Davis Polk

SEC Adopts Hedging Policy Disclosure Rules and Requests Public Comment on Quarterly Reporting

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The SEC **yesterday announced** that it has adopted the Dodd-Frank hedging policy disclosure rules and **issued a request** for comment on quarterly reporting. We will provide additional information in the form of client memos, but preliminary information based on the fact sheets published includes:

Hedging Rules. Compliance is required in proxy statements during fiscal years beginning on or after July 1, 2019. Companies must disclose any practices or policies it has adopted about the ability of its employees (including officers) or directors to buy securities or other 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 equity securities granted as compensation, or held directly or indirectly by the employee or director. Equity securities include the securities of the company, any parent of the company, any subsidiary of the company, or any subsidiary of any parent of the company.

Companies could either provide a summary, or fully describe, the practices or policies that apply, including the categories of persons they affect and any categories of hedging transactions that are specifically permitted or specifically disallowed. A company that doesn't have any such practices or policies must disclose that fact or state that hedging transactions are generally permitted.

Quarterly Reporting. The Commission is seeking public comment on whether its rules should allow reporting companies, or certain types of reporting companies, flexibility on the frequency of public reporting. In addition, the SEC wants comments on:

- The nature and timing of disclosures that reporting companies must provide in their quarterly Form 10-Q reports, including when the Form 10-Q disclosure requirements overlap with the disclosures such companies voluntarily provide to the public in earnings releases furnished on Form 8-K;
- How the Commission can promote efficiency in periodic reporting by reducing unnecessary duplication in the information that reporting companies disclose and how any such changes could affect capital formation, while enhancing, or at a minimum maintaining, appropriate investor protection; and
- How the existing periodic reporting system, earnings releases, and earnings guidance may affect corporate decision making and strategic thinking, including whether these factors focus on short-term results and foster "an inefficient outlook among reporting companies and market participants."

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