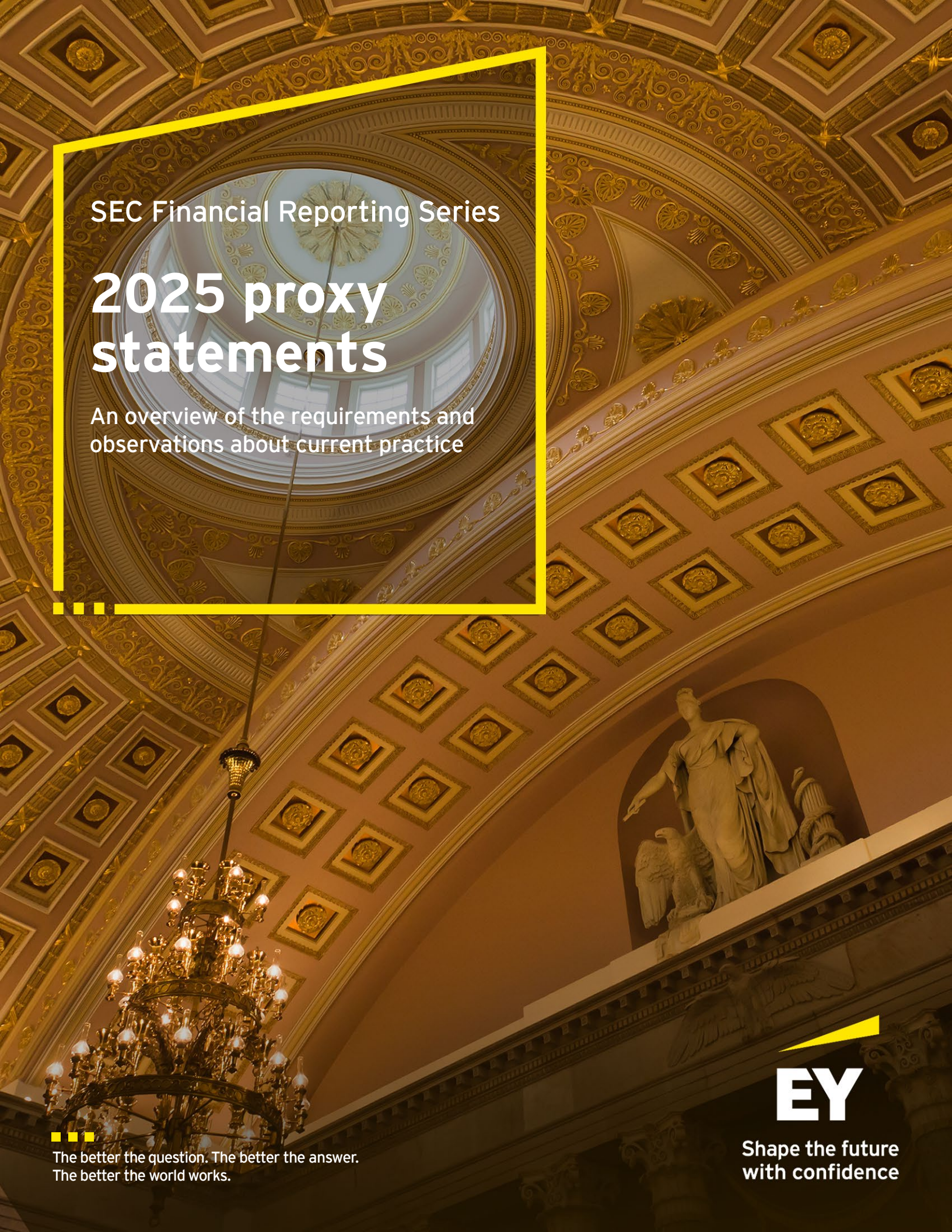

SEC Financial Reporting Series

2025 proxy statements

An overview of the requirements and observations about current practice

The better the question. The better the answer.
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Contents

1 Overview

State corporate laws generally require companies to hold an annual shareholders' meeting and/or special meetings for shareholders to vote on certain material transactions or other proposals. To solicit shareholder votes for annual or special meetings, companies prepare and send to their shareholders proxy statements that disclose information about:

- The date, time, place and matters of business to be conducted at the annual meeting or special meeting
- How and when record or beneficial shareholders can vote
- Other information relevant to the matters to be addressed at the meeting that are being put to a shareholder vote

The specific information required to be disclosed by public companies in their proxy statements is regulated by the Securities and Exchange Commission (SEC or Commission).

This publication is intended to help companies prepare for the 2025 proxy season. It discusses the SEC's proxy rules and proxy disclosure trends, including example disclosures and observations about current practice.

The complexity of a proxy statement is determined primarily by the information shareholders need to make informed decisions and depends on the matters being presented for shareholder vote and other facts and circumstances relating to the registrant. State laws, corporate bylaws and stock exchange requirements, rather than SEC regulations, principally determine what types of corporate actions are subject to shareholder vote. In addition to the specific proposals included in the proxy statement, management may ask for discretionary authority to vote on any unanticipated matters that may arise at the meeting.

This publication summarizes the requirements of Regulation 14A of the Securities Exchange Act of 1934 (Exchange Act), which governs proxy solicitations for most public companies, and Schedule 14A, which sets forth the information required in a proxy statement. In this publication, we refer to Regulation 14A and Schedule 14A collectively as the proxy rules. This publication is not intended to provide complete coverage or detailed explanations of all proxy requirements, or any legal interpretations, or the unique requirements pertaining to investment companies registered under the Investment Company Act of 1940. It also isn't intended to address the requirements of more complex proxy statements, such as those dealing with proxy fights.

Rule 14b of Regulation 14A establishes the obligations of brokers and dealers, and other fiduciaries such as banks, in responding to proxy solicitations. Regulation 14C governs the information that must be provided to shareholders of companies that choose not to solicit proxies. These rules and regulations are not discussed in this publication.

The sample disclosures and recommendations made in this publication are based in part on our review of leading corporate practices. Ernst & Young LLP does not provide legal advice, and we recommend that companies consult experienced securities or corporate law counsel for further guidance.

Proxy trend information in this publication is based on the EY Center for Board Matters' proprietary corporate governance database that covers more than 1,500 public companies listed in the US. Data we refer to in this publication is for S&P 1500 companies unless otherwise noted.

1.1 Section highlights

The following is an overview of how information is organized in this publication:

- Section 1 highlights EY resources, proxy trends and recent developments in proxy-related rulemaking.
- Section 2 discusses the general rules for proxy solicitations described in Regulation 14A under the Exchange Act.
- Section 3 describes the specific disclosures required by Schedule 14A in a typical annual meeting proxy statement in which shareholders are asked to elect directors and adopt or amend a compensation plan.
- Section 4 addresses the requirements of Item 7 of Schedule 14A. It describes the required disclosures about directors and executive officers, as well as the disclosures related to the nominating committee, the compensation committee and the audit committee.
- Section 5 addresses the requirements of Item 8 of Schedule 14A. It describes, in detail, the executive compensation disclosure requirements for the named executive officers (NEOs) and directors.
- Section 6 addresses the requirements of Item 9 of Schedule 14A. It describes the required disclosures about independent auditors and their fees.
- Section 7 addresses the requirements of Item 10 of Schedule 14A. It describes the required disclosures about equity compensation plans.
- Section 8 summarizes financial statement and other disclosure requirements when proxies are solicited for certain purposes other than the annual election of directors.
- Section 9 summarizes the proxy disclosure rules specific to smaller reporting companies (SRCs) and emerging growth companies (EGCs).

This publication reflects proxy rules and SEC staff interpretive positions as of 5 December 2024. When preparing proxy materials, readers of this publication should consider applicable changes to SEC reporting requirements in final rules issued after 5 December 2024.

1.2 EY publications and checklists

EY regularly issues publications that provide interpretive guidance for preparing various SEC reports and filings. These publications are available from any EY representative. Many of them are also available on our AccountingLink[1] website, which provides access to publications produced by our US Professional Practice Group. They include:

- *SEC annual reports — Form 10-K* summarizes the SEC requirements and provides guidance for preparing annual reports on Form 10-K, as well as annual reports to shareholders that must be furnished under the proxy rules.
- *SEC quarterly reports — Form 10-Q* summarizes the rules and practices that apply to quarterly financial accounting and reporting on Form 10-Q. It provides guidance for preparing quarterly reports to shareholders and Form 10-Q.
- *SEC Reporting Update — Highlights of trends in SEC staff comment letters* discusses the SEC staff's comments on public company periodic reports to provide insights on the SEC staff's areas of focus.

[1] The EY AccountingLink website is accessible free of charge at **https://www.ey.com/en_us/technical/accountinglink**.

- *Pro forma financial information — A guide for applying Article 11 of Regulation S-X* summarizes the requirements for pro forma financial information and illustrates how registrants may apply the guidance to different transactions and pro forma adjustments.
- *SEC in Focus* is a quarterly newsletter summarizing current activities and regulatory developments at the SEC. The newsletter provides an update on activities and events relating to SEC matters, including Commission open meetings, final rules and rule proposals, SEC staff areas of focus, SEC personnel changes and SEC enforcement actions.
- Financial reporting briefs provides a snapshot of the major accounting and regulatory developments during the quarter and includes a reference library that lists the EY publications issued during the quarter, along with the links to them on our **EY AccountingLink** website.

Reports about proxy statement disclosures produced by the EY Center for Board Matters are also available on the Center for Board Matters website.[2]

The following is a list of EY checklists intended to help companies prepare annual shareholders' reports and financial and other related information required under Items 13 and 14 of Schedule 14A:

- *GAAP disclosure checklist* assists in determining that the financial statement disclosure requirements of US GAAP and Regulation S-X have been satisfied (EY Form A13).
- *Form 10-K and registration statement checklist supplement to GAAP disclosure checklist* assists in determining that the financial statement and financial statement schedule requirements of Regulation S-X (as required by Items 13 and 14 of Schedule 14A) have been satisfied (EY Form A69).
- *SEC annual shareholders' report checklist* assists in determining whether certain nonfinancial statement disclosures required for the annual shareholders' report, many of which are identical to those of Form 10-K, have been satisfied. Parts II and III of the checklist address the SEC's requirements for management's discussion and analysis (MD&A) (EY Form A150).
- *GAAP disclosure checklist supplement for health care entities* contains the disclosures required by Accounting Standards Codification (ASC) 954 (EY Form A68).
- *GAAP and Regulation S-X checklist supplement for insurance companies* includes disclosures required by ASC 944 and Article 7 of Regulation S-X (EY Form A69B).
- *GAAP and Regulation S-X checklist supplement for banks, bank holding companies and savings institutions* includes disclosures required by ASC 942, ASC 948 and Article 9 of Regulation S-X and summarizes disclosures required by Regulation S-K Subpart 1400, *Disclosure by Bank and Savings and Loan Registrants* (EY Form A69C).
- *GAAP, Regulation S-X and Regulation S-K checklist supplement for oil and gas producing companies* includes the disclosures required by ASC 932 and Regulation S-X and Regulation S-K Subpart 1200, *Disclosure by Registrants Engaged in Oil and Gas Producing Activities* (EY Form A69E).

1.3 Other considerations in preparing proxy statements

This publication is not a substitute for reading the proxy rules, the Schedule 14A instructions or the disclosure instructions in Regulations S-K and S-X. In preparing proxy materials, registrants also should consider the views of the SEC and its staff. We note that the SEC staff views are nonbinding and do not have the force and effect of law, unlike SEC rules and regulations. However, registrants are generally expected to comply with the SEC staff's views.

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[2] The EY Center for Board Matters website is available at **https://www.ey.com/en_us/board-matters**.

Registrants should consider the following Commission rules, interpretive guidance and SEC staff interpretive guidance:

- Regulation S-K provides the requirements for nonfinancial statement disclosures required in annual shareholders' reports and various SEC filings, including proxy statements.
- Regulation S-X provides the requirements for financial statements and schedules.
- Financial Reporting Releases (FRRs) address interpretative guidance and certain revisions to Regulations S-K and S-X. The Codification of Financial Reporting Policies (FRC) contains the current interpretive guidance and rulemaking provided by the SEC relating to financial reporting as published in the Accounting Series Releases (ASRs), and more recently, in FRRs.
- Staff Accounting Bulletins (SABs) are written accounting interpretations and practices followed by the SEC's Division of Corporation Finance and the Office of the Chief Accountant (OCA).
- Staff Legal Bulletins (SLBs) are written interpretations of the requirements of the federal securities laws or related rules and regulations published by the SEC's legal staff.
- The Financial Reporting Manual (FRM)[3] provides views on financial reporting matters from the Division of Corporation Finance's Office of Chief Accountant.
- Compliance and Disclosure Interpretations (C&DIs) are staff interpretations and positions expressed by the SEC's Division of Corporation Finance on various rules and regulations including certain Regulation S-K matters applicable to proxy statements.[4]
- CF Disclosure Guidance Topics and sample comment letters provide observations and views expressed by the staff of the Division of Corporation Finance about disclosures required by existing SEC rules and regulations.
- The highlights of meetings the Center for Audit Quality (CAQ) SEC Regulations Committee holds periodically with the SEC staff describe the staff's views on emerging reporting issues relating to SEC rules and regulations and can be found on the CAQ's website.[5]

The rules and regulations for proxy statement disclosures, shareholder proposals included in proxy statement disclosures and the timing of proxy filings relative to annual meetings are complex. Any materially inaccurate or incomplete information in proxy statements can expose a company and its directors, officers and independent auditors to liability under the federal securities laws.

