LEGAL UPDATES

PUBLISHED: FEBRUARY 17, 2015

Service

Securities & Corporate Governance

SEC Proposes Rules Related to Proxy Disclosure of Hedging by Directors, Officers and Employees

On Monday, February 9, 2015, the U.S. Securities and Exchange Commission (the SEC) proposed amendments to implement Section 14(j) of the Securities Exchange Act of 1934 (the Exchange Act) which was added by Section 955 of the Dodd-Frank Act. The proposed rules, if adopted, would require any proxy statement which involves the election of directors to include disclosure of whether employees (and officers) or members of the board of directors of the subject company are permitted to engage in transactions to hedge or offset any decrease in the market value of equity securities granted to the employee (and officers) or board member as compensation, or held directly or indirectly by the employee (and officers) or board members.

The intent of the proposed rules is to provide transparency to shareholders regarding the ability of employees, officers or members of the board to purchase financial instruments that effectively avoid compensation restrictions by hedging against changes in the value of company stock they are required to hold long-term, thereby receiving compensation whether or not the business enterprise performs well. Neither Section 14(j) nor the proposed rules would require companies to prohibit or otherwise regulate hedging transactions by any category of individuals. Rather, they are meant to provide shareholders with additional insight concerning whether the equity holdings and compensation of a company's employees, officers and directors serve to align the interests of such individuals with those of shareholders, and the extent to which the company's governance policies permit them to engage in transactions that could effectively neutralize such alignment.

Limited Exceptions

© 2025 HUSCH BLACKWELL LLP. ALL RIGHTS RESERVED

Unlike some of the SEC's regulatory exceptions applicable to smaller reporting companies and those included in the JOBS Act for emerging growth companies (EGCs), the proposed rules would apply to all companies subject to the federal proxy rules, including smaller reporting companies, EGCs and business development companies, as well as registered closed-end investment companies with shares listed and registered on a national securities exchange.

What This Means to You

Under the proposed rules and instructions, a company would be required to disclose (a) the categories of hedging transactions that are permitted or prohibited; (b) which types of persons are permitted to participate in hedging transactions; and (c) the scope of any permitted transactions. As proposed, this disclosure would apply to equity securities issued by a company, its parents, subsidiaries or subsidiaries of the company's parents that are registered on a national securities exchange or under Section 12(g) of the Exchange Act.

Comments on the proposed rules will be accepted by the SEC for 60 days after the proposed rules are published in the Federal Register.

While these rules are only in the proposal stage, companies should review their policies regarding hedging the economic risks of owning company securities by members of the board, officers and employees in connection with the proposed additional disclosure requirements. Although these proposed rules will not be in effect for the 2015 proxy season, companies should consider the impact such disclosure would have on drafting future proxy statements, together with the evolving positions of investors and proxy advisory firms (such as ISS and Glass Lewis) in response to these rules, in making decisions concerning the adoption of, or any revisions to, corporate hedging policies.

Contact Us

For more information, please contact an attorney in Husch Blackwell's Securities and Corporate Governance Group.

© 2025 HUSCH BLACKWELL LLP. ALL RIGHTS RESERVED