



## Securities Law ADVISORY ■

**DECEMBER 27, 2018**

### SEC Adopts Final Rules on Hedging Disclosures

On December 18, 2018, the Securities and Exchange Commission (SEC) [adopted final rules](#), as mandated by Section 955 of the Dodd–Frank Wall Street Reform and Consumer Protection Act, that require registrants to make new disclosures regarding hedging practices or policies in any proxy statement or information statement relating to the election of directors.

The new Item 407(i) of Regulation S-K requires registrants to detail any practices and policies relating to its employees' and directors' ability to purchase 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 the registrant's equity securities that were either granted to such person as compensation or that are held, directly or indirectly, by such person. The new rules require either a disclosure of policies in full or a summary of policies that include hedging categories that are specifically allowed or prohibited. Lastly, if the registrant has no practices or policies, it should disclose that fact or make known that hedging is generally permitted. The disclosure requirement in Item 407(i) covers equity securities of the registrant, any parent of the registrant, any subsidiary of the registrant, or any subsidiary of any parent of the registrant.

The new rules do not require that reporting companies prohibit or limit hedging transactions, or that reporting companies adopt a specific policy relating to hedging. However, in light of the new rules, reporting companies should review their current policies and consider adding a policy about employees' and directors' ability to engage in hedging transactions to the extent hedging is not already covered.

All proxy statements and information statements for the election of directors filed during fiscal years beginning on or after July 1, 2019, must comply with the new disclosure requirements. For smaller reporting companies and emerging-growth companies, the rules apply for proxy statements and information statements filed during fiscal years beginning on or after July 1, 2020.

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