1.4 Recent developments

A brief summary of recent developments related to proxy statements is provided below.

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[3] The FRM's front cover contains a disclaimer that the "information in this Manual is non-authoritative. If it conflicts with authoritative or source material, the authoritative or source material governs." The FRM is available at **https://www.sec.gov/corpfin/cf-manual**.

[4] The Regulation S-K C&DIs are available at **http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**. The C&DIs related to the Proxy Rules and Schedules 14A/14C are available at **https://www.sec.gov/corpfin/proxy-rules-schedules-14a-14c-cdi**.

[5] The CAQ SEC Regulations Committee highlights are available on the CAQ website at **https://www.thecaq.org/about-us/our-committees/sec-regulations-committee/**.

1.4.1 Evolving proxy communications

Proxy statements continue to evolve as a communication tool that promotes corporate engagement with shareholders about matters to be addressed at the annual shareholders' meeting. Standard management proposals include the annual election of directors, non-binding "say-on-pay" votes for executive compensation, ratification of the selection of the independent auditor and any shareholder proposals that are included in the proxy consistent with relevant SEC rules.

To support a company's views on proposals and to address evolving market and investor developments, proxy statements also generally provide a summary of corporate performance developments and achievements in the prior year as well as disclosures regarding the board's composition, leadership, structure, oversight, priorities and governance philosophy.

In response to increased investor focus on environmental, social and governance (ESG) topics, many companies have enhanced their proxy disclosures in recent years to highlight initiatives and practices on key ESG topics such as diversity and inclusion, human capital management, climate risk, and environmental sustainability more broadly.

In our research on the 2023 proxy season, we noted the following ESG disclosure trends in proxy statement disclosures of Fortune 100 companies:[6]

- Nearly all companies disclosed the board's racial and ethnic diversity in 2023, in line with 2022.
- Eighty-four percent of companies voluntarily included a section on corporate sustainability initiatives, and 95% disclosed which board committees are tasked with ESG oversight responsibilities.

In 2024, the EY Center for Board Matters found that companies are starting to heed investors' interest in how artificial intelligence (AI) is being governed by providing enhanced disclosures on how their boards are overseeing its use. For example, an analysis of AI-related disclosures in the proxy statements of Fortune 100 companies found that:

- Over a quarter of companies cited AI in at least one director biography or in the board skills matrix.
- Eleven percent of companies disclosed that a board committee has some level of AI oversight responsibilities.
- Sixteen percent of companies explicitly cited AI in the board risk oversight section of their proxy statements, with some including an AI-specific subsection to provide further detail on how AI risks are governed.
- Eleven percent of companies disclosed the use of AI frameworks, principles or guidelines aimed at promoting responsible and ethical design, development and application of AI technologies.

Further, the EY Center for Board Matters found that proxy statements are continuing to evolve as communication documents. For example:

- Letters from independent chairpersons, lead directors or the full board often directly communicate governance developments and priorities and demonstrate the strength of independent board leadership.
- There are continuing efforts to reduce boilerplate and legalese in proxy statements, as well as efforts to clarify a company's compensation philosophy and practices in the Compensation discussion and analysis (CD&A) section.

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[6] These statistics are based on the 81 proxy and information statements of Fortune 100 companies filed through 23 June 2023.

- Companies are using graphics, tables, charts and hyperlinks in proxy statements to share comprehensive information in a more concise and understandable way.

EY resources

- EY Center for Board Matters, 2024 proxy season review: Five takeaways

1.4.2 Increased transparency in audit committee reporting

For more than a decade, the EY Center for Board Matters has reviewed the audit committee-related disclosures in the proxy statements of Fortune 100 companies to analyze their evolution. While the year-over-year change in the percentage of companies providing these voluntary disclosures is incremental, there has been a dramatic increase in most categories of disclosures since we began examining them in 2012.

We analyzed 75 companies on the 2023 Fortune 100 list that filed proxy statements from 2012 to 2023 for annual meetings through July 2023. Highlights from the 2023 findings include:

- **Growing number of financial experts**: Sixty-eight percent of companies disclosed audit committees with three or more financial experts, up from 51% in 2012.
- **Independence and performance of the auditor**: Seventy-one percent of the companies disclosed factors used in the audit committee's assessment of the external auditor's qualifications and work quality, up from 15% in 2012. Further, 92% of the companies disclosed that the audit committee considers non-audit fees and services when assessing auditor independence, compared to 23% in 2012.
- **Critical audit matters (CAMs)**: Twenty-eight percent of the companies made references to the audit committee's discussion of CAMs with the external auditor in 2023, up from 20% in 2021.

Trends in audit committee disclosure:

Category	Topic	2023	2021	2017	2012
Disclosures in the audit committee report	Statement that the audit committee is independent	63%	60%	61%	52%
	Name of the audit firm is included in the audit committee report	87%	85%	79%	73%
Audit committee composition	Audit committee with one financial expert (FE)	17%	13%	21%	31%
	Audit committee with two FEs	15%	21%	19%	19%
	Audit committee with three or more FEs	68%	65%	60%	51%
Audit committee responsibilities (re: external auditor)	Statement that the audit committee is responsible for appointment, compensation and oversight of external auditor	85%	84%	81%	41%
Identification of topics discussed	Topics discussed by the audit committee and external auditor	7%	7%	4%	5%
	Disclosure or reference to the audit committee's discussion of CAMs with the external auditor	28%	20%	N/A	N/A
Fees paid to the external auditor	Statement that the audit committee considers non-audit fees and services when assessing auditor independence	92%	92%	85%	23%
	Statement that the audit committee is responsible for fee negotiations	37%	37%	33%	1%
	Explanation provided for change in fees paid to external auditor	16%	13%	32%	13%

Category	Topic	2023	2021	2017	2012
Assessment of the external auditor	Disclosure of factors used in the audit committee's assessment of the external auditor qualifications and work quality	71%	68%	52%	15%
	Statement that audit committee is involved in lead partner selection	73%	73%	73%	1%
	Disclosure of the year the lead audit partner was appointed	20%	17%	17%	3%
	Statement that choice of external auditor is in best interest of company and/or shareholders	77%	75%	71%	5%
Tenure of the external auditor	Disclosure of the length of the external auditor's tenure	80%	79%	65%	29%
	Statement that the audit committee considers the impact of changing auditors when assessing whether to retain the current external auditor	69%	69%	60%	4%
Accessibility of audit committee charters from proxy statements (link goes directly to)	Audit committee and/or all committee charters	7%	7%	11%	8%
	Company main website	35%	36%	36%	43%
	Company site for investor relations	21%	29%	27%	28%
	Company site for corporate governance	37%	28%	27%	21%

EY resources

- EY Center for Board Matters, ***What audit committees are reporting to shareholders***

2 General rules on solicitation of proxies

2.1 Who must file a proxy statement

Regulations adopted under the Exchange Act must be followed whenever proxies are solicited on matters involving any company whose securities are registered under Section 12 of the Exchange Act. Companies that have securities listed on a national securities exchange or have more than $10 million in assets and, for non-banks and non-bank holding companies, 2,000[1] or more holders of any class of equity securities (or 500 or more who are not accredited investors) must register their securities under Section 12. Most companies subject to Section 12 under the Exchange Act meet these criteria.[2]

2.2 Furnishing proxy statements to shareholders

2.2.1 Delivery options for proxy materials

Rule 14a-16, *Internet Availability of Proxy Materials*, requires that proxy materials be posted on a company's website. An issuer has two delivery options, which it can elect on a shareholder-by-shareholder basis:

- A "notice only" option allows the company to post all its proxy materials on the internet rather than send paper copies to shareholders. It requires the company to send shareholders a notice of the internet posting at least 40 days before the shareholder meeting.[3]
- A "full-set delivery" option requires the company to deliver paper copies of proxy materials, but the materials can be delivered within 40 days of the shareholder meeting. It also requires the issuer to post its proxy materials on the internet and include a notice of internet availability of the proxy statement.

A registrant may send proxy materials to shareholders via email if it follows SEC guidance, which typically requires obtaining affirmative consent from individual shareholders. If it has received a shareholder's consent, a company may send proxy materials electronically under either the notice only or full-set delivery option.

Other groups or people other than the registrant also may rely on either model, or a combination of the two, when soliciting proxies on their own (e.g., proxy contest by shareholders).

2.2.1.1 Notice only option[4]

Registrants using the notice only model must send the "Notice of Internet Availability of Proxy Materials" (the Notice) to shareholders at least 40 calendar days before the shareholders' meeting. The Notice must be sent separately from other types of shareholder communications, so it does not get lost among several other types of communications. When the Notice is delivered, the registrant must provide shareholders with a means to vote, including electronic voting over the internet, telephone voting or a combination of these choices.

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1 For an issuer that is a bank or bank holding company, the threshold is 2,000 record holders, even if none are accredited investors.

2 Registrants that meet the definition of an SRC under the Exchange Act may refer to the scaled disclosure items in Regulation S-K. An SRC may provide the financial information in Article 8 of Regulation S-X in place of the financial statements required by Schedule 14A. See section 9 of this publication for a discussion of the requirements of an SRC.

3 Proxy materials issued in connection with a proposed business combination, as defined in Rule 165 under the Securities Act, as well as transactions for cash consideration requiring disclosure under Item 15 of Schedule 14A, cannot be posted on the internet as described in the "notice only" option.

4 SEC Release No. 34-61560, *Amendments to Rules Requiring Internet Availability of Proxy Materials*.

The Notice must provide the following in plain English:

- A prominent legend in bold-face type that states "Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting To Be Held on [insert meeting date]"
- Indication that the communication is not a form of voting and presents only an overview of the more complete proxy materials, which are available by internet or mail
- Specific language regarding the availability of proxy materials on the internet, the website address[5] and instructions for requesting paper or email copies of the proxy materials at no charge
- The date, time and location of the shareholders' meeting
- Clear and impartial description of each matter to be considered at the shareholders' meeting and the issuer's recommendations, if any
- A list of the materials available at the website
- A toll-free number, email address and website at which the shareholder can request a copy of the proxy materials
- Instructions on how to access the form of proxy, including any control/identification numbers the shareholder needs
- Information on how to obtain directions to attend the meeting and vote in person

A proxy card may not accompany the Notice. Instead, the company may send a proxy card to a shareholder no sooner than 10 calendar days after the initial Notice is sent, unless the proxy card is accompanied or preceded by a copy of the proxy statement sent via the same medium (e.g., delivery by paper mail, email or electronic access on a specified website).

Companies do not have to rely on the notice only model for all proxy related materials and may furnish some proxy-related materials on a website and other material physically (or electronically if the shareholder has agreed to such delivery). Shareholders must be allowed to make a permanent election to receive paper or email copies of future proxy materials.

Under the notice only model, proxy materials must be posted on the website on or before the time the shareholder receives the Notice. The materials must remain accessible on the website free of charge through the time of the shareholders' meeting.

The website must be a site other than EDGAR, and registrants may not simply hyperlink to their EDGAR filings. The website address identified on the Notice must be specific enough to lead shareholders directly to the proxy materials.

2.2.1.2 Full-set delivery option

Registrants using the full-set delivery model must distribute paper copies of proxy materials to the shareholders who have not consented to electronic delivery of proxy materials. In addition, they must:

- Provide the information required in the Notice in its proxy materials (or in a separate Notice that would accompany the full set of materials)
- Post its proxy materials on the internet

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[5] On 1 August 2008, the SEC staff published interpretive guidance on how to comply with the securities laws while developing a website as a means for disseminating important information, including proxy materials, to investors. See SEC Release No. 34-58288, *Commission Guidance on the Use of Company Websites*.

The full-set delivery method varies from the notice only option in the following ways:

- A proxy card may accompany the Notice.
- The registrant is not required to provide instructions for requesting paper or email copies of the proxy materials at no charge as the shareholder already would have been provided a full set of the proxy materials along with the Notice.
- The registrant is not required to provide another means for voting (e.g., electronic voting over the Internet, telephone voting or a combination of the two) because a proxy card was included with the proxy materials.
- The registrant is not required to comply with the 40-day Notice deadline.

2.2.1.3 Contested board elections

Shareholders are allowed to elect a director from a full list of candidates nominated by both the company and a dissident in a contested board election for all shareholder meetings of US publicly traded companies. The rules[6] require that universal proxy cards include the names of candidates nominated by both a registrant and the dissident shareholders to allow shareholders to vote by proxy in a manner that more closely resembles how they can vote in person at a shareholder meeting, among other things. While each party in a proxy contest may still produce and distribute proxy cards and accompanying proxy solicitation materials, candidates from the opposing slate will now be included on each party's card.[7]

2.2.2 Beneficial owners

The registrant must ask brokers, dealers, banks, clearing agencies and nominees that hold securities for others (collectively referred to as record holders) whether there are beneficial owners of the securities. The inquiries of record holders believed to hold securities for beneficial owners must be made at least 20 business days before the record date for the shareholders' meeting.

The company can satisfy its obligation to provide beneficial owners with information required by the proxy rules — normally the proxy statement, other proxy soliciting material or the annual shareholders' report — in either of two ways:

- By providing the record holder with the information to be forwarded to the beneficial owners
- By obtaining the names of beneficial owners who have not objected to disclosure of their names, addresses and securities positions and directly mailing the information

A company that elects the notice only option for providing proxy materials to beneficial owners must provide the record holder with all the information required to be included in the Notice within sufficient time for the record holder to prepare, print and send the Notice to the beneficial owners at least 40 calendar days before the date of the shareholders' meeting.

