

Disclosure of Hedging Policies to Be Required in Proxy and Information Statements

January 17, 2019

For fiscal years beginning on or after July 1, 2019, SEC reporting companies will be required to disclose in proxy or information statements for the election of directors any practices or policies (whether written or not) regarding the ability of employees or directors to engage in certain hedging transactions with respect to equity securities of the company and specified affiliates. The final rules fulfill a mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act. “Smaller reporting companies” and “emerging growth companies” must comply starting with fiscal years beginning on or after July 1, 2020. Listed closed-end funds and foreign private issuers are not subject to the new disclosure requirements. Foreign private issuers are generally not subject to SEC proxy statement requirements and, as a result, are not subject to the new rules.

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New Item 407(i) of Regulation S-K requires companies to describe any practices or policies adopted regarding the ability of employees or directors to purchase securities or other financial instruments, or otherwise engage in transactions, that hedge or offset, or are designed to hedge or offset, any decrease in the market value of equity securities granted as compensation, or held directly or indirectly by the employee or director. This requirement may be satisfied by providing a fair and accurate summary of the relevant practices or policies, including the categories of persons affected and any categories of hedging transactions that are specifically permitted or disallowed, or by disclosing the practices or policies in full.

If the company does not have any such hedging practices or policies, the rule requires the company to disclose that fact or state that hedging transactions are generally permitted.

The rules apply to equity securities of the company, any parent of the company, any subsidiary of the company, or any subsidiary of any parent of the company.

Note that Item 402(b) of Regulation S-K already requires disclosure of a company’s compensation policies—including policies around hedging—affecting named executive officers. Many companies go further and describe policies that address hedging by employees and directors. In addition, current ISS and Glass Lewis proxy voting

guidelines also address hedging policies and related disclosure. For many SEC reporting companies, therefore, the new rules may merely be bringing requirements in line with prevailing disclosure practice.

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Please do not hesitate to contact us with any questions.



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