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Skadden

SEC Reporting & Compliance Alert

If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the last page or call your regular Skadden contact.

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SEC Adopts Hedging Policy Disclosure Requirements

On December 18, 2018, the Securities and Exchange Commission (SEC) adopted final rules that will require hedging policy disclosures. The new rules, mandated by Section 955 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and found in new Regulation S-K Item 407(i), will require additional disclosures in certain proxy and information statements beginning no earlier than the second half of 2019.

In particular, Item 407(i) will require companies to describe their policies or practices regarding the ability of their employees, officers, directors or any of their designees to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars and exchange funds) or otherwise engage in transactions designed to hedge or offset decreases in the market value of the company's equity securities. Under the rules, a company's equity securities include those of the company and of its parents, its subsidiaries and subsidiaries of the company's parents. Companies will be able to satisfy the new rules either by disclosing the practices or policies in full or by providing a fair and accurate description of their hedging practices or policies, including the categories of people affected and types of hedging transactions specifically allowed or not allowed. If a company does not have hedging policies, it will be required to state that fact or to state that hedging transactions generally are permitted.

Most companies will be required to include Item 407(i) disclosures in proxy and information statements with respect to the election of directors during fiscal years beginning on or after July 1, 2019. Smaller reporting companies and emerging growth companies have an additional year — for proxy and information statements with respect to the election of directors during fiscal years beginning on or after July 1, 2020 — to comply with the new disclosure requirements. Listed closed-end funds and foreign private issuers will not be subject to the new rules.

Impacted companies should review their existing hedging policies and procedures to determine what, if any, changes should be made in light of their public disclosure requirements.

For additional information, the SEC's adopting release and related press release are available here.

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