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6 SEC Release No. 34-93596, *Universal Proxy*.

7 The SEC's Division of Corporation Finance has issued C&DIs related to universal proxies under Rule 14a-19. These C&DIs address, among other items, proxy contests, disclosure of the proxy notice deadline when a registrant's advance notice bylaw imposes a deadline that is earlier than the deadline required by Rule 14a-19 and the inclusion of a dissident shareholder's director nominations in the universal proxy card. The C&DIs related to Rule 14a-19 are available at **https://www.sec.gov/corpfin/proxy-rules-schedules-14a-14c-cdi**.

2.2.3 Household deliveries of proxy materials

A single proxy statement or the Notice, as applicable, may be delivered to all security holders at a shared address (i.e., household) if:

- The security holders sharing an address consent (either by affirmative written consent or implied consent)[8] to delivery of a single document to the shared address
- The company or intermediary delivers the proxy statement or the Notice to the shared address
- The company or intermediary addresses the proxy statement or the Notice either to the security holders as a group (e.g., "ABC Corporation Security Holders," "Jane Doe and Household," or "The Smith Family") or to each of the security holders sharing the address (e.g., "Jane Doe and Mary Doe")[9]
- The company includes a separate proxy card together with or subsequent to the delivery of the proxy statement for each consenting security holder sharing an address (i.e., a proxy card cannot accompany the Notice if a proxy statement is not sent at the same time)
- The company includes an undertaking in the proxy statement or the Notice to promptly deliver, upon request, separate copies of the proxy statement[10]

Registrants also may send the annual report to a household of shareholders if these conditions are met.

2.3 Filing proxy information with the SEC

The rules generally allow "plain vanilla" soliciting materials for an annual meeting of shareholders (e.g., the election of directors, the election, approval or ratification of the independent auditors, shareholder proposals) to be filed in definitive (final) form without prior review by the SEC staff. These materials must be filed with the SEC by the day they are published, sent or given to shareholders. However, in certain circumstances (e.g., merger, authorizing additional shares), the preliminary proxy statement and the form of proxy (i.e., the proxy voting card) must be submitted to the SEC for review prior to mailing.

Proxy statements required to be submitted in preliminary form will be immediately available to the public, except in certain circumstances when confidential treatment is obtained, such as in connection with a merger, consolidation, acquisition or similar matter. Regulation M-A significantly limits the instances in which a company may file confidential preliminary materials to those in which the parties to a merger or other business combination transaction limit their public communications about the transaction to those specified in Rule 135 of the Securities Act of 1933 (Securities Act).[11] If, however, the parties elect to publicly disclose, either orally or in writing, information relating to the transaction that goes beyond Rule 135, confidential treatment is not available. Preliminary proxy materials and information statements with respect to a matter specified in Item 14 of Schedule 14A for which confidential treatment has been requested cannot be filed electronically.

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[8] Companies or intermediaries cannot rely on any implied consent to electronically delivered proxy statements to a household.

[9] Companies also may use alternative forms of the address with the written consent of each security holder at the shared address (e.g., the company may address the proxy statement or the Notice only to one individual in the household).

[10] The company must provide the security holders with specific instructions for requesting separate copies of the proxy statement or the Notice.

[11] Rule 135 generally permits prospective offerors (issuers or selling security holders) to issue notices that include no more than the following information: (1) the name of the issuer; (2) the title, amount and basic terms of the securities to be offered; (3) the amount of the offering, if any, to be made by selling security holders; (4) the anticipated time of the offering; (5) a brief statement of the manner and purpose of the offering, without naming the underwriters; (6) whether the issuer is directing its offering only to a particular class of purchasers and (7) any statement or legend required by the laws of any state or foreign country or administrative authority. Other limited information also is permitted under Rule 135 for rights offerings, exchange offers, offers to employees of the issuer or an affiliate or Rule 145(a) offerings (e.g., transfers of assets).

2.3.1 Preliminary materials

When required, a company must file preliminary materials with the SEC at least 10 calendar days, or any shorter period before that date that the SEC authorizes, before mailing or giving the "definitive" or "final" proxy materials to shareholders. Certain preliminary proxy solicitation materials are subject to a filing fee.[12]

Preliminary filings with the SEC are not required if the solicitation relates to a shareholders' meeting at which the only matters to be acted upon are:

- The election of directors
- The election, approval or ratification of independent auditors
- A proposal by a shareholder
- Ratification or approval of a new employee benefit plan or plan amendments
- Approval of executive compensation (i.e., say-on-pay vote or any other shareholder advisory vote on executive compensation)
- Determination of whether the shareholder vote on executive compensation will occur every one, two or three years (i.e., frequency vote)

The exclusion from filing preliminary proxy material does not apply if, in its proxy material, the registrant comments upon, or refers to, a "solicitation in opposition."[13] However, any security holder proposals that are included in the proxy statement under Rule 14a-8 of the Exchange Act are not deemed to be solicitations in opposition, and preliminary proxy materials are not required, even if the registrant includes a statement opposing the security holder proposal. A company that files preliminary proxy material only because it has commented on or referred to a "solicitation in opposition" should indicate that fact in a letter when filing the preliminary proxy material.

The SEC staff may not review the preliminary proxy statement. Thus, unless the SEC staff notifies the registrant within 10 calendar days of receiving the preliminary proxy statement that it will have comments, the definitive proxy statement may be mailed to shareholders.

2.3.2 Definitive materials

The definitive proxy statement, including all required proxy materials, must be filed electronically using the SEC's EDGAR system. The rules for electronic filings on the EDGAR system are included in Regulation S-T and the EDGAR Filer Manual (refer to section 2 of our publication *SEC annual reports — Form 10-K* for additional information about EDGAR filings).

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[12] At the time of filing the proxy solicitation material, the persons upon whose behalf the solicitation is made, other than investment companies registered under the Investment Company Act of 1940, must pay the SEC a fee under Rule 0-11 of the Exchange Act for preliminary proxy material involving acquisitions, mergers, spinoffs, consolidations or proposed sales or other dispositions of substantially all of the company's assets. There is no filing fee for all other proxy submissions and submissions under Rule 14a-6(g) of the Exchange Act, including proxy submissions for the typical annual shareholders' meeting.

[13] For this purpose, a "solicitation in opposition" includes (1) any proxy solicitation by another party opposing a proposal supported by the registrant and (2) any solicitation supporting a proposal that the registrant does not expressly support.

2.3.3 Annual report to shareholders

Registrants must prepare and deliver to their shareholders an annual report that contains at a minimum the registrant's audited financial statements and other items outlined in Rule 14a-3 of the Exchange Act and identified in section 2.4 of this publication. Unlike the annual report on Form 10-K, the annual report to shareholders is not required to include financial statement schedules, exhibits or separate financial statements of certain subsidiaries, equity investees or affiliates. Some companies prepare and deliver to their shareholders annual reports that meet only the reporting requirements in Rule 14a-3 of the Exchange Act. Others simply deliver their annual report on Form 10-K that is prepared to also comply with Rule 14a-3 of the Exchange Act. A registrant must submit its annual reports to shareholders (i.e., the glossy annual report) in electronic format in accordance with the EDGAR Filer Manual.[14]

Securities exchanges may have additional proxy requirements. For example, for Nasdaq-listed companies, shareholder distribution of the company's annual report is required within a reasonable period following the filing of the annual report with the SEC. Companies should consult with legal counsel to evaluate these requirements.

2.4 Information to be provided to shareholders

Management must provide an annual report to all shareholders when soliciting proxy votes for a meeting where directors are to be elected (typically the annual meeting or a special meeting to elect directors). In addition to providing information required in the proxy materials, the company must furnish the annual report to shareholders either before or at the same time as the proxy materials. However, a company may solicit a proxy before the annual report is available if an opposing proxy is being solicited. The annual report to shareholders is not considered part of the solicitation materials to be filed with the SEC or subject to Regulations 14A or 14C, except to the extent that it is incorporated by reference in the proxy statement. The annual report to shareholders, however, is subject to the antifraud provisions of Rule 10b-5 under the Exchange Act.

Rule 14a-3(b) of the Exchange Act requires that companies[15] include the following items in their annual reports:

- Consolidated financial statements — Audited balance sheets for each of the two most recent fiscal years and statements of income, comprehensive income and cash flows for each of the three most recent fiscal years prepared in accordance with Regulation S-X, but financial schedules, exhibits and separate financial statements (e.g., significant investees) may be omitted
- Supplementary financial information — Item 302 of Regulation S-K — Disclosure of material quarterly changes[16] and information about oil and gas producing activities, if applicable
- MD&A of financial condition and results of operations — Item 303 of Regulation S-K
- Changes in and disagreements with accountants on accounting and financial disclosure — Item 304(b) of Regulation S-K, if applicable
- Quantitative and qualitative disclosures about market risk — Item 305 of Regulation S-K
- A brief description of the general nature and scope of the business done by the registrant and its subsidiaries for the latest fiscal year

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[14] SEC Release No. 33-11070, Updating EDGAR Filing Requirements and Form 144 Filings

[15] Refer to section 9 for discussion on annual report requirements for SRCs.

[16] Registrants may omit the summarized financial information from their annual report, unless there has been a material retrospective change (or changes that are material in the aggregate) affecting comprehensive income.

- Segment information — Item 101 of Regulation S-K, paragraph (c)(1) and instructions 1 and 2
- Director and executive officer information — name, principal occupation or employment and name of employer and its principal business
- Market disclosures for the issuer's common equity and related stockholder matters — Item 201(a), (b) and (c) of Regulation S-K[17]
- If the report precedes or accompanies a proxy statement or information statement relating to an annual meeting at which directors are to be elected, a "furnished"[18] stock performance graph that compares the company's cumulative total shareholder return (TSR) during the previous five years with a performance indicator of the overall stock market (i.e., a "broad-based" index), and the company's peer group — Item 201(e) of Regulation S-K
- A statement, which may be in the proxy statement instead of the annual report to shareholders, that the annual report (Form 10-K), including the financial statements and the financial statement schedules, will be provided free of charge upon written request

The requirements in annual shareholders' reports for financial statements (except financial schedules, exhibits and separate financial statements), supplementary information, MD&A, market risk, market disclosures for the issuer's common equity and related stockholder matters, and disagreements with prior independent auditors are identical to the related Form 10-K requirements. In addition, Form 10-K requirements for the description of business, including segment data, and the director and officer information include the related annual shareholders' report requirements.

A registrant is not required to incorporate portions of its annual shareholders' report into its Form 10-K. If the financial statements in the annual shareholders' report are not incorporated by reference into Form 10-K, the SEC expects the financial statements in Form 10-K and the annual shareholders' report to be identical. Further, if there is no incorporation by reference, the other disclosures provided in those documents (i.e., market disclosures on common equity and related stockholder matters, supplementary financial information, MD&A, market risk disclosures, and disagreements with prior independent auditors) must be similar.

Section 404 reports are not required in annual shareholders' reports. However, if internal control over financial reporting is ineffective or the auditor has issued an adverse opinion on internal control over financial reporting (i.e., there are material weaknesses in internal control), the SEC staff has strongly suggested that the issuer consider including the Section 404 reports in the annual shareholders' report to avoid a misleading presentation.

Neither the proxy statement nor the annual report to shareholders is required to include a management certification like those required in annual reports (Form 10-K) and quarterly reports (Form 10-Q) under Section 302 of the Sarbanes-Oxley Act of 2002 (the Sarbanes-Oxley Act). However, the certification required in the annual report on Form 10-K covers any portions of the annual report to shareholders incorporated by reference and any portions of the proxy statement that may be incorporated by reference when the proxy is filed subsequently. Further, the SEC rules adopted to implement Section 302 of the Sarbanes-Oxley Act require issuers to design, maintain and evaluate disclosure controls and procedures that ensure full and timely disclosure in periodic and current reports, as well as definitive proxy materials and information statements.

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[17] The annual shareholders' report is not required to include the disclosures under Item 201(d) of securities authorized for issuance under equity compensation plans, which is required in Item 12 of Form 10-K each year and in Item 10 of Schedule 14A if shareholders are voting on any compensation plan.

[18] As "furnished" information, the stock performance graph will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act except to the extent the registrant specifically incorporates it by reference.

In practice, the typical "glossy" annual report is prepared to satisfy proxy rule disclosure requirements. However, a glossy annual report is not required by the proxy rules, which allow the report to be "in any form deemed suitable by management." The SEC staff has indicated that the proxy rules can be satisfied by providing the required information in an appendix to the annual meeting proxy statement, provided that the attention of shareholders is called to this presentation. The SEC staff encourages the use of supplemental graphs, charts and other illustrations that are consistent with the financial statements. Our publication, *SEC annual reports — Form 10-K*, provides guidance for preparing annual reports to shareholders.

2.5 Executive compensation votes

2.5.1 Say-on-pay vote

Rule 14a-21(a) of the Exchange Act requires non-EGC issuers to provide a nonbinding shareholder vote on executive compensation in a proxy statement at least every three years. The say-on-pay vote applies to an annual meeting of shareholders at which directors will be elected and for which the SEC rules require executive compensation disclosures under Item 402 of Regulation S-K.[19] Shareholders provide an advisory vote on the compensation of an issuer's NEOs as disclosed in the following sections of the proxy statement, which are discussed further in section 5 of this publication:

- CD&A
- The executive summary compensation table
- Grants of plan-based awards table
- Pay versus performance disclosures
- Other required narrative executive compensation disclosures

Newly public non-EGC companies are required to hold the say-on-pay vote at the first annual meeting after their initial public offerings (IPOs).

