



March 22, 2021

Vanessa A. Countryman
Secretary

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Securities Act Release No. 10,911, Exchange Act Release No. 90,773, File No. S7-24-20

Dear Ms. Countryman:

The Society for Corporate Governance (the “Society”) appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission (“SEC” or “Commission”) on the Rule 144 Holding Period and Form 144 Filings (the “Proposed Rule”).

Founded in 1946, the Society is a professional membership association of approximately 3,400 corporate and assistant secretaries, in-house counsel, outside counsel and other governance professionals who serve approximately 1,500 entities, including 1,000 public companies of almost every size and industry. Society members are responsible for supporting the work of corporate boards of directors and the executive managements of their companies on corporate governance and disclosure matters.

Executive Summary

The Proposed Rule seeks to, among other things: update Form 4 to provide greater visibility for disclosure about transactions entered into pursuant to 10b5-1 plans (Statement of Changes in Beneficial Ownership); and update and streamline Form 144 by mandating electronic filing and modifying the time frame for this disclosure (Notice of Proposed Sale of Securities Pursuant to Rule 144).

The Society supports the proposed change to include a “check the box” on Form 4 for trades pursuant to a 10b5-1 plan. With respect to the proposed changes to modernize Form 144 filings, however, we are concerned that the new electronic filing procedure for Forms 144 will effectively preempt the Form 4 filings that companies make for the benefit of their investors. Moreover, requiring two different electronic filings to report the exact same sales transactions is redundant, inefficient, and could cause investor confusion. The Form 144 may at times already cause investor confusion given that the requirement is triggered on an intent to sell, which intent may never actually result in a sale. Further, the requirement to refresh the Form 144 after could add to the confusion as the same shares may be covered by multiple filings.

For these reasons, as more fully described below, the Society respectfully requests that Form 144 filings be eliminated for insiders who are also required to file Form 4s within 2 business days to report the same sales transaction(s).

I. For Transactions Required to be Reported on Form 4 and Form 144, the Proposed Amendments Would Result in Unintended but Meaningful Disclosure Challenges and Potential Investor Confusion

Currently, U.S. public companies file Form 4s under Section 16 as required for the company's Section 16 reportable group, primarily directors and officers. Even though technically, the Form 4 filing obligation is the responsibility of the insider and not the public company, most companies follow the majority/best practice by filing these disclosure forms for their insiders, consistent with previously provided authorizations from the insiders.

Form 144 filings, on the other hand, are typically handled by third-party selling brokers. The Proposed Rule would mandate electronically filed Form 144s and align the time frame for Form 144s and Form 4s: both would be due via Edgar within 2 business days after sales. Unfortunately, this would result in unintended but meaningful practical disclosure problems for investors, insiders, and companies for the following reasons:

First, investors would now see two different disclosure forms – Form 144s and Form 4s – on the EDGAR system disclosing the exact same sales transaction. The Society believes this is redundant, and potentially confusing and misleading to investors.

In addition, because brokers could file the Form 144 before companies are able to file the Form 4, it is very likely that brokers would end up making the first disclosure on significant insider transactions, including transactions by a Chief Executive Officer or Chief Financial Officer. The reason brokers can file a Form 144 before companies can file a Form 4 is simply that companies need the actual sales data for a Form 4, and the brokers are not required to include the sales data on a Form 144. Sales data typically comes after the market close or the following morning after the sales take place. Having the Form 144 filed first on EDGAR would not only be potentially confusing and misleading for investors, it would also impact companies' internal communications processes relating to Form 4 disclosures about significant transactions. Currently, many companies have an internal process in place to prepare their Communications and Investor Relations team to be ready to respond to inquiries about significant transactions based on the Form 4 filings.

The Proposed Rule explains that Form 144 is required pursuant to Rule 144 which was adopted almost 50 years ago, not as a means to communicate information to investors *but instead* to help the SEC monitor the “experiment” that was Rule 144 when it was adopted in 1972.

The Proposed rule asks:

17. Is it common for Form 144 filers to use a filing agent or a third party such as

a broker to prepare and submit the Form 144 filing? If so, would the proposed amendments create any difficulties in the filing process or add costs to the process?

In response to Q. 17, the answer is yes. A small sample of Society members were surveyed on two questions (i) did a third party broker (as opposed to the company itself) file Form 144 for insider stock sales? and (ii) was the company concerned that EDGAR-filed Form 144s could “out” the disclosure prior to the related Form 4 filing, potentially impacting current company processes for internal communications in advance of public disclosures?

