was made public.'⁸³

76 Ryan Tracy and Scott Patterson, *Fast Traders Are Getting Data from SEC Seconds Early*, *Wall Street Journal* (Oct. 29, 2014), summarizing results from Chicago Booth Research Paper.

77 *Id.*

78 Scott Patterson, *SEC Plans to Fix Flaw in Electronic Distribution System*, *Wall Street Journal* (updated Dec. 26, 2014); see also Scott Patterson, Ryan Tracy and Andrew Ackerman, *Gap Narrows in Access to SEC Filings*, *Wall Street Journal* (Nov. 3, 2014).

79 SEC Chairman Jay Clayton, *Statement on Cybersecurity* (Sep. 20, 2017) (available at https://www.sec.gov/news/public-statement/statement-clayton-2017-09-20#_ftnref3).

80 *Press Release 2019-1, SEC Brings Charges in EDGAR Hacking Case* (Jan. 15, 2019) (available at <https://www.sec.gov/news/press-release/2019-1>).

81 The EDGAR system permits filers to submit 'test filings'. Prior to transmitting a filing through EDGAR, filers may elect to submit a 'test filing' to ensure that the filing is in the correct format, free from errors, and will be accepted for filing by EDGAR. A test filing will often consist of all of the documents the filer intends to submit in the actual filing. Test filings are processed by EDGAR in a similar manner to actual filings, but are not made publicly available. See Section 7.6.4 of EDGAR Filer Manual II.

82 *SEC Complaint, U.S. District Court District of New Jersey* (Jan. 15, 2019) (available at <https://www.sec.gov/litigation/complaints/2019/comp-pr2019-1.pdf>).

83 *Id.*

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The SEC has settled charges with two of the nine hackers, and dismissed charges against a third. The remaining alleged hackers, including the two alleged masterminds of the scheme, remain at large.⁸⁴

6 Filing and public disclosure of regulated information in Europe and the Netherlands

No single reporting system, such as EDGAR, exists on a European level or on a Dutch level. Although, in Europe, there is a tendency towards harmonization with, *inter alia*, the aim to complete the EU Capital Markets Union, each European Union ('EU') member state still maintains its own, and thereby varying, disclosure rules. For example, the substantial holding notification thresholds with respect to capital and voting interests differ among EU jurisdictions.⁸⁵

In 2016, the Market Abuse Regulation⁸⁶ entered into force and introduced a more uniform market abuse framework in the EU. The Market Abuse Regulation, however, did not establish a centralized filing system and database on the EU level. Pursuant to the Market Abuse Regulation, any press release on inside information must be filed with the competent financial supervisory authority in the relevant home member state.⁸⁷ In this respect, the Market Abuse Regulation refers to the EU Transparency Directive,⁸⁸ which provides that each member state must ensure that there is at least one officially appointed mechanism for the central storage of regulated information. These mechanisms should comply with minimum quality standards of security, certainty as to the information source, time recording and easy access by end users.⁸⁹ In the Netherlands, the Dutch Financial Markets Authority (*Autoriteit Financiële Markten*, 'AFM') was designated for this purpose.⁹⁰ Where the Market Abuse Regulation appointed the financial supervisory authorities of each of the EU member states responsible for the collection and storage of regulated information, the harmonization of the EU prospectus rules as laid down in the Prospectus Regulation⁹¹ resulted in the obligation for national competent financial supervisory authorities of the EU members states to notify the European Securities and Markets Authority ('ESMA') of the approval of a prospectus and to provide ESMA with an electronic copy of such prospectus.⁹²

84 See Catalin Cimpanu, SEC Settles with Two Suspects in EDGAR Hacking Case (Apr. 10, 2020) (available at <https://www.zdnet.com/article/sec-settles-with-two-suspects-in-edgar-hacking-case/>).

85 https://www.esma.europa.eu/sites/default/files/library/practical_guide_major_holdings_notifications_under_transparency_directive.pdf

86 Regulation (EU) 596/2014 of the European Parliament and of the Council of the European Union of 16 April 2014.

87 Article 17, paragraph 1 Market Abuse Regulation.

88 Directive 2004/109/EC of the European Parliament and of the Council of the European Union of 15 December 2004.

89 Article 21 Transparency Directive.

90 Article 5:25m Dutch financial supervision act (*Wet op het financieel toezicht*).

91 Regulation (EU) 2017/1129 of the European Parliament and of the Council of the European Union of 14 June 2017.

92 Article 21, paragraph 5 Prospectus Regulation.

ESMA must, without undue delay, publish all prospectuses received on its website. Public availability of these prospectuses must be ensured through a storage mechanism providing the public with free access and search functions.⁹³ Notwithstanding the centralized access to prospectuses, as introduced by the Prospectus Regulation, the EU legislator still deemed it important that the competent national financial supervisory authority of the member state that approved the prospectus would publish on its website all the prospectuses approved by it or at least a list of all such approved prospectuses including a hyperlink to the website of the relevant issuer where the prospectus is published. The EU legislator did not elaborate on the rationale behind this double disclosure requirement, but as long as not all disclosure rules and filing obligations are harmonized at the EU level, central storage and filing of certain information at the EU level and storage and filing of regulated information on a national level remains imperative for full transparency. The introduction of a system comparable to EDGAR on an EU level would benefit investors' access to reliable data that can be used and analyzed timely and efficiently. However, the implementation of such central filing and storage system should be enacted only if the disclosure rules applicable to EU listed companies have first been fully harmonized.

In the Netherlands, the AFM has been designated to facilitate the centralized storage and public access of regulated information. This follows from various rules and regulations, including the Dutch financial supervision act, the Prospectus Regulation and the Dutch decree on public takeover offers (*Besluit openbare biedingen Wft*). The AFM does not have a single system, similar to EDGAR, through which listed companies and other market participants can submit all documents required by law to be filed and which documents are subsequently publicly available. However, the AFM has developed an electronic portal through which certain regulated information, including inside information, substantial holding notifications and issued share capital information can be sent securely to the AFM. Other regulated information must be sent to the AFM by (secured) e-mail. The regulated information will be stored in the register of the AFM (www.afm.nl). The regulated information will remain there indefinitely, or at least for as long as required by the relevant statutory provisions, available to the public free of charge. Accordingly, on a national level, there might be a possibility to further harmonize the filing system and link it (directly) to the register of the AFM and thereby provide for a national central filing and storage system with some of the attributes of EDGAR. Once similar implementations occur in the other countries throughout the EU and the reporting systems of all member states are harmonized from a substantive perspective, such that all market participants throughout the EU are subject to one regulatory regime, an electronic filing and reporting system similar to EDGAR (implementing some of the 'lessons learned' mentioned above) should also be adopted at the EU level to facilitate an efficient and modern reporting and retrieval system that would serve all EU market participants well.

93 Article 21, paragraph 6 Prospectus Regulation.