Practice observations

During the 2024 proxy season — the 14th year of say-on-pay (SOP) votes — investors continued to demonstrate support for most executive compensation packages. The support for executive compensation for S&P 500, S&P 1500 and Fortune 1000 companies through 30 September 2024 averaged 90%, 92% and 91%, respectively. This level of support has remained relatively consistent since the introduction of SOP votes. Only 8% of SOP votes have secured less than 79% support, and just 1% did not achieve majority support.

2.5.2 Say-on-pay frequency vote

Rule 14a-21(b) of Regulation 14A requires non-EGC issuers to provide a nonbinding shareholder vote in a proxy statement at least every six years on whether the say-on-pay vote should occur every one, two or three years. Consistent with the say-on-pay vote:

- The frequency vote is required at an annual meeting of shareholders at which directors will be elected and for which the SEC rules require executive compensation disclosures in accordance with Item 402 of Regulation S-K.
- Except for an EGC, the frequency vote is required at a new public company's first annual meeting.

[19] A separate vote on executive compensation also applies to a special meeting in lieu of an annual meeting.

2.6 Shareholder proposals

Under Rule 14a-8 of Regulation 14A, shareholders may submit a proposal for inclusion in the proxy statement and are entitled to vote on the proposal if they continuously hold at least (1) $2,000 in company securities for at least three years, (2) $15,000 in company securities for at least two years or (3) $25,000 in company securities for one year. Shareholders are prohibited from aggregating their holdings for the purposes of satisfying these criteria.

A shareholder may not submit more than one proposal per shareholders' meeting. The proposal may include a supporting statement for inclusion in the proxy materials; however, the proposal and supporting statement together may not exceed 500 words. Graphics and images may be included in the proposal and supporting statement when they comply with other provisions or Rule 14a-8 and if the total number of words, including words in the graphics, does not exceed 500.

Generally, shareholders must notify management at least 120 calendar days before the date proxy materials would be mailed (based on the prior-year proxy mailing) that they intend to present a proposal for action at the annual meeting. This deadline must have been communicated to shareholders in the proxy statement for the prior year's annual meeting.

2.6.1 Omission of shareholder proposals from the proxy statement

The proxy rules describe the circumstances when management may omit a shareholder proposal from the proxy statement. Some of the reasons for doing so are:

- It is not a proper subject for shareholder action under applicable state or federal law.
- Implementation would involve a violation of state, federal or foreign law by the registrant.
- It is contrary to the SEC's proxy rules and regulations.

It is not appropriate for management to exclude supporting statement language or an entire proposal claiming it is violating proxy rules in the following circumstances: (1) management objects to factual assertions because they are not supported; (2) management objects to factual assertions that, while not materially false or misleading, may be disputed or countered; (3) management objects to factual assertions because those assertions may be unfavorably interpreted or (4) management objects to statements because they represent, but are not identified as, the opinion of the shareholder proponent or referenced source. In these cases, management must demonstrate objectively that the proposal or statement is materially false or misleading for it to be excludable (SLB 14B).

2.6.2 Excludable proposals

Shareholder proposals that management may exclude from proxy statements include:

- A proposal that relates to a personal claim or grievance not shared by other shareholders at large
- A proposal that relates to operations that account for less than 5% of the company's total assets at the end of its most recent fiscal year and less than 5% of gross sales and net income for its most recent fiscal year and that are not otherwise significant to the registrant's business (i.e., "economic relevance exception")
- A proposal that deals with a matter beyond the registrant's power to implement
    - A proposal that would require a director to maintain their independence at all times would be considered excludable on the basis that a board of directors lacks the power to make sure that its chairman or any other director would retain their independence at all times. In contrast, if the

proposal does not require a director to maintain independence at all times, or contains language providing management the opportunity to cure a director's loss of independence (i.e., consistent with the SEC standards relating to audit committee independence as set forth in Rule 10A-3 and Section 10A(m) of the Exchange Act), the proposal would not be considered excludable (SLB 14C)

- A proposal relating to director elections that would do or does any of the following things:
  - Disqualifies a nominee who is standing for election
  - Removes a director from office before their term expires
  - Questions the competence, business judgment or character of one or more nominees or directors
  - Seeks to include a specific individual in the company's proxy materials for election to the board of directors
  - Seeks to affect the outcome of the upcoming election of directors
- A proposal directly conflicting with a proposal to be submitted by management at the same meeting
- A proposal relating to matters dealing with the conduct of ordinary business operations (i.e., an "ordinary business exclusion")

A company seeking to exclude a proposal from its proxy statement may submit a no-action request to the SEC staff, and the staff may concur, disagree or decline to state a view with respect to the company's asserted basis for exclusion. The staff has historically informed the proponent and the company of its position in a response letter, but it now responds orally to some requests. The staff has said it intends to issue response letters only when it believes doing so would "provide value" (e.g., provide broadly applicable guidance), but it maintains a public record of all of the requests it receives and its responses to those requests.

2.6.3 Ordinary business exclusion

The SEC staff has said that the policy underlying the ordinary business exclusion rests on two central considerations: the subject matter of the proposal and the degree to which the proposal seeks to micromanage the company by probing too deeply into matters that are so complex that shareholders, as a group, would not be in a position to make an informed judgment.[20] Proposals that relate to ordinary business matters but focus on sufficiently significant social policy issues (e.g., proposals to approve equity compensation plans for only senior executive officers and directors or to minimize or eliminate operations that pose an environmental or public health risk) would not be excludable because they would transcend day-to-day business matters, as discussed in SLB 14A and SLB 14C.

Furthermore, proposals may transcend a company's day-to-day business operations even if the significant policy issue relates to its core business. Following a court ruling that addressed whether a shareholder proposal was excludable under the ordinary business exclusion, the SEC staff confirmed that it intends to continue applying this exclusion as it previously did (SLB 14H).

[20] See SEC Release No. 34-40018, *Amendments to Rules on Shareholder Proposals*, adopted 28 May 1998.

In November 2021, the SEC staff issued SLB 14L, which said the SEC staff will no longer focus on the significance of a policy issue to a particular company but will instead consider whether the proposal raises issues with a broad societal impact, such that those issues transcend the ordinary business of the company. Under this approach, the SEC staff no longer expects a company's no-action request to include a discussion that reflects the board of directors' analysis of the particular policy issue raised and its significance.

In evaluating a company's argument that a proposal seeks to micromanage the company, the staff has said that it would take a measured approach and focus on the level of granularity sought in the proposal and whether and to what extent the proposal inappropriately limits discretion of the board or management. In one case, for example, the staff objected to a company's position that it could exclude a shareholder proposal that requested that the company set GHG emissions targets for its operations and products but did not impose a specific method for doing so because it sought to micromanage the company. The staff concluded that the proposal did not seek to micromanage the company to a degree that would justify exclusion.

2.6.4 Conflicts with company proposals

When requesting the exclusion of a shareholder proposal, management should specify the points of conflict with the company's proposal.[21]

The SEC staff has issued guidance that significantly limits a company's ability to exclude shareholder proposals that "directly conflict" with its own proposal. Examples of such conflicting proposals include a company's proposal seeking shareholder approval of a merger and a shareholder proposal asking shareholders to vote against the merger; or a company's proposal seeking approval of a bylaw provision requiring the chief executive officer (CEO) to be the chair of the board and a shareholder proposal that asks for the separation of the chair and CEO positions.

A direct conflict would not exist if a shareholder could logically vote for both the company and shareholder proposals. For example, a company's proposal allowing a shareholder holding at least 5% of the company's stock for at least five years to nominate up to 10% of the directors would not directly conflict with a shareholder's proposal that would permit a shareholder holding at least 3% of the company's stock for at least three years to nominate up to 20% of the directors. The SEC staff believes that both proposals seek to give shareholders the ability to include their nominees for director (along with management's nominees) in the proxy statement (i.e., proxy access) and a reasonable shareholder could logically vote in favor of both proposals (SLB 14H).

A company may also exclude a shareholder proposal if it has been rendered moot (i.e., the company already has substantially implemented the proposal). For example, shareholder proposals that would provide a frequency vote would be rendered moot if the company has adopted a policy on the frequency vote consistent with the majority of votes cast in the most recent frequency vote. If an issuer adopts a frequency vote that is consistent with the majority of votes cast in the most recent shareholder frequency vote, the company also could exclude shareholder proposals that would provide an advisory vote or seek future advisory votes on executive compensation with the same scope as the say-on-pay vote.[22]

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[21] Ibid.

[22] See SEC Release Nos. 33-9178 and 34-63768, *Shareholder Approval of Executive Compensation and Golden Parachute Compensation*, adopted 25 January 2011.

In addition, a company may exclude a shareholder proposal if:

- It substantially duplicates a proposal previously submitted by another shareholder that will be voted on at the meeting.
- It deals with substantially the same subject matter as a prior proposal voted on at one or more annual or special shareholders' meetings held in the last five years, provided the proposal received less than 5% of the votes cast if it was voted on at only one meeting during this period, less than 15% of the votes cast if it was voted on at the second of two meetings during this period and less than 25% of the votes cast if it was voted on at the latest of three or more meetings during this period.
- It relates to specific amounts of cash or stock dividends.

2.6.5 Notification protocols

If management asserts that a proposal received from a shareholder may be properly omitted from the proxy statement, it must notify the SEC in writing at least 80 calendar days before filing the definitive proxy materials. This notification should consist of six copies of the following items:

- The proposal
- The reasons for omitting it
- An opinion from legal counsel supporting the omission if the proposal is excluded based on matters of law

At the same time, management also must notify the proponent of its intention to omit the proposal and provide a copy of its reasons, including any supporting opinion of counsel.

Management may include a statement opposing any shareholder proposal in the proxy statement. If such a statement is to be made, management must provide a copy of its statement to the shareholder who originally submitted the proposal no later than 30 calendar days before filing the definitive proxy materials. The shareholder may notify the SEC if they believe management's statement is false or misleading.

2.6.6 Use of websites

An increasing number of shareholder proposals and supporting statements include website addresses that provide more information about the proposal. Websites may be included if the information on the website only supplements the information contained in the proposal, and shareholders can understand what the proposal requires without reviewing the website (otherwise, the proposal may be considered vague and indefinite and could be excluded). If a referenced website is not operational at the time of submission, it may be included if the proponent provides the company with the materials that will be published on the website before the company files its definitive proxy materials. If the information on a referenced website changes after submission of a proposal, and the company believes the revised information renders the website reference excludable under Rule 14a-8, the company may be allowed to exclude the website reference (SLB 14G).

2.6.7 2024 trends in shareholder proposals

Shareholder proposals shape the corporate governance landscape and reflect emerging issues. About 870 shareholder proposals were submitted to S&P 1500 or Fortune 1000 companies for 2024 annual meetings through 30 September 2024. Of these proposals, around 67% went to a vote. The table below shows the breakdown of shareholder proposals voted this year by category and average support.[23]

Shareholder proposal categories	% of total shareholder proposals voted	Average support
Environmental/social	64%	16%
Anti-takeover/strategic	14%	54%
Board-focused	12%	29%
Compensation	10%	14%

Trend highlights include:

- Environmental and social proposals can seek enhanced disclosure of company policies and practices on a wide range of topics and in some cases request specific action (e.g., enhance equal employment opportunity policies). In recent years, we also have seen a surge of anti-ESG shareholder proposals pushing against company efforts related to environmental and social matters. In 2024, those proposals garnered just 2% support on average. Excluding anti-ESG shareholder proposals, average support for environmental and social shareholder proposals leveled off to 19% in 2024 from 21% the previous year. Just 18% of those proposals secured more than 30% support, down from a high of 55% in 2021. Average support has declined in recent years across key environmental and social topics, including climate risk and energy transition and diversity, equity and inclusion.
- AI proposals calling for increased transparency and ethical guidelines garnered 27% support, while other proposals addressing board committee oversight, management of AI-generated misinformation and negative human impacts from AI averaged 15% support.
- Strategic/anti-takeover proposals seeking to reduce a company's takeover protections and encourage a company to consider changes in strategy to enhance shareholder value support jumped to 54% support this year, up from 34% in 2023. These changes were driven largely by an increase in proposals to eliminate supermajority votes, which averaged 72% support, up from 58% last year. These proposals request that each supermajority voting requirement in the charter and bylaws be replaced by a simple majority voting requirement. Other proposals that won majority support included those asking a company to allow shareholders to call special meetings and repeal bylaw changes made without shareholder consent.
- Board-focused shareholder proposals address accountability topics including board leadership, structure and composition. In 2024, the three most common proposals were requests for the appointment of an independent board chair, proposals to adopt a majority vote to elect directors and proposals to eliminate classified boards.
- Compensation-related shareholder proposals generally seek to eliminate certain practices that are viewed as problematic by shareholders, increase equity ownership policies for management and increase links between pay and long-term performance. In 2023, an emerging area of focus was shareholder proposals asking companies to link executive pay to environmental matters.

[23] Information is based on SEC filings for S&P 1500 and Fortune 1000 companies with annual meetings through 30 September 2024.

