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SEC Proposes Long-Awaited Hedging Disclosure Rule: What Does It Mean and What Should You Do Now?

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On Feb. 9, the SEC proposed a long-awaited rule on disclosure of company equity hedging policies, as required by the Dodd-Frank Act (13 CARE 321, 2/13/15) (13 CARE 376, 2/20/15). The proposed rule would require companies to disclose whether they permit any employees, officers or directors, or any of their ''designees,'' to purchase financial instruments or otherwise engage in transactions that are designed to have the effect of hedging or offsetting any decrease in the market value of company equity securities: s granted as part of compensation; or s held by them, ''directly or indirectly.'' The disclosure would be required in any proxy statement or information statement relating to an election of directors. The widespread view is that this disclosure is unlikely to be required during this current proxy season, ending June 30. The SEC has proposed a disclosure rule only, which does not require companies to prohibit hedging or adopt hedging policies. The major proxy advisory services, however, are vocal in their belief that allowing executive officer and director hedging is a problematic practice, and companies will undoubtedly continue to feel pressure from shareholders to adopt anti-hedging policies for those individuals.

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