

2017 Proxy Statement Reminders

September 13, 2016 | Client Update | 2-minute read

While several major SEC disclosure requirements remain in the proposal stage and the pay ratio disclosure does not come into play until the proxy statement for 2018 meetings, companies should be aware of a few new items for the 2017 proxy statement:

- *Audit Committee Communications with Auditors.* Item 407 of Regulation S-K requires the audit committee report to state whether the committee has discussed with the independent auditors the matters required to be discussed by the statement on Auditing Standards No. 61, as amended (AICPA, Professional Standards, Vol. 1. AU section 380), as adopted by the Public Company Accounting Oversight Board in Rule 3200T.

Auditing Standards No. 61 was superseded by Auditing Standard No. 16 (Communications with Audit Committees) several years ago. The PCAOB reorganized its auditing standards again in 2015. Effective as of December 31, 2016, Auditing Standard No. 16 will be superseded by Auditing Standard No. 1301. Item 407 is unlikely to be amended, as it did not change to reflect the last PCAOB reorganization, but companies may prefer to use the appropriate reference in their proxy statement disclosures.

- *Say-on-Pay Frequency Vote.* A separate ballot item to allow shareholders to again vote on how often companies should hold their say-on-pay votes must be in the proxy statement if the initial say-on-frequency vote was held in 2011. Rule 14a-21(b) requires issuers to ask shareholders for this vote at least once every six calendar years following the prior frequency vote. Note that Item 24 of Schedule 14A applies to the frequency vote as well as the say-on-pay vote, and includes a requirement to briefly explain the general effect of each vote. This includes whether the vote is non-binding, the current frequency of the say-on-pay votes and when the next say-on-pay vote will occur. [Our 2011 memo](#) also notes some of the Form 8-K disclosure requirements after the frequency vote which remain relevant.
- *Third-Party Director Compensation Disclosure for NASDAQ Companies.* NASDAQ Rule 5250(b)(3) requires its listed companies to disclose, either on their websites or proxy statements, the material terms of all agreements and arrangements between any director or nominee for director, and any person or entity other than the company, relating to compensation or other payment in connection with such person's candidacy or service as a director. Payments that are exempt include those that: (a) relate only to reimbursement of expenses in connection with candidacy as a director; (b) existed prior to the nominee's candidacy (including as an employee of the other person or entity) and the nominee's relationship with the third-party has been publicly disclosed in a proxy statement or annual report; or (c) have already been disclosed under Schedule 14A or Form 8-K.

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.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.