EY resources

- EY Center for Board Matters, ***2024 proxy season review: Five takeaways***
- EY Center for Board Matters, ***How board committee responsibilities and structures are changing*** (accessible from the Center for Board Matters website)

2.7 Proxies not solicited

If management does not solicit proxies in connection with an annual or other meeting of shareholders, the issuer is required under Regulation 14C of the Exchange Act to file with the SEC and to transmit to shareholders information equivalent to that which would be required if a proxy solicitation were made. The items of information specified by Schedule 14C are to be furnished in the form of an "Information Statement." If the information statement relates to an annual meeting of security holders at which directors are to be elected, it must be accompanied or preceded by an annual report to security holders.

2.8 Form 8-K reporting

A company is required to file under Item 5.07 of Form 8-K the results of a shareholder vote within four business days after the meeting at which the vote was held. If voting results are preliminary, a company is required to file an amended Form 8-K to disclose the final voting results within four days after the final results are known.

The Item 5.07 Form 8-K should include the following:

- The date of the meeting and whether it was an annual or special meeting
- If the meeting involved the election of directors, and if so:
  - The name of each director elected at the meeting
  - A brief description of each matter voted upon at the meeting
  - The number of votes cast for, against or withheld
  - The number of abstentions and broker non-votes
  - A separate tabulation with respect to each nominee for office
- A description of the terms of any settlement between the registrant and any other participant terminating any solicitation, including the cost or anticipated cost to the registrant

Item 5.07 of Form 8-K also requires issuers to disclose, within 150 days after the nonbinding shareholder vote on how frequently the say-on-pay vote should occur (but no later than 60 days prior to the deadline for submission of shareholder proposals for the next annual meeting), how frequently the issuer will conduct its say-on-pay vote given the results of a shareholder frequency vote. The disclosure should be included in an amendment to the Form 8-K that initially announced the results of the shareholder frequency vote.[24] A company also can disclose the decision about the frequency of the say-on-pay advisory vote in an annual or quarterly report rather than in Item 5.07 of Form 8-K.[25]

Companies that fail to make the disclosure by the deadline are not considered "timely" for purposes of Form S-3 eligibility. These companies must obtain a waiver from the SEC staff before filing a new Form S-3 or issuing securities from an existing shelf registration statement.

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[24] See SEC Release Nos. 33-9178 and 34-63768, *Shareholder Approval of Executive Compensation and Golden Parachute Compensation*.

[25] See Exchange Act Form 8-K, C&DI 121A.04 at **http://www.sec.gov/divisions/corpfin/guidance/8-kinterp.htm**.

2.9 Timing

The timetable for soliciting votes for the annual meeting depends largely on the meeting date, which is determined by a number of factors. The timeline below shows the relative timing of the events for an annual meeting proxy statement of a calendar year-end company.

November	Shareholder proposals deadline (120 calendar days before the date proxy materials were mailed to shareholders in the previous year)
December	Notify the SEC of reasons for omitting a shareholder proposal (80 calendar days before filing the definitive proxy)
February	Conduct broker search (20 business days before the record date)
	Provide shareholder with a copy of any statement opposing the shareholder's proposal (30 calendar days before filing definitive proxy)
March	Record date (to be selected by registrant, usually within two to three days of the mail date)
	File preliminary proxy materials and form of proxy with the SEC, if required (10 calendar days prior to the date a final proxy may be mailed to shareholders)
	File final (definitive) proxy materials with the SEC and appropriate exchanges (20 to 40 days before the annual shareholders' meeting is typical; however, the number of days is not specified)
	Send the Notice of Internet Availability of Proxy Materials to shareholders being provided proxy materials under the "notice only" option (40 days before the annual shareholders' meeting, if applicable)
April	Annual shareholders' meeting (date to be selected by registrant)
	File an Item 5.07 Form 8-K to disclose the results of a shareholder vote (within four business days after the meeting at which the vote was held)

SEC regulations do not specify the number of days in advance of an annual shareholders' meeting that the final proxy statement must be mailed to shareholders, with the exception that a registrant using the "notice only" option of delivering proxy materials must make its proxy materials available on the internet at least 40 days before the annual shareholders' meeting. Registrants generally mail proxy statements 20 to 40 days before the annual meeting so there is adequate time for beneficial owners to give instructions to the record holders as to how to vote their proxy. However, most states have statutory requirements for mailing notices for meetings, and proxy statements are often mailed with such notices. For example, state law may require that written notice of the meeting be given no less than 10 or no more than 60 days before the meeting.

3 Information in the typical annual meeting proxy statement

Schedule 14A of the Exchange Act regulations contains the specific disclosure requirements for proxy statements. Although many of the items in Schedule 14A do not apply to a proxy statement for the typical annual meeting (i.e., certain items are required only when certain transactions or events occur), the following is a list of all items in Schedule 14A:

Item 1	Date, time and place information
Item 2	Revocability of proxy
Item 3	Dissenters' right of appraisal
Item 4	Persons making the solicitation
Item 5	Interest of certain persons in matters to be acted upon
Item 6	Voting securities and principal holders thereof
Item 7	Directors and executive officers
Item 8	Compensation of directors and executive officers
Item 9	Independent public accountants
Item 10	Compensation plans
Item 11	Authorization or issuance of securities otherwise than for exchange
Item 12	Modification or exchange of securities
Item 13	Financial and other information
Item 14	Mergers, consolidations, acquisitions and similar matters
Item 15	Acquisition or disposition of property
Item 16	Restatement of accounts
Item 17	Action with respect to reports
Item 18	Matters not required to be submitted
Item 19	Amendment of charter, bylaws or other documents
Item 20	Other proposed action
Item 21	Voting procedures
Item 22	Information required in investment company proxy statement
Item 23	Delivery of documents to security holders sharing an address
Item 24	Shareholder approval of executive compensation
Item 25	Exhibits

When a company provides a say-on-pay vote, frequency vote or golden parachute vote, Item 24 requires disclosure that a company is providing the votes and a brief explanation of the general effect of the votes (e.g., whether the vote is nonbinding). Item 24 also requires disclosure, when applicable, of the current frequency of the say-on-pay vote and when the next say-on-pay vote will occur.

This section discusses matters commonly disclosed in annual meeting proxies, including the general disclosure rules.

3.1 General information requirements

Regardless of shareholder action to be taken at a shareholders' meeting, the proxy statement must include information on:

- When and where the shareholders' meeting will take place, unless such information is otherwise disclosed in material furnished to shareholders with or preceding the proxy statement (Item 1)
- Whether the shareholder returning a proxy has a right to revoke it and, if so, the limitations or procedures to follow (Item 2)
- Who is soliciting the proxy, whether proxies will be solicited other than by mail or through the internet under Rule 14a-16 (as discussed in section 2 of this publication), and who will pay the cost of solicitation (e.g., if proxy solicitors will be paid, disclosure of the arrangement and the estimated cost must be made) (Item 4)
- The number of shares of voting securities outstanding and the record date for shareholders entitled to vote (Item 6)
- The number and percentage of equity shares beneficially owned by each director and nominee (including directors' qualifying shares), the NEOs (see section 5 of this publication), all directors and executive officers as a group and each person who beneficially owns more than 5% of any class of voting securities (Item 6)

3.2 Meeting to elect directors

Proxies solicited to elect directors must provide information about executive officers, continuing directors and nominees for director. These disclosures are intended to allow shareholders to judge the professional competence, accountability and effectiveness of directors and officers and the qualifications of nominees.

The proxy rules require disclosures about executive officers, directors and nominees that frequently overlap; however, the disclosures have to be made only once in the proxy statement.

Proxies solicited to elect directors also must describe any applicable cumulative voting rights (i.e., a shareholder may be entitled to a number of votes equal to shares owned multiplied by the number of directors to be elected and the right to allocate the vote among nominees as the shareholder chooses). In addition, proxy statements must set forth the vote required for approval or election, the manner in which votes will be counted (including the treatment and effect of abstentions) and broker non-votes.

3.3 Incorporation by reference into Form 10-K

General Instruction G(3) of Form 10-K provides that information called for by Part III of Form 10-K (Items 10 through 14) may be incorporated by reference from the registrant's definitive proxy or information statement if the proxy or information statement is filed with the SEC no later than 120 days after the end of the fiscal year covered by the Form 10-K. However, if the information called for by these items cannot be incorporated by reference, it must either be included in Form 10-K when filed or included by amendment on Form 10-K/A no later than 120 days after the fiscal year end.

Regulation S-K contains the rules for disclosure of information required in Part III of Form 10-K, including:

Item 201(d)	Securities authorized for issuance under equity compensation plans (required under Item 10 of Schedule 14A)
Item 401	Directors, executive officers, promoters and control persons (required under Item 7 of Schedule 14A)
Item 402	Executive compensation (required under Item 8 of Schedule 14A)
Item 403	Security ownership of certain beneficial owners and management (required under Item 6 of Schedule 14A)
Item 404	Transactions with related persons, promoters and certain control persons (required under Item 7 of Schedule 14A)[1]
Item 405	Compliance with Section 16(a) of the Exchange Act (required under Item 7 of Schedule 14A)
Item 406	Code of ethics
Item 407	Corporate governance (certain disclosures required under Items 7 and 8 of Schedule 14A)

In addition, Item 14 in Part III of Form 10-K requires principal accounting fee disclosure identical to that required by Item 9(e) of Schedule 14A, which is discussed in section 6 of this publication.

There are several exceptions to the general rule that Part III Item 10 information will be identical to, and generally incorporated by reference from, the annual meeting proxy statement. These exceptions are discussed further below.

3.3.1 Executive officers

General Instruction G(3) of Form 10-K provides that the information required by Item 10 of Form 10-K (e.g., Item 401 of Regulation S-K) for executive officers may be included in Part I of Form 10-K under a caption entitled "Executive Officers of the Registrant." If this is done, this information need not be included in the proxy or information statement.

3.3.2 Audit committee financial experts

Item 407(d)(5) requires a public company to disclose whether its board of directors has determined that the company has at least one audit committee financial expert (as defined) on its audit committee. If so, the company also must disclose the name of its audit committee financial expert and whether that person is independent. If the audit committee does not have such an expert, the company is required to explain why not. The company may have more than one audit committee financial expert but is not required to disclose the names of any additional audit committee financial experts. A company that elects to disclose the names of such experts must indicate whether they are independent.

The disclosures about audit committee financial experts (Item 407(d)(5) of Regulation S-K) must be provided in response to Item 10 of Form 10-K, but an instruction to Item 407(d)(5) specifically states that the disclosures may be omitted from the proxy or information statement. However, a company may elect to provide the disclosures about its audit committee financial experts in its proxy statement and incorporate those disclosures by reference into the Form 10-K, provided the proxy statement is filed no later than 120 days after the company's fiscal year end. Otherwise, the disclosures about audit committee financial experts must be included in the Form 10-K upon filing or by amendment within 120 days of the fiscal year end.

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[1] Item 404(c) of Regulation S-K, *Promoters and certain control persons*, requires certain disclosures from registrants that are filing a registration statement on Form S-1 under the Securities Act, or on Form 10 under the Exchange Act, and that had a promoter at any time during the past five fiscal years. Therefore, this item is not applicable to annual reports on Form 10-K or to proxy statements.

Practice observations

The average number of financial experts disclosed by Fortune 100 companies whose proxy statements we reviewed for 2024 was 2.9, and the average audit committee size was 4.3 members. The average number of financial experts disclosed by S&P 500 companies was 2.9, and the average audit committee size was 4.4 members.

3.3.3 Code of ethics

Item 406 of Regulation S-K requires a public company to disclose whether it has adopted a code of ethics (as defined) that covers its principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions. Disclosures about the issuer's code of ethics must be provided in response to Item 10 of Form 10-K, but the proxy or information statement is not required to provide those disclosures. However, a company may elect to provide the disclosures about its code of ethics in its proxy statement and incorporate those disclosures by reference into the Form 10-K, provided the proxy statement is filed no later than 120 days after the company's fiscal year end. Otherwise, the disclosures about the code of ethics must be included in the Form 10-K.

Separately, the listing standards of the New York Stock Exchange (NYSE) and Nasdaq require listed companies to have a code of conduct and make it publicly available.

Illustration 3-1: Example disclosure on code of ethics

The Company has adopted a Code of Ethics that applies to all of its directors, officers (including its chief executive officer, chief financial officer, chief accounting officer, controller and any person performing similar functions) and employees. The Company has made the Code of Ethics available on its website at **http://www.companyethicsexample.com**.

3.3.4 Changes in shareholder nominating procedures

The proxy rules require disclosure in proxy statements about an issuer's process for nominating directors. Item 407(c)(3) of Regulation S-K requires a public company to disclose any material changes to the procedures disclosed in the most recent proxy statement for security holders to recommend a director candidate. A company is required to report any material change in its periodic Exchange Act report for the period that the material change occurs (i.e., the company's quarterly report on Form 10-Q or, for changes that occur during the fourth fiscal quarter, the company's annual report on Form 10-K). A material change requiring disclosure would include the adoption of procedures by which security holders may recommend a nominee when the company disclosed in its last proxy statement that it did not have any such procedures.

