

SEC Reporting & Compliance Alert

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Reminder To Report Say-on-Pay Frequency Determination

Before closing the books on the 2017 proxy season, companies that held a shareholder vote on the frequency of future say-on-pay votes should confirm that they timely disclosed on an Item 5.07 Form 8-K their decision regarding how frequently they will hold future say-on-pay votes.

Item 5.07(a) of Form 8-K requires companies to disclose the voting results of each matter submitted to a shareholder vote within four business days of the shareholders meeting. When companies hold an advisory shareholder vote to determine the frequency of future say-on-pay votes (the so-called “say-on-frequency” vote), Item 5.07(d) requires companies to disclose their decision, in light of the say-on-frequency vote, as to how often they will include a say-on-pay vote in their proxy materials. Because say-on-frequency votes are required to be held only once every six years, this additional Item 5.07(d) requirement generally is not on annual disclosure checklists.

While a company may disclose its say-on-pay frequency determination in the initial Item 5.07 Form 8-K publishing the voting results of the shareholders meeting, it is permitted to delay disclosure of its determination until the filing of an amendment to such Form 8-K. Such amendment must be filed no later than 150 calendar days following the shareholders meeting, but in no event later than 60 calendar days prior to the Rule 14a-8 shareholder proposal deadline set forth in the proxy statement filed in connection with the meeting.

Given that Item 5.07 is not carved out from the Form S-3 requirement to have timely filed all required reports during the prior 12 months, a company that fails to disclose its say-on-pay frequency determination either in its original Item 5.07 Form 8-K or in a timely filed amendment to such Form 8-K could lose its Form S-3 eligibility. As a result, companies that have held say-on-frequency votes this year but have not yet disclosed their frequency determination should ensure a determination is made and disclosed within the time frames outlined above.

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For additional information regarding annual meeting filing requirements, please see our March 14, 2017, client alert [“Annual Meeting Proxy Statement Reminders.”](#)

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