

Comments Focus on Employees in SEC Proposed Rules on Hedging Policy Disclosure

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Twenty-one comment letters have been submitted about the SEC's proposed rules on disclosure of hedging by employees, officers and directors, including ours linked [here](#).

The Council of Institutional Investors (CII) states that 54% of Russell 3000 companies and 84% of the S&P 500 companies prohibit employees from hedging shares. CII supports the proposed requirement that the disclosure should cover all employees, not just officers, in order to obtain information about whether employees are "allowed to effectively avoid restrictions on long-term compensation through hedging." While acknowledging that the disclosure about employees' equity holdings below the executive level may not be as relevant for investors, CII believes that it may still have implications for a company's "bottom line." The Florida State Board of Administration (the SBA) is similarly supportive of requiring companies to disclose the hedging status of all incentive-based compensation, regardless of whether it is given to directors, officers or other employees.

In contrast, the Business Roundtable (the BRT) agrees with the importance of disclosing whether hedging by executive officers is banned, but argues that whether employees are permitted to hedge is not material to investors. The BRT notes that nearly 95% of the 60 publicly traded companies whose CEOs are members of the Business Roundtable prohibit hedging by executive officers and 85% extend that prohibition to directors. The Society of Corporate Secretaries and Governance Professionals (the Society) also endorses limiting the disclosure requirement. In addition, the Society asks the SEC to clarify the difference between hedging and general portfolio diversification, so that the rules would distinguish between instruments that provide exposure to a broad range of issuers or securities, such as broad-based indices, exchange-traded funds, baskets, and those that are principally designed to hedge particular securities or have that effect.

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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