

SEC Pushes Toward the Digital Age, Proposes to Eliminate More Paper-Based Filings

APRIL 5, 2023

On March 22, 2023, the Securities and Exchange Commission (the SEC) proposed amendments that would require electronically submitting certain filings, including Securities and Exchange Act of 1934 (Exchange Act) forms, eliminating related paper-based filing requirements and compelling the use of XBRL or custom XML for certain submissions. The affected filings are primarily associated with self-regulatory organizations (SROs), broker-dealers, security-based swap dealers (SBSDs) and major security-based swap participants (MSBSPs). The SEC stated in its press release that the proposed amendments are designed to modernize the SEC's information collection and analysis methods and are intended to build upon the success of electronic filing relief implemented during the COVID-19 pandemic.

Noting that “[w]e live in a digital age,” SEC Chair Gary Gensler considered the proposal an “important opportunity to require electronic filing for nearly all of the remaining paper filings required under the Exchange Act,” indicating further that, if adopted, he believes that the proposed amendments “would save both registrants and the [SEC] time and resources.”

Proposed Changes Impacting SROs

The current regulatory framework imposes certain paper-based filing requirements on SROs—namely:

- an entity seeking to be registered (or seeking exemption from registration) as an SRO (i.e., as a national securities exchange, national securities association, or clearing agency) must file its respective application form in a paper-based format;^[1]
- registered and exempt SROs must continue to paper file amendments and supplements to existing forms;
- Rule 19b-4(e) requires an SRO to provide, in a paper-based format, information regarding the listing and trading of new derivative securities products;
- Rule 19b-4(j) requires a physical signature to authenticate the required electronic signature; and
- Rule 17a-22 requires clearing agencies to provide certain supplementary materials in physical form to the SEC and to their participants.

If adopted, the SEC's proposal would eliminate such paper filings by (1) requiring registrants to electronically file Forms 1, 1-N, X-15AA-1, X-15AJ-1 and -2, and CA-1 on the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, including amendments or supplements thereto made by registered or exempt SROs; (2) requiring SROs to post information required by Rule 19b-4(e) on their website and eliminating corresponding Form 19b-4(e); (3) removing all wet-ink signature requirements from Rule 19b-4(j); and (4) requiring registered clearing agencies to post any supplementary materials to their internet website, along with shortening the compliance time frame from 10 days to two.

Proposed Changes to Financial and Operational Reporting for Certain Broker-Dealers, OTC Derivatives Dealers, SBSBs, and MSBSPs

Presently, entities subject to certain notice and reporting requirements under Rules 17a-5 (broker-dealers), 17a-12 (OTC derivatives dealers), and 18a-7 (SBSBs and MSBSPs), including the filing of Financial and Operational Combined Uniform Single (FOCUS) reports, are required to paper file certain information, requiring "manual signature" on such filings.^[2] The SEC's proposed amendments would require submissions under these rules, including Forms X-17A-5 and 17-H, to be filed on EDGAR and would eliminate any physical signature requirements. The SEC noted that such filings are ideally situated for registrants to transition to electronic filing as registrants are already permitted (though not yet required) to submit these forms via EDGAR.

Additionally, the proposed amendments aim to revise FOCUS reports to harmonize them with other rules, make technical corrections, and provide additional clarification.

Proposed Additional Filings Required to Be Submitted on EDGAR

Addressing related filings that must currently be paper filed, the SEC proposed to require electronic filing via EDGAR for the following additional Exchange Act notices, reports, and filings:

- notices made pursuant to Rule 17a-19 and on accompanying Form X-17A-19;
- notices (and withdrawals) made pursuant to Rule 3a71-3(d)(1)(vi);
- notices (and amendments) made to the SEC pursuant to Rule 15fi-3(c); and
- compliance reports made pursuant to Rule 15fk-1(c)(2)(ii)(A).

Structured Data Requirements

Finally, along with the proposed shift towards electronic filing, in an effort to ensure consistent disclosure and streamlined data processing, the SEC is proposing that certain electronic disclosures be structured in Inline eXtensible Business Reporting Language, commonly known as "Inline XBRL." Highlighting that certain types of data are better suited to other formats, the SEC proposed that certain disclosures would be captured using custom XML data languages (also referred to as a "schema") that the SEC would create and publish on its website for SROs to use, which would yield smaller file sizes for faster processing. More specifically,

- portions of Forms 1, CA-1, 17-H, and X-17A-5 Part III and related annual filings would be provided in the Inline XBRL structured data language, as well as reports required by Rule 15fk-1(c)(2)(ii)(A);
- information required under Rule 19b-4(e) must use a custom XML-based schema for publishing on an SRO website; and
- SROs would be required to post a rendered PDF version of the custom XML document using a PDF renderer created by the SEC and published on its website for SROs to use.

Addressing concerns regarding the electronic overhaul, SEC Commissioner Caroline A. Crenshaw, in her [statement of support](#), assured investors and the public that, while the changes affect how registrants file with the SEC, the changes would not result in any individuals losing access to paper delivery of documents.

The public comment period for the proposal is open until May 22, 2023, or until 30 days after publication in the Federal Register, whichever is later. As investors and other stakeholders begin to weigh in, Capital Markets Watch

will continue to monitor developments, trends, and activity in this area and will provide updates to our readers as they become available.

¹¹ See, e.g., Form 1 Instructions, Securities and Exchange Commission, <https://www.sec.gov/files/form1.pdf> (“All materials must be filed with the Commission in paper”).

¹² See, e.g., Form X-17A-5 FOCUS REPORT Part II, Securities and Exchange Commission, https://www.sec.gov/about/forms/form17a-5_2.pdf (“The original filed with the [SEC] and the copy filed with the [SIPC] shall be executed with a manual signature . . .”).

4 Min Read

Authors

[Michael J. Blankenship](#)

[Ben D. Smolij](#)

[John P. Niedzwiecki](#)

[Robert Allan Oakes, IV](#)

[Allan R. Jeanjaquet](#)

Related Locations

[Houston](#)

Related Topics

[EDGAR](#)

[Exchanges and Self-Regulatory Organizations](#)

[Broker Dealer Regulatory](#)

[Capital Markets](#)

[Corporate Governance](#)

Related Capabilities

[Capital Markets](#)

[Corporate Governance](#)

Related Regions

[North America](#)

Related Professionals



Michael J. Blankenship



Ben D. Smolij



John P. Niedzwiecki



Robert Allan Oakes, IV



Allan R. Jeanjaquet

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.