

# SEC Disclosure Requirements for Equity Grants: What You Need to Know for 2024

November 27, 2023

In December 2022, the U.S. Securities and Exchange Commission adopted new [narrative and tabular disclosure requirements](#) for stock option and stock appreciation right (“SAR”) awards. The new rules primarily focus on grants made in proximity to the release of material nonpublic information (“MNPI”) but also require narrative disclosure regarding the timing of option and SAR grants and how MNPI factors into any grant decisions.

The applicable fiscal year covered by the new disclosure rules is the first full fiscal year beginning on or after April 1, 2023. For calendar year-end companies, this means 2024—the narrative disclosure will be required in the Form 10-K and proxy statement to be filed in early 2025, and the new table will be required in the same filings with respect to stock option and SARs granted in 2024 to named executive officers within the timeframe described below. Accordingly, now is the time for companies to review and consider changes to their equity grant policies and procedures so that the 2025 disclosures reflect each registrant’s desired reporting outcomes.

## OVERVIEW OF ITEM 402(X) REQUIREMENTS

New Item 402(x) of Regulation S-K requires as follows:

- **Narrative Disclosure of Policies and Practices.** Each registrant must provide narrative disclosure in its annual report on Form 10-K and any proxy or information statement describing its policies and practices on the timing of option and SAR grants in relation to the release of MNPI, including (1) how the board determines when to grant such awards, (2) whether the board takes MNPI into account when determining the timing and terms of an award and (3) whether the registrant has timed the disclosure of MNPI for the purpose of affecting the value of executive compensation. This narrative disclosure is required regardless of whether grants of stock options or SARs are actually made in close proximity to the release of MNPI. This disclosure is not required for awards of restricted stock or restricted stock units.

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- **Tabular Disclosure.** If, during the last completed fiscal year, any stock options, SARs or similar option-like awards are granted to a named executive officer within a period starting four business days before and ending one business day after the filing or furnishing of a Form 10-Q, 10-K or 8-K that discloses MNPI (including earnings information but excluding a Form 8-K disclosing only a material new option award grant under Item 5.02(e) of that form), the issuer must provide the following information in a table for each stock option or SAR award to the named executive officer:
    - grant date of the award;
    - number of the securities underlying the award;
    - per-share exercise price;
    - grant date fair value of each award; and
    - the percentage change in the market price of the underlying securities between the closing market price of the security one trading day prior to and one trading day following the disclosure of material nonpublic information.

Although a Form 8-K reporting only the grant of a material new option or SAR award under Item 5.02(e) of the form does not trigger the tabular disclosure, there is no similar exclusion for option or SAR awards reported under Item 5.02(c). For example, if a registrant enters into an employment agreement and grants stock options to a new CEO in connection with their appointment, the registrant would be required to file a Form 8-K reporting, among other things, a brief description of the employment agreement and the option grant under Item 5.02(c)(3) of Form 8-K. This common set of facts would trigger the Item 402(x) table in the next year's proxy (assuming the option grant was effective within four business days before or one business day after the filing of the Form 8-K).

## ACTIONS TO CONSIDER

### Narrative Disclosure

To prepare for the new narrative disclosure requirements, issuers should:

- **Consider the adoption of a formal equity grant policy addressing the timing of stock options and SARs in relation to the disclosure of MNPI.** The policy may either (a) hardwire annual and/or quarterly option and SAR grant dates in advance to

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occur in an open trading window shortly after the filing of a Form 10-Q or Form 10-K, as applicable, to minimize the potential impact of MNPI on the value of the stock on the grant date of the award or (b) allow flexibility with respect to the grant date but prohibit accelerating or delaying the release of MNPI to benefit grantees. If the equity grant policy allows flexibility, the issuer will need to consider (i) whether to delay the grant of stock option or SAR awards scheduled to be made on a fixed date if the issuer happens to possess MNPI at that date (which is generally not recommended as it might signal to the market that the issuer has MNPI) or (ii) whether, if a grant is being considered at a time that the issuer possesses MNPI, different rules would apply depending on the length of time expected to lapse before the MNPI would be publicly disclosed, if at all.

- **Review and update equity grant disclosure for the proxy to be filed in 2025.** Because Item 402(b)(2) already includes as an example of the material information to be disclosed in the Compensation Discussion & Analysis section of the proxy statement “[h]ow the determination is made as to when awards are granted, including awards of equity-based compensation such as options,” proxy statements may currently include disclosure related to the timing of option and SAR awards. However, issuers should (a) assess whether any such disclosure is fully responsive to the new Item 402(x) requirements and (b) reflect any changes that are made to stock option and SAR grant policies and procedures in light of these requirements.

#### Tabular Disclosure

Issuers may want to consider whether to structure grants to try to avoid disclosure in the new table and adding this particular focus on option and SAR grants to named executive officers or, at the least, to be intentional when considering option or SAR grants that could trigger the tabular disclosure. Issuers should consider a “dry run” of a triggering grant so that the required disclosure can be evaluated by the Compensation Committee and any other relevant constituencies.

- **For annual or quarterly grant dates:** To avoid preset annual or quarterly grants being disclosed in the new table, option and SAR grants to named executive officers could be granted on a date that is more than one business day after the later of the issuer’s release of earnings for the most recently completed fiscal period or filing of its annual report on Form 10-K or quarterly report on Form 10-Q. Where board and committee meeting calendars would not allow for this, option and SAR grants could be approved at a compensation committee meeting with a later effective grant date outside of the disclosure window. Under Item 402(d)(2)(ii), if the grant date is different than the date on which the compensation committee acts to grant the award, there will be an extra column in the “*Grants of Plan-Based Awards Table*” for the fiscal year. Note that, even where these steps are taken, an option grant to a

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named executive officer close in time to an unplanned Form 8-K may still result in tabular disclosure.

- **For non-routine, off-cycle grants of options or SARs:** There may be compelling business reasons for registrants to make option or SAR grants that may ultimately be disclosed in the new table, for example in connection with new hires. Alternatively, a policy that all new hire grants are always made as of a preestablished date (e.g., on the first or last business day of each month) might mitigate any appearance of impropriety arising from the timing of the grant. This policy might come under pressure in connection with a high-profile new hire, the announcement of which might be expected to favorably affect the registrant's stock price.

Issuers should also keep in mind that, if non-routine, off-cycle equity awards are entered into in contemplation of or shortly before the planned release of MNPI, the principles outlined in [Staff Accounting Bulletin No. 120](#) may require additional analysis and disclosure as part of an issuer's preparation and filing of financial statements.

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Please do not hesitate to contact us with any questions.



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