The disclosures about material changes, during the fourth fiscal quarter, to the procedures for security holders to recommend a director candidate (Item 407(c)(3) of Regulation S-K) must be provided in response to Item 10 of Form 10-K, but an instruction to Item 407(c)(3) specifically states that the disclosures only need to be provided in the company's quarterly or annual report and, therefore, may be omitted from the proxy or information statement. If the company elects to provide the disclosures about any such changes in its proxy statement, it also may incorporate them by reference into the Form 10-K if the proxy statement is filed no later than 120 days after the company's fiscal year end. Otherwise, the disclosures about such changes must be included in the Form 10-K upon filing or by amendment within 120 days of the fiscal year end.

3.3.5 Authorized equity compensation

In addition to the exceptions discussed above, the information required by Item 201(d) of Regulation S-K in response to Item 12 of Form 10-K is not required to be included in a proxy or information statement in all cases. The proxy or information statement is not required to provide this disclosure unless the registrant is submitting a compensation plan for shareholder action (see section 7 of this publication).

Nevertheless, even if a registrant does not submit a compensation plan for shareholder action, a registrant that provides the information required under Item 201(d) in its proxy statement may incorporate the disclosure by reference into Item 12 of Form 10-K if the proxy statement is filed no later than 120 days after the company's fiscal year end. Otherwise, the Form 10-K must include the disclosure upon filing or by amendment within 120 days of the fiscal year end.

The Form 10-K instructions indicate that the disclosures required under Item 201(d) of Regulation S-K must be provided in response to both Item 5 and Item 12 of Form 10-K. However, the SEC staff has indicated that the disclosures required under Item 201(d) should be included only in response to Item 12 of Part III of Form 10-K. These disclosures are discussed in section 7 of this publication.

4 Item 7 – Directors and executive officers

Item 7 of Schedule 14A largely requires the information about directors and executive officers as specified in Regulation S-K Items 401, 404, 405, 407 and 408. This information frequently is incorporated by reference into Items 10 and 13 in Part III of Form 10-K.

Item 7 also requires certain disclosures about the compensation committee, which are discussed below. Item 8 of Schedule 14A requires additional disclosures related to the compensation committee, which are discussed in section 5 of this publication.

The following summarizes the requirements of Item 7 of Schedule 14A and which of those disclosures also are required in Form 10-K (refer to section 10 of our publication *SEC annual reports – Form 10-K* for additional information):

Disclosure requirement of Item 7 of Schedule 14A	Regulation S-K Item	Required in Form 10-K?
Identification of directors and executive officers	401(a) – (f); 103(c)(2)	Yes (Item 401 in Part III – Item 10; Item 103(c)(2) in Part I – Item 3)
Independence of directors	407(a)	Yes (Part III – Item 13)
Board meetings and committees; annual meeting attendance	407(b)	No
Nominating committee disclosures	407(c)(1) & (2)	No*
Audit committee disclosures		
▸ Audit committee charter	407(d)(1)	No
▸ Nonindependence of audit committee members	407(d)(2)	No
▸ Audit committee report	407(d)(3)	No
▸ Audit committee disclosures by listed issuers	407(d)(4)	Yes (Part III – Item 10)
▸ Audit committee financial expert**	407(d)(5)	Yes (Part III – Item 10)
Compensation committee disclosures	407(e)(1), (2) & (3)	No
Security holder communications with directors (i.e., shareholder communications)	407(f)	No
Board leadership structure and role in risk oversight	407(h)	No
Employee, officer and director hedging	407(i)	No
Transactions with related persons	404(a)***	Yes (Part III – Item 13)
Review and approval of related person transactions	404(b)***	Yes (Part III – Item 13)
Promoters and control persons	401(g)	Yes (Part III – Item 10)
Compliance with reports under Section 16(a) of the Exchange Act	405	Yes (Part III – Item 10)
Insider trading arrangements and policies	408(b)(1)	No****

* Registrants are required under S-K Item 407(c)(3) to report any material change to the procedures for security holders to recommend a director candidate in their periodic Exchange Act report for the period that the material change occurs (e.g., for changes that occurred during the fourth fiscal quarter, the disclosure would be required in the registrant's annual report on Form 10-K). Such disclosure is not required by Item 7 of Schedule 14A.

** Disclosure requirements related to Item 407(d)(5) are discussed further in section 3.3.2.

*** A registrant that qualifies as a smaller reporting company must follow the requirements of Item 404(d) of Regulation S-K. See section 9 of this publication for further information.

**** If the registrant has adopted insider trading arrangements policies and procedures, Item 408(b)(2) requires to file them as an exhibit to Form 10-K. Registrants must also disclose under Part II, Item 9B in Form 10-K the information required by Items 408(a) of Regulation S-K. Such disclosure is not required by Item 7 of Schedule 14A.

4.1 Identification of directors and executive officers

Items 401(a)-(f) of Regulation S-K require disclosure of NEOs,[1] directors and director nominees in the proxy, including:[2]

- Their names and ages
- All positions and offices held with the registrant (including the period that they have been a director or officer)
- A description of their business experience for the last five years (including their principal occupation and the name and principal business of their employers during this period) and the specific experience, qualifications, attributes or skills that led to the conclusion that the individual should serve as a director, in light of the company's business and structure[3]

Practice observations

If the individual has been employed by the company or a subsidiary of the company for less than five years, a brief explanation should be provided about the nature of the individual's responsibilities in their prior position and information relating to the individual's level of professional competence (e.g., size of operation supervised).

If material, this disclosure should cover more than the past five years, including information about the person's particular areas of expertise or other relevant qualifications. Regulation S-K C&DI 116.05[4] specifies that the disclosure of each director or nominee's experience must be provided on an individual basis even if a group of directors or nominees share similar characteristics.

- Any family relationships among these individuals (i.e., any relationship by blood, marriage or adoption, but not more remote than first cousin)
- A brief description of arrangements or understandings they have with any other person(s) (naming such person(s)) under which they were, or are to be, selected as an executive officer, director or nominee
- The name of any other SEC registered company for which these individuals served as director during the past five years, even if the individual no longer serves on that board
- Any involvement during the past 10 years[5] in certain types of judicial and administrative proceedings, to the extent material to an evaluation of the ability or integrity of the executive officer, director or nominee (including bankruptcy, criminal, injunctive and securities-related proceedings as well as disciplinary sanctions or orders imposed by a stock, commodities or derivatives exchange or other self-regulatory organization)[6]

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1 A non-reporting issuer (e.g., an issuer registering securities in an IPO) that employs persons who are not executive officers but who make, or are expected to make, significant contributions to the registrant's business, must identify such persons and disclose their background to the same extent as in the case of executive officers.

2 The required information for executive officers may be omitted from the proxy statement if it is included in the registrant's annual report on Form 10-K.

3 A director's business experience should be disclosed regardless of whether the director was nominated by the company's board or appointed by holders of a class of preferred stock. See Regulation S-K C&DI 116.09 at **https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

4 Regulation S-K C&DI 116.05 is available at **http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

5 Instruction 1 to Item 401(f) of Regulation S-K provides guidance in computing the 10-year period.

6 The SEC's final rule, *Proxy Disclosure Enhancements*, expanded the list of legal proceedings under Item 401(f) to include: (1) any judicial or administrative proceedings resulting from involvement in mail or wire fraud or fraud in connection with any business entity, (2) any violations of federal or state securities, commodities, banking or insurance laws and regulations, or any settlement of those (or related) actions. The disclosure requirement does not apply to any settlement of a civil proceeding among private litigants.

In addition, Item 103(c)(2) of Regulation S-K requires the registrant to describe any material proceeding in which a director or executive officer is a party or has a material interest adverse to the registrant.

The company must not identify any nominee or person chosen to become a director or executive officer unless that person has consented to be named. In addition, in a proxy statement, certain of the disclosures are not required for any director whose term of office will not continue after the shareholders' meeting. For example, instruction 3 of Regulation S-K Item 401(a), *Identification of directors*, says that if the information called for by paragraph (a) is being presented in a proxy or information statement, no information need be given about any director whose term of office will not continue after the meeting.

In addition, Regulation S-K C&DI 116.07 notes that Item 401(e), *Business experience disclosures*, is not required for any director for whom the company is not required to provide the Item 401(a) disclosures. Regulation S-K C&DI 116.10 notes that a company also may omit these disclosures from its Form 10-K if it incorporates director information by reference from its proxy statement. However, if a company includes disclosure of director information in its Form 10-K (rather than incorporating by reference from its proxy statement), disclosures about a departing director may not be omitted.[7]

4.2 Independence of directors

Item 407(a) of Regulation S-K requires registrants to disclose the name of each nominee for director (in connection with a proxy or information statement relating to the election of directors) and each director that is independent under specified independence standards, which may vary depending on whether the registrant is a listed issuer as discussed below. The scope of the disclosures about independence of directors encompasses any person who served as a director of the registrant during any part of the respective fiscal year, even if the person no longer serves as a director at the time of filing the proxy or information statement.

If the registrant is a listed issuer with securities that are listed on a national securities exchange or in an inter-dealer quotation system that requires a majority of the board of directors to be independent, the registrant must use that definition of independence for purposes of the disclosures under Item 407(a) of Regulation S-K. If the registrant is not a listed issuer, these disclosures must be based on the definition of independence in the listing standards of a national securities exchange or inter-dealer quotation system that requires a majority of the board of directors to be independent, and the definition must be identified and used for all directors and director nominees. Additionally, if the registrant has relied on certain exemptions from such independence requirements allowed by its national securities exchange or inter-dealer quotation system (or, for non-listed issuers, the independence standards selected), the registrant must disclose the exemption relied upon and explain the basis for its conclusion that the exemption is applicable.

If the independence standards applicable to the registrant contain independence requirements for committees of the board of directors, the registrant must identify each director who is a member of the compensation, nominating or audit committee who is not independent under such committee independence standards. If the registrant does not have a separately designated compensation, nominating or audit committee or committee performing similar functions, the registrant must provide this disclosure for all directors who are not independent applying such committee independence standards.

When determining whether each director and nominee for director is independent, registrants also are required to fully describe, by specific category or type, any transactions, relationships or arrangements not otherwise disclosed that were considered by the board of directors.

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[7] See Regulation S-K C&DIs 116.07 and 116.10 at **http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

4.3 Board meetings and committees; annual meeting attendance

Under Item 407(b) of Regulation S-K, registrants must state the total number of meetings held by the board of directors and each committee during the last fiscal year. The disclosure must identify any director who during the last fiscal year attended fewer than 75% of the aggregate of (1) the number of meetings the board of directors held during the period in which they were a director and (2) the number of meetings of all committees of the board held during the period in which they served as a member of the respective committee. Registrants also are required to describe, either in the proxy statement or on their websites, their policy, if any, with regard to board member attendance at annual meetings and state the number of board members who attended the prior year's annual meeting.

Registrants must state whether they have standing audit, nominating and compensation committees (or committees performing similar functions), and, if so, must identify the members of each and the number of meetings held during the last fiscal year. They also must briefly describe the functions performed by each committee. The registrant may integrate these disclosures with the specific disclosures required about each of the committees in Schedule 14A. As discussed below, Item 7 of Schedule 14A requires specific additional disclosures about the audit, nominating and compensation committees and, as discussed in section 5 of this publication, Item 8 of Schedule 14A requires additional disclosures related to the compensation committee.

Practice observations

Board and key committees

Summary data* for S&P 1500 companies with annual meetings from 1 January 2024 through 30 September 2024

	Board of Directors	Audit Committee	Compensation Committee	Nominating Committee
Portion of companies	100%	100%	100%	99%
Average number of members	9.8	4.1	3.9	3.9
Average number of meetings	7.4	7.3	5.4	4.3

*Data represents companies with a separate sub-committee of the board addressing these functions.

4.4 Nominating committee disclosures

Item 407(c) of Regulation S-K requires disclosures about an issuer's process for nominating directors. Item 407 of Regulation S-K defines the term "nominating committee" to include not only a standing nominating committee, but also other board committees performing similar functions, as well as groups of directors fulfilling the role of a nominating committee including the entire board of directors. If a company does not have a standing nominating committee or committee performing similar functions, the company is required to disclose the basis for the board of directors' view that it is appropriate not to have such a committee, and the identity of each director who participates in the consideration of director nominees.

With respect to the process of nominating directors, Item 407(c)(2) of Regulation S-K requires the following disclosures:

- Whether the nominating committee has a charter, and, if so, whether the current charter is available on the company's website (providing the website address), or otherwise, as an appendix to its proxy statement following any material amendment or at least once every three fiscal years (indicating the prior fiscal year provided, if applicable)

- If the nominating committee has a policy about the consideration of any director candidates recommended by security holders, a description of the material elements of that policy (including a statement whether the committee will consider director candidates recommended by security holders); or, otherwise, the fact that it does not have such a policy and the basis for the board of directors' view that it is appropriate not to have such a policy
- If the nominating committee will consider candidates recommended by security holders, a description of the procedures to be followed by security holders in submitting such recommendations
- Any specific, minimum qualifications that the nominating committee believes must be met by their nominees for director and any specific qualities or skills that the nominating committee believes are necessary for one or more of the company's directors to possess
- The nominating committee's process for identifying and evaluating potential nominees for director, including any differences in the evaluation process if the potential nominee is recommended by a security holder
- Whether, and if so how, the nominating committee considers diversity in identifying nominees (if applicable, a company should disclose how it has implemented its policy with respect to the consideration of diversity in identifying director nominees and how it assesses the effectiveness of that policy)
- For each nominee approved by the nominating committee and included on the company's proxy card (other than nominees who are executive officers or directors standing for re-election), which one or more of the following categories or persons or entities recommended the nominee: security holder, non-management director, chief executive officer, other executive officer, third-party search firm or other specified source[8]
- If the company pays any third party a fee to identify or evaluate, or assist in identifying or evaluating, potential nominees for director, the function performed by each such third party
- The identity of any recommended nominee for director and the recommending security holder(s), provided both give their written consent, and whether the nominating committee chose to nominate any such potential nominee recommended in a timely manner (as defined) by a security holder, or group of security holders, that has held a beneficial ownership interest in the company's voting common stock of 5% or more for at least one year[9]

In its comment letters, the SEC staff may request that a registrant disclose whether its nominating committee or board considers diversity in identifying director nominees and, if so, how. Also, with respect to each director, the SEC staff may request that the registrant specifically discuss what aspects of the individual's experience led the board to conclude that the person should serve as a director for the registrant, as well as any other relevant qualifications, attributes or skills that were considered by the board.

