

Client Alert

SEC Adopts Final Dodd-Frank Act Hedging Rules

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Independent Board and
Management Advisors

On December 18, 2018, the SEC announced that it has finalized the hedging rules required by the Dodd-Frank Act.¹ The SEC then made the Final Rule release (Release No. 33-10593; File No. S7-01-15) available on its website.²

Final Rule Requirements

- New Item 407(i) of Regulation S-K requires a company to describe any practices or policies it has adopted regarding the ability of its employees (including officers) or directors to purchase 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.
- Companies can satisfy this requirement by providing a summary of 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, or by disclosing the practices or policies in full.
- If the company does not have any such practices or policies, the company must disclose that fact or state that hedging transactions are generally permitted.
- Equity securities for which this disclosure requirement applies are equity securities of the company, any parent, or any subsidiary of the company or any parent.

Timing of Application of Final Rules

Companies must generally comply with these new disclosure rules in proxy and information statements for the election of directors during fiscal years beginning on or after:

- July 1, 2020 for smaller reporting companies and emerging growth companies; and
- July 1, 2019 for public companies;
- But note that the rules will not apply to closed-end funds and foreign private issuers.

¹ See <https://www.sec.gov/news/press-release/2018-291>

² <https://www.sec.gov/rules/final/2018/33-10593.pdf>



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