

SEC proposes to significantly reduce executive compensation disclosure for many public companies

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The SEC's proposal would exempt many public companies (~81% in the SEC's estimate) from much of the existing executive compensation disclosure obligations and the say-on-pay vote under a new category of "non-accelerated filer."

Recap of the proposal for the new "non-accelerated filer" category

As explained in our [client update](#) last week, the SEC has [proposed](#) a simplified two-classification system for public reporting companies (down from the existing five categories): non-accelerated filer (NAF) and large-accelerated filer (LAF). Under this proposal, a public company will be categorized as an NAF, unless it satisfies specified public float and time requirements (at least \$2 billion and 60 consecutive months of Exchange Act reporting). The public float threshold would need to be satisfied for two consecutive fiscal years before transition to LAF status. Every IPO company, regardless of public float, will benefit from a minimum five-year on-ramp as an NAF.

The SEC is separately considering changes to the executive compensation disclosure regime more broadly following a roundtable last year, about which we submitted a [comment letter](#).

Final rules could be adopted by the end of this year and apply for the 2027 proxy season for calendar-year companies.

Easing NAFs' compensation disclosure

Under current law, U.S. public companies, excluding emerging growth companies (EGC) and smaller reporting companies, are subject to a rigorous executive compensation disclosure regime under Item 402 of Regulation S-K, which includes a detailed Compensation Discussion and Analysis (CD&A) and multiple tables reporting compensation of the CEO, CFO and at least three other executive officers. Any company with revenue over \$1.25 billion, including IPO companies, and any company with a market cap over \$700 million that is public for at least a year is not an EGC and therefore is subject to these rules.

If final rules are adopted as proposed, NAFs' compensation disclosure obligations will be the same as that for IPO companies or public companies that currently qualify as EGCs and be significantly reduced.

Which disclosure requirements would continue to apply to NAFs?

NAFs would be required to provide in their annual proxy statement (or Form 10-K or registration statement on Form S-1) *only*:

- compensation of three (rather than five) executive officers, consisting of the CEO and two other most highly-compensated executive officers (i.e., CFO inclusion is no longer automatic);¹
- a summary compensation table and related narrative disclosure, reporting full compensation for up to the last two (rather than three) completed fiscal years;
- an outstanding equity awards at fiscal year-end table;
- a director compensation table; and
- additional accompanying narratives (e.g., material terms of certain plans, termination payments and change in control arrangements).

Which disclosure requirements would be eliminated for NAFs?

The SEC's proposal would eliminate the following compensation disclosure obligations for NAFs:

- CD&A (Item 402(b));
- Grants of plan-based awards table (Item 402(d));
- Option exercises and stock vested table (Item 402(g));
- Pension benefits table (Item 402(h));
- Nonqualified deferred compensation table (Item 402(i));
- Pay ratio disclosure (Item 402(u));
- Pay versus performance disclosure (Item 402(v));
- Say-on-pay advisory vote and frequency of such vote (Rule 14a-21);
- Golden parachute table in connection with mergers and the related advisory vote (Item 402(t));
- Compensation committee report (Item 407(e)(5)); and
- Compensation committee interlocks (Item 407(e)(4)).

Of course, any NAF that wishes to provide any eliminated disclosure would be allowed to do that. For example, an NAF that has included a say-on-pay vote in its proxy in prior years might prefer to continue doing the same, in order to address possible proxy advisory firm concerns.

Effective date for proposed changes

No changes in response to this proposal are required or permitted until a final rule is adopted and becomes effective, which could happen in late 2026 or early 2027. Accordingly, public companies are not required to do anything at this time. That said, a company may wish to preliminarily assess its LAF/NAF status (and we are aware that some companies are opting to do that).

The final rule's effective date will drive whether a company benefits from an NAF's reduced compensation disclosure in its 2027 proxy.

As described in our earlier client update, LAF/NAF status would be first assessed as of the end of the fiscal year prior to the final rules' effectiveness. However, under the proposal, companies will be allowed to conduct that assessment as early as the effective date, and must complete this assessment no later than the day prior to the last day of their fiscal year in which the final rules become effective.

Note that once a company qualifies as an NAF, it would retain that status for at least two years before potentially becoming an LAF because of the requirement that a company meet the \$2 billion public float threshold for two consecutive years before a change to LAF status.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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¹ Disclosure about certain former executive officers is still required.