4.5 Audit committee disclosures

Section 3(a)(58) of the Exchange Act defines the term "audit committee" as "a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the issuer's accounting and financial reporting processes and audits of the financial statements." If the company does not have a standing audit or similar committee, its entire board of directors is considered the audit committee. Exchange Act Rule 10A-3 includes the SEC's minimum audit committee requirements for listed companies.

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[8] For example, if the CEO asks a third party to evaluate a candidate and that third party then recommends the candidate to the nominating committee, the proxy statement should disclose both the CEO and the third party as the source of the nominee's recommendation.

[9] Item 407 of Regulation S-K neither requires nor prohibits disclosure of the reasons for the nominating committee's conclusion not to nominate the candidate recommended by the security holder(s).

4.5.1 Audit committee charter

Item 407(d)(1) of Regulation S-K requires the proxy statement to state whether the audit committee has a written charter, and, if so, whether the current charter is available on the company's website (providing the website address) or, otherwise, as an appendix to the proxy statement following any material amendment or at least once every three fiscal years (indicating the prior fiscal year provided, if applicable). If provided as an appendix to the proxy statement, the Audit Committee Charter has the same legal status as the annual report to shareholders and is not deemed to constitute soliciting material or a "filed" document. The disclosure is required only in proxy or information statements relating to an annual meeting of security holders for the election of directors and will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant decides to specifically incorporate it by reference.

The NYSE and Nasdaq corporate governance provisions require listed companies to adopt formal written audit committee charters that specify the committee's responsibilities, including those related to independence and accountability of the independent auditors.

4.5.2 Minimum independence requirements for audit committee members

Rule 10A-3 of the Exchange Act establishes minimum audit committee requirements for listed companies including, among other things, the independence of audit committee members.

Consistent with Section 301 of the Sarbanes-Oxley Act, Rule 10A-3 establishes two basic independence criteria for audit committee members involving the member's compensation by the issuer and affiliation with the issuer. The SEC has included limited, specific exceptions to the independence criteria, which are discussed separately below under "Exemptions."

Compensation: Each audit committee member must be precluded from receiving any remuneration from the issuer (including any consulting, advisory or other fees from the issuer or any subsidiary of the issuer), other than (1) in the member's capacity as a director and (2) fixed amounts under a retirement plan (including deferred compensation) for prior service with the issuer, provided such compensation is not in any way contingent on continued service. Thus, a current officer or employee of the issuer or any of its subsidiaries would not be allowed to serve as an audit committee member, but a retired officer or employee would not necessarily be precluded. The compensation prohibition is absolute (i.e., Rule 10A-3 does not allow *de minimis* exceptions), but it applies only to current relationships and payments (i.e., Rule 10A-3 requires no "look back" period prior to a director's appointment to the audit committee).

Payments made either directly or indirectly would impair the independence of an audit committee member. Accordingly, Rule 10A-3 defines indirect payments as those to spouses, minor children or stepchildren or children or stepchildren sharing a home with the audit committee member. In addition, Rule 10A-3 prohibits payments to an entity (1) in which an audit committee member is a partner or member (or officer such as a managing director occupying a comparable position to a partner or member), an executive officer, or occupies any similar position (e.g., a "principal" in certain organizations) and (2) which provides accounting, consulting, legal, investment banking or financial advisory services[10] to the issuer or any of its subsidiaries. In these circumstances, the SEC prohibited payments because the member's compensation from such entities could be directly affected by the fees for services provided to the issuer, even if the member was not directly involved in providing the services to the issuer. However, for such entities, if an audit committee member is, or occupies a position similar to, a limited partner or non-managing member and has no active role in providing services to the entity, the audit committee member's independence

[10] The prohibition does not extend to non-advisory financial services such as lending, check clearing, stock brokerage services, custodial services, cash management services or customer account maintenance.

would not be impaired under the SEC's definition. Moreover, ordinary course commercial relationships between an issuer and an entity with which a director has a relationship would not impair the SEC's definition of audit committee member independence.

Affiliation: Other than in the member's capacity as a director of a non-investment company issuer, each audit committee member cannot be an "affiliated person" of the issuer or any subsidiary. For purposes of Rule 10A-3, "affiliated person" is defined as "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with" the issuer or any subsidiary. Under Rule 10A-3, "control" is defined as "the possession, direct or indirect, of the power to direct or cause the direction of the management or policies" of the issuer or any subsidiary, "whether through the ownership of voting securities, by contract or otherwise."

Under a safe harbor within Rule 10A-3, a person who is neither an executive officer nor a 10% beneficial owner of any class of voting equity securities is deemed not to be in control, and thus would not be an affiliated person. For executive officers or 10% shareholders who fall outside the rule's safe harbor, a legal analysis of the facts and circumstances is required in order to conclude whether or not they are an affiliated person. However, while it might be concluded that an executive officer is not an affiliated person, it is unlikely that an executive officer of the issuer could meet the compensation criterion of independence discussed above. Thus, as a practical matter, evaluation of the affiliation criterion will be limited to audit committee members who are 10% beneficial owners or who have relationships with any such persons.

For purposes of Rule 10A-3, an audit committee member would not be independent of the issuer if the audit committee member also serves an affiliate of the issuer or any of its subsidiaries in any of the following capacities: executive officer, director and employee, general partner or managing member. Conversely, an audit committee member could be determined to be independent of the issuer even if the audit committee member serves an affiliate of the issuer or any of its subsidiaries in other capacities, such as outside director, limited partner or non-executive employee. However, in any event, an audit committee member would not be independent of the issuer if the audit committee member acts as the representative or agent of an affiliate of the issuer or any of its subsidiaries.

Exemptions: Section 301 of the Sarbanes-Oxley Act provides the SEC with the authority to exempt from the audit committee independence requirements, certain relationships "as the Commission determines appropriate in light of the circumstances." Rule 10A-3 provides specific exemptions from the independence requirements in the following circumstances:

- Exemption for an issuer listing securities pursuant to an initial registration statement such that the audit committee must be composed of one fully independent member at the effective date of the registration statement, a majority of independent members within 90 days thereafter, and a fully independent committee within one year of the effective date of the IPO registration statement
- Exemption from the "affiliated person" requirement of an audit committee member that sits on the board of both the listed issuer and an affiliate (e.g., on the board of a subsidiary or a joint venture in which the issuer participates) of the listed issuer, provided the individual otherwise meets the remaining independence requirements with respect to both the listed issuer and the affiliate of the listed issuer
- For foreign private issuers (FPIs) only (in light of their unique circumstances):
    - Exemption of an employee elected to the audit committee pursuant to the issuer's governing law or documents, an employee collective bargaining or similar arrangement, or other home country legal or listing requirements, provided the employee is not an executive officer of the FPI
    - Exemption from the "affiliated person" criterion (but not the compensation criterion) for a member of the audit committee who is an affiliate of the issuer or a representative of such an affiliate; has only observer status, and is not a voting member or the chair of the audit committee; and is not an executive officer of the FPI

- Exemption from the "affiliated person" criterion (but not the compensation criterion) for a member of the audit committee who is a representative of a foreign governmental entity that is an affiliate of the FPI, provided the member also is not an executive officer of the FPI

Rule 10A-3 also provides that if an audit committee member ceases to be independent for reasons outside the member's reasonable control (e.g., the issuer acquires a company that receives services from a law firm in which the audit committee member is a partner), with notice to the applicable national securities exchange, the member may remain an audit committee member of the listed issuer until the earlier of the issuer's next annual shareholders' meeting or one year from the occurrence of the event that caused the member to no longer be independent. This period may allow the issuer sufficient time to implement a cure rather than removing the audit committee member.[11]

Rule 10A-3 also provides a general exemption for an FPI that does not have a separate audit committee of the board of directors, but that does have a board of auditors (or similar body) or statutory auditors (collectively the "audit board") separate from the board of directors.[12] If certain conditions are met, Rule 10A-3 of the Exchange Act exempts an FPI from the audit committee requirements. To qualify for the general exemption, the FPI must meet all of the following conditions:

- The FPI has an audit board pursuant to home country legal or listing provisions expressly requiring or permitting such a board or similar body
- The audit board is required under home country legal or listing provisions to be either separate from the board of directors, or composed of one or more members of the board of directors and one or more members that are not members of the board of directors
- The audit board is not elected by management of the issuer, and no executive officer of the issuer is a member of the audit board
- Home country legal or listing provisions provide standards for the independence of the audit board from the issuer or the management of the issuer
- The audit board, in accordance with home country legal or listing requirements or the issuer's governing documents, is responsible, to the extent permitted by law, for the appointment, retention and oversight of the work of any registered public accounting firm (including, to the extent permitted by law, the resolution of disagreements between management and the auditor regarding financial reporting) engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer
- The requirements in Rule 10A-3 with respect to complaint procedures, outside advisers and funding, to the extent permitted by law, apply to the audit board

Under any of the specific exemptions discussed above, the issuer is required to disclose its reliance on such exemption and provide an assessment whether (and how) such reliance would materially adversely affect the ability of the audit committee (or the audit board) to act independently and to satisfy its related responsibilities.

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[11] The NYSE and Nasdaq rules regarding the cure period provided when an audit committee member ceases to be independent are consistent with those in Rule 10A-3. However, Nasdaq allows a listed issuer at least 180 days to regain compliance when a previously independent director or audit committee member loses their independence.

[12] The adopting releases of the SEC rule (SEC Release Nos. 33-8220, 34-47654, *Standards Related to Listed Companies Audit Committees*) cited Japan, Italy and Brazil as jurisdictions that require an audit board.

Consistent with Section 301 of the Sarbanes-Oxley Act, Rule 10A-3 provides the SEC authority to exempt a particular relationship with respect to audit committee members as it "determines appropriate in light of the circumstances." In the adopting release, the SEC stated that this exemptive authority will allow it to respond to evolving standards of corporate governance and changes in US and foreign laws. However, the adopting release indicated that, besides the specific exemptions included in Rule 10A-3, the SEC did not intend to entertain requests for exemptions or waivers for particular relationships on a case-by-case basis.

4.5.3 Nonindependence of audit committee members

If the registrant's board of directors determines, in accordance with applicable listing standards and the exemptions described in the preceding section, to appoint a director to the audit committee who is not independent, including as a result of exceptional or limited or similar circumstances, Item 407(d)(2) of Regulation S-K requires the registrant to disclose the nature of the relationship that makes that individual not independent and the reasons for the board's determination. Any such disclosure has the same legal status as the annual report to shareholders and is not deemed to constitute soliciting material or a "filed" document. The disclosure is required only in proxy or information statements relating to an annual meeting of security holders for the election of directors and will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant decides to specifically incorporate it by reference.

4.5.4 Audit committee report

Under Item 407(d)(3) of Regulation S-K, the audit committee must include a report in the proxy that states whether the audit committee has:

- Reviewed and discussed the audited financial statements with management
- Discussed with the independent auditors matters required to be discussed under Public Company Accounting Oversight Board (PCAOB) Auditing Standard No. 1301, *Communications with Audit Committees* (AS 1301),[13] and matters required to be discussed based on Commission requirements
- Received from the independent auditors written disclosures regarding the auditors' independence required by PCAOB Ethics and Independence Rule 3526, *Communication with Audit Committees Concerning Independence,* and has discussed with the independent auditors, the independent auditors' independence

Based on the above, the audit committee must state whether it has recommended to the board of directors that the audited financial statements be included in the company's annual report on Form 10-K for filing with the SEC.

The name of each member of the company's audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors) must appear below the Audit Committee Report.

The Audit Committee Report has the same legal status as the annual report to shareholders and is not deemed to constitute soliciting material or a "filed" document. The disclosure is required only in proxy or information statements relating to an annual meeting of security holders for the election of directors and will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act unless the registrant decides to specifically incorporate it by reference.

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[13] AS 1301 was approved by the SEC in December 2012 and was effective for audits for fiscal years beginning on or after 15 December 2012 and superseded the PCAOB's interim rule Auditing Update (AU) Section 380, *Communications with Audit Committees*. The SEC has not revised Item 407(d)(3)(B) to refer to AS 1301, which is the effective standard; however, it is acceptable for audit committee reports to reference AS 1301 or state that the committee has discussed matters required by PCAOB standards (i.e., reference no specific standard).

