

SEC Adopts Hedging Disclosure Rules

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by Kimberley R. Anderson

The SEC adopted new rules today that will require disclosure of a company's hedging policies in proxy statements or information statements relating to the election of directors.

The new rules are set forth in new Item 407(i) of Regulation S-K and require a company to describe any practices or policies it has adopted regarding the ability of its employees, officers or directors to engage in hedging transactions. The disclosure requirements can be satisfied by providing a "fair and accurate summary" of the hedging practices or policies, or by disclosing the practices or policies in full. If a summary is provided, it must include (i) the categories of persons covered by the policy or practice and (ii) the categories of hedging transactions that are specifically permitted or specifically disallowed. However, if a company has not established a hedging policy or practice it must disclosure that fact or state that hedging transactions are permitted.

The rules do not require that companies prohibit or limit hedging transactions, or that companies adopt a policy relating to hedging. However, we expect that most companies will amend their current policies to address hedging if it is not already covered in existing policies.

Implementation Dates: Except for "smaller reporting companies" and "emerging growth companies", the new disclosure rules apply for proxy statements or information statements filed during **fiscal years beginning on or after July 1, 2019**. For "smaller reporting companies" and "emerging growth companies", the rules apply for proxy statements or information statements filed during **fiscal years beginning on or after July 1, 2020**. Foreign private issuers will not be subject to the new disclosure requirements.

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