- At 87% of the responding companies), the Form 144 is filed by the selling broker (and not by the company) on the insider’s behalf.
- And 80% of the responding companies are concerned about the possibility that an EDGAR-filed Form 144 would “out” significant insider transactions prior to the related Form 4 filing.

II. The Society Supports a “Reasonable Alternative” That Would Eliminate Form 144 for Sales Otherwise Required to be Reported on Form 4

The Proposed Rule also seeks comment on a “reasonable alternative” that would eliminate Form 144, but questions whether such elimination would deprive investors of the sales information, even though such information is in the Form 4. The Society supports and in fact recommends, that the Commission eliminate the Form 144 requirement solely for sales that are otherwise required to be reported on a Form 4 within 2 business days after the transaction. The Proposed Rule asks:

10. Do investors or other market participants have an interest in the information provided by Form 144? Does Form 144 provide important information that would not otherwise be publicly available? Do investors or other market participants obtain benefits from this information? If so, please describe the benefits.

* * *

15. In the alternative, should we eliminate the Form 144 filing requirement altogether?

In its proposal, the SEC acknowledges there are duplicative disclosures on Form 144s and Form 4s:

Some of the disclosures required by Form 144 duplicate the disclosure requirements of Form 4. For example, both Form 144 and Form 4 require disclosure concerning the title of the class of securities being sold, the number of shares subject to sale, the aggregate market value of those shares, and the date of sale.¹

¹ The SEC also acknowledges in its proposal that Form 144 is required pursuant to Rule 144, which was adopted almost 50 years ago, *not* as a means to communicate information to investors *but instead* to help the SEC monitor the “experiment” that was Rule 144 when it was adopted in 1972.

Based on a review of Form 144 as compared to Form 4, the following data points are provided by Form 144 but not by Form 4. The Society believes that these minor differences are not material to investors, and for the most part, the information is otherwise already public or provided in the Form 4.

1. Fact that sales are in reliance on Rule 144

If the SEC continues to need this information to monitor Rule 144 compliance, the best solution would be for the SEC to simply add a “check the box” on Form 4 to the effect of: “Sales pursuant to Rule 144 under the Securities Act of 1933”

2. Name and address of selling broker

The Society does not believe this information is material to investors. If the SEC determines that it still needs this information to monitor Rule 144 compliance, a possible solution would be for the SEC to add a required undertaking in the Form 4 as follows: “The Reporting Person undertakes to provide to the staff of the SEC, upon request, the name and address of each broker that effected sales pursuant to Rule 144 under the Securities Act of 1933”

3. Aggregate Market Value

This information is duplicative as it can be determined based on the Form 4 data regarding the number of shares sold at certain prices.

4. Number of company’s share outstanding as reported by company in its most recent report of statement

This information is available to all investors on the front cover of the company’s most recent SEC periodic report (10Q or 10K).

5. The stock exchange on which the securities are sold

It seems unlikely to the Society that the SEC continues to need this information, and in any event does not appear to be material to investors.

6. Table I (Securities to be Sold) and Table II (Securities sold during the past 3 months).

This information is available on Form 4 disclosures including for previous sales except for “gross proceeds” which can be easily determined based on the Form 4 data regarding the number of shares sold at certain prices.

III. New SEC “Single-User” Interface for both Form 4 and Form 144 Not Helpful As Filings are Made by Separate Entities

Finally, the Proposed Rule also contemplates an “online fillable document” to make electronic filing easier and would also allow filing of both a Form 144 and a Form 4 to report the same sale of equity securities. In other words, since many of the disclosures required by Form 144 are the same as those required by Form 4, and many affiliates required to file Form 144 are also Section 16 filers, the Proposal would provide for an option on EDGAR to file a Form 144 and a Form 4 through a single user interface. This unfortunately will not help because these filings are generally done by two unrelated entities as noted above, and it does not obviate the concerns about redundant disclosures that could cause investor confusion.



Conclusion

For all of these reasons, the Society respectfully requests that Form 144 filings be eliminated for insiders who are also required to file Form 4s within 2 business days to report the same sales transaction(s).

Respectfully submitted,

A handwritten signature in blue ink that reads "Darla C. Stuckey".

Darla C. Stuckey
President and CEO
Society for Corporate Governance

cc: The Honorable Allison Herren Lee
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Caroline A. Crenshaw
John Coates, Acting Director, Division of Corporation Finance