Compensation Advisory Partners

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SEC Adopts Final Rules for Disclosure of Hedging Policies

■ By **Shaun Bisman**

On December 18, 2018, the SEC adopted new rules that will require disclosure of a company's hedging policy. The hedging policy was initially proposed by the SEC on February 9, 2015 under Section 955 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. It requires companies to disclose in the proxy (or information statements relating to the election of directors), any practices or policies regarding the ability of employees or directors to engage in certain hedging transactions with respect to company equity.

The rules become effective beginning with proxy statements filed for the first fiscal year beginning on or after July 1, 2019 and apply to all publicly traded U.S. companies (other than foreign private issuers and listed closed-end funds). Smaller reporting companies and emerging growth companies will have an additional year to comply.

The final rules are consistent with much of the original proposal from four years ago, with key changes noted below:

- Companies are required to describe any practices or policies they have adopted regarding the ability of its employees, officers or directors to purchase securities or other financial instruments, or engage in transactions, that 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

- Companies can satisfy the disclosure requirements by either providing a fair and accurate summary of the hedging practices or policies that apply, including the categories of persons they affect and any categories of hedging transactions that are specifically permitted or specifically disallowed, or, alternatively, by disclosing the practices or policies in full

- If the company does not have any such practices or policies, the company must disclose this fact or state that hedging transactions are generally permitted

These requirements are different from the proposed rules which only required a company to disclose whether they permitted employees and directors to hedge.

For most companies, the impact of the rules may likely require only slight modification to existing disclosure, given that many public companies already disclose hedging policies on a voluntary basis.

Click on this link to see the final SEC rule and this link for the press release.