

SEC Proposes Rules for Disclosure of Hedging by Employees, Officers, and Directors

FEBRUARY 13, 2015

Boards of Directors of companies subject to the federal proxy rules should take note of proposed rules released by the Securities and Exchange Commission (SEC) on February 9, 2015 that would enhance corporate disclosure of company hedging policies for directors and employees, including officers.

The proposed rules would implement Section 955 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires the disclosure of company hedging policies applicable to employees and directors. Congress intended Section 955 to provide transparency to shareholders regarding employees' or directors' permission to engage in transactions that mitigate or avoid the incentive alignment associated with equity ownership.

The rules as proposed would require companies to disclose whether directors, officers, and other employees are permitted to hedge or offset any decrease in the market value of the company's or a related entity's equity securities that were granted by the company as compensation or are otherwise held, directly or indirectly, by employees or directors. Disclosure would apply to equity securities of the company, the company's parent or subsidiary, or any subsidiary of any parent of the company that is registered under Section 12 of the Securities Exchange Act of 1934 (Exchange Act).

The proposed rules would apply to all companies that are subject to the federal proxy rules, including smaller reporting companies, emerging growth companies, business development companies, and registered closed-end investment companies with shares listed and registered on a national securities exchange.

Disclosure would be required in a proxy statement or information statement relating to the election of directors.

Importantly, the proposed rules would only require disclosure of a company's hedging policy, if such a policy exists. The rules would not require a company to prohibit hedging transactions, or to otherwise adopt practices or a policy addressing hedging by any category of individuals.

If you have any questions about the SEC proposed rules for hedging disclosure, please contact an attorney in Benesch's Corporate & Securities Practice Group.

Megan L. Mehalko at mmehalko@beneschlaw.com or 216.363.4487

Douglas E. Haas at dhaas@beneschlaw.com or 216.363.4602

Corey R. Sparks at csparks@beneschlaw.com or 216.363.4632