AS 1301 requires the auditor to:

- Discuss the responsibilities of the auditor for (1) the audit of the financial statements, (2) the audit of internal control over financial reporting and (3) other information presented in documents containing the audited financial statements
- Provide the engagement agreement annually to the audit committee, which must acknowledge and agree to the terms
- Inquire of audit committee members about risks of material misstatement due to fraud including whether they are aware of matters relevant to the audit, including, but not limited to, violations or possible violations of laws and regulations
- Provide the audit committee with information about the audit strategy, including the timing and significant risks identified by the audit, any changes to the planned audit strategy or significant risks identified and the reasons for such changes, any specialized skills needed, the extent of reliance on the internal audit function or others and the involvement of other audit firms, including affiliated audit firms and the basis for the auditor's determination that the auditor can serve as principal auditor when there are significant parts of the audit performed by other audit firms
- Discuss with the audit committee in detail and communicate the auditor's evaluation and conclusions about significant and critical accounting policies and practices (including new significant accounting policies), critical accounting estimates, significant unusual transactions and the company's financial reporting
- Communicate to the audit committee information about disagreements with management as well as matters that are difficult or contentious when the auditor consults outside the engagement team on such matters
- Communicate the auditor's views on matters that were subject to management's consultation with other accountants when the auditor is aware of such consultations
- Communicate to the audit committee events or conditions that indicate a substantial doubt about the company's ability to continue as a going concern for a reasonable period of time
- Discuss with the audit committee uncorrected misstatements pertaining to the current period whose effects management believes are immaterial to the financial statements taken as a whole, the implications of corrected misstatements that may not have been detected except through the audit and the auditor's basis for determining that uncorrected misstatements were immaterial, including the qualitative factors considered and any effect the uncorrected misstatements may have on future financial statements
- Communicate when the auditor expects to modify the opinion in the auditor's report or to include an explanatory paragraph in the auditor's report
- Discuss any other significant difficulties encountered during the audit or other matters the auditor considers significant to the oversight of the company's financial reporting process

The SEC's rules on auditor independence also are incorporated into AS 1301 and Rule 2-07 of Regulation S-X requires the auditor to communicate the following matters to the audit committee prior to the filing of an audit report: (1) all critical accounting policies and practices used, (2) material alternative treatments within GAAP that have been discussed with management, including the ramification of the alternative treatment as well as the auditor's preference, and (3) other material written communications between the auditor and management (e.g., letter of representations).

Refer to section 1.4.2 of this publication for discussion about recent trends in disclosures made by audit committees in audit committee reports.

4.5.5 Audit committee disclosures by listed issuers

Item 407(d)(4) of Regulation S-K requires a listed issuer to provide additional disclosures relating to its audit committee in proxy or information statements for shareholders' meetings at which action is to be taken with respect to the election of directors. However, disclosure is not required if either:

- The listed issuer is relying on the exemption in Rule 10A-3(c)(2) (i.e., the issuer has only listed non-equity securities or non-convertible, non-participating preferred securities and is a direct or indirect subsidiary of a parent company with listed common equity securities)
- The listed issuer is relying on any of the exceptions under Rule 10A-3(c)(4) through (c)(7) (e.g., asset-backed issuers, unit investment trusts, foreign governments, passive trusts or other unincorporated associations and FPIs with qualifying audit boards)

A listed issuer must:

- State whether it has a standing audit committee of the board of directors or a committee performing similar functions
- Identify each audit committee member
- If the entire board of directors acts as the audit committee, state that fact

A listed issuer also must disclose its reliance on specific exemptions from the SEC minimum listing standards for audit committees, if applicable, and provide an assessment whether (and how) such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy its related responsibilities.[14]

4.6 Compensation committee disclosures

Item 407(e) of Regulation S-K requires disclosures about a registrant's compensation committee. If a company does not have a standing compensation committee or committee performing similar functions, the company is required to disclose the basis for the view of the board of directors that it is appropriate not to have such a committee and the identity of each director who participates in the consideration of executive and director compensation.

With respect to the compensation committee, Item 407(e) of Regulation S-K requires the following disclosures:

- Whether the compensation committee has a charter, and, if so, whether the current charter is available on the company's website (providing the website address) or, otherwise, as an appendix to its proxy statement following any material amendment or at least once every three years (indicating the prior fiscal year provided, if applicable)
- A narrative description of the company's processes and procedures for considering and determining executive and director compensation, including:
  - The scope and authority of the compensation committee (or persons performing similar functions)
  - The extent to which the compensation committee (or persons performing similar functions) may delegate any such authority to other persons (specifying what authority may be delegated and to whom)
  - Any role of executive officers or compensation consultants in determining or recommending the amount or form of executive or director compensation

[14] Item 407(d)(4)(ii)(B) of Regulation S-K and Exchange Act Rule 10A-3(d)

4.6.1 Listing standards for compensation committees

The NYSE and Nasdaq generally require that a member of a listed company's compensation committee also be a member of the board of directors and be "independent," but they have slightly different requirements. The SEC did not prescribe the independence requirements as it did for audit committee members. Instead, each exchange created its own definitions that considered both of the following factors:

- The source of compensation of a member of the board of directors, including any consulting, advisory or other compensatory fee paid by the company
- Whether a member of the board of directors is affiliated with the company or a subsidiary of the company or its affiliate

The exchanges also adopted listing standards requiring the compensation committee to have the authority to retain or obtain the advice of advisers. Although an adviser isn't required to be independent, the compensation committee must consider the following independence factors in selecting an adviser:

- The provision of other services to the company by the adviser's employer
- The amount of fees the adviser's employer receives from the company as a percentage of the employer's total revenue
- The policy and procedures of the adviser's employer that are designed to prevent conflicts of interest
- Any business or personal relationship of the adviser with a member of the compensation committee
- Any stock of the company owned by the advisers and their immediate family members
- Any business or personal relationships between the company's executive officers and the compensation adviser or the advisers' employer

The listing standards make the compensation committee responsible for the adviser's appointment, compensation and oversight, and the listed company must provide funding for those advisers. The scope of these requirements is limited to compensation advisers retained by the compensation committee and specifically excludes in-house counsel.

These listing requirements do not apply to certain companies, including SRCs and FPIs that don't have an independent compensation committee. The exchanges also have the authority to exempt from the listing standards certain relationships and categories of issuers (e.g., EGCs).

4.6.2 Disclosures about consultants and conflicts of interest

If compensation consultants play a role in determining or recommending the amount or form of executive or director compensation, a registrant also is required to identify the compensation consultant, state whether the consultant is engaged directly by the compensation committee or any other person, describe the nature and scope of the consultant's assignment and the material elements of the instructions or directions given to the consultants about the performance of their duties under the engagement. Proxy statements must disclose whether the compensation committee obtained the advice of a compensation consultant during the company's past fiscal year, regardless of whether the consultant was formally engaged or even paid for its advice.

A company also must disclose the fees paid to compensation consultants and their affiliates who play a role in determining or recommending the amount or form of executive and director compensation, if those consultants also provide other services to the company. If required, the company must disclose the fees paid to the compensation consultant for executive and director compensation services and the aggregate fees paid for all other services. There is no limitation on the types of services that are included in all other services. If the consultant also sells products to the company, revenues generated from such sales should be included in the aggregate fees paid for all other services provided by the compensation consultant or its affiliates. The company is not required to disclose the nature of the other services provided.

The fee disclosures required by Item 407(e)(3)(iii) provide for the following:

- If (1) the board, compensation committee or other persons performing the equivalent functions (collectively, the board) has engaged its own consultant to provide advice or recommendations on the amount or form of executive and director compensation and (2) the board's consultant or its affiliates provided other non-executive compensation consulting services to the company for which the fees exceeded $120,000 during the company's fiscal year, fee disclosures are required. The company also must disclose whether the decision to engage the compensation consultant or its affiliates for non-executive compensation consulting services was made or recommended by management and whether the board approved those non-executive compensation consulting services. If the board engaged its own compensation consultant, disclosure of fees paid to any compensation consultants that work with management is not required.
- If the board has not engaged its own compensation consultant, fee disclosures are required if (1) there is a consultant providing executive compensation consulting services and (2) the consultant or its affiliates also provided non-executive compensation consulting services to the company for which the fees exceeded $120,000 during the company's fiscal year. No disclosure is required with respect to compensation consultants who work with management if the board has its own compensation consultant.

Companies also must disclose in their proxy statements whether the work of the consultants identified in response to Item 407(e)(3)(iii) raised any conflicts of interest. If so, companies have to describe the conflict and explain how the conflict is being addressed. A general description of a company's policies and procedures to address conflicts of interest would not be sufficient. While the rule does not define a conflict of interest, the SEC notes that a company should, at a minimum, consider the six independence factors required to be considered when selecting an adviser.

4.7 Security holder communications with directors

Item 407(f) of Regulation S-K requires a company to disclose whether its board of directors provides a process for security holders to send communications to the board. If not, the proxy statement must disclose the basis for the board of directors' view that it is appropriate not to have such a process.

If the company has such a process, the company must provide the following additional disclosures, which the proxy statement may either include or refer to the company's website address at which the information appears:

- The manner in which security holders can send communications to the board of directors and, if applicable, to individual directors
- If all security holder communications are not sent directly to board members, the company's process for determining which communications will be relayed to board members[15]

[15] The process for collecting and organizing security holder communications, and similar or related activities, is not required to be disclosed if the issuer's process has been approved by a majority of the independent directors.

While the term "communications" is not defined in Item 407(f) of Regulation S-K, the SEC intends the term to be broadly construed. However, the scope of the required disclosure specifically excludes the following: (1) communications from an officer or director of the company, (2) communications from employees or agents of the company, unless the communications are made based on such employee's or agent's capacity as a shareholder, and (3) security holder proposals under Rule 14a-8 of the Exchange Act (see section 2 of this publication) for consideration at shareholders' meetings and communications about such proposals.

4.8 Board leadership structure and role in risk oversight

Item 407(h) of Regulation S-K and corresponding Item 7 of Schedule 14A require disclosure of a board's leadership structure and why a company believes it is the best structure for the company at the time of the filing.

A company must disclose whether, and why, it has chosen to combine or separate the principal executive officer and board chair positions. If the role of principal executive officer and board chair are combined, a company is required to disclose whether, and why, the company has a lead independent director, as well as the specific role the lead independent director plays in the leadership of the company.

Practice observations

Board leadership structures have evolved over the past decade, with more companies separating the positions of chair and CEO and appointing independent board leaders. Today, about 94% of S&P 1500 companies have some form of independent leadership compared with only 10% in 2000. These leadership positions include independent chairs, lead directors and presiding directors. Lead directors are common at companies where the CEO also holds the chair position; presiding directors are less common. The responsibilities assigned to these leaders vary by registrant.

	Independent board leadership position		
Year	Independent board chair	Lead director	Presiding director
2024*	46%	47%	3%
2023	46%	47%	3%
2022	45%	47%	3%
2021	44%	48%	3%
2020	42%	48%	4%
2019	43%	48%	4%
2018	41%	49%	4%
2017	38%	49%	5%
2016	36%	48%	5%
2015	36%	48%	7%
2014	35%	47%	9%
2013	30%	45%	11%
2000	7%	3%	0%

*Data as of 30 September 2024.

In addition, Item 407(h) requires a company to include disclosure about the board's involvement in the oversight of the risk management process. These disclosures should provide information about how the company perceives the role of its board and the relationship between the board and senior management in managing the material risks facing the company. For example, a company may disclose whether the board administers its risk oversight function through the whole board or through a separate risk committee or the audit committee. A company also may disclose whether the individuals who supervise the day-to-day risk management responsibilities report directly to the board as a whole or to a board committee or how the board or committee otherwise receives information from such individuals.

The SEC staff has issued comment letters to registrants across all industries on disclosures about board leadership structure and board risk oversight as required under Item 407(h) of Regulation S-K. The staff has said that companies could enhance their corporate governance disclosures and should consider making such changes in future proxy statements.

EY resources

- EY Center for Board Matters, ***How board committee responsibilities and structures are changing*** (accessible from the Center for Board Matters website)

4.9 Employee, officer and director hedging

Item 407(i) requires companies to disclose any practices or policies regarding the ability of employees (including officers) or directors to engage in transactions that hedge or offset any decrease in the market value of the company's equity securities or those of certain related entities, as mandated by the Dodd-Frank Act. Registrants must provide the disclosures in proxy or information statements that relate to the election of directors. Registrants that do not have such policies or practices must disclose that fact or state that hedging transactions are generally permitted. Listed closed-end funds and FPIs are not subject to the rules.

4.10 Transactions with related persons

Item 404(a) of Regulation S-K requires registrants to describe transactions (both actual and proposed), since the beginning of the registrant's last fiscal year, in which the registrant is a participant, which exceed $120,000, and in which any related person had or will have a direct or indirect material interest.[16] "Related persons" are those in the following categories at any time during the most recent fiscal year: executive officers,[17] directors,[18] nominees for director, security holders known to own or beneficially own more than 5% of any class of voting securities and members of their immediate families (e.g., spouse, parents, step-parents, children, step-children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, persons (other than tenants or employees) sharing the household of a related person). "Transactions" include any financial transaction, arrangement or relationship (including indebtedness or a guarantee of indebtedness) or any series of similar transactions, arrangements or relationships.[19]

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[16] Instruction 6 to Item 404(a) of Regulation S-K provides limited exceptions whereby certain transactions are not deemed to create an indirect material interest (e.g., when the interest arises only from the related person's position as a director of another corporation that is a party to the transaction; when the aggregate direct and indirect equity interests of all related persons is less than 10% in a corporation or a limited partnership, in which no related person is a general partner, that is a party to the transaction).

[17] Disclosure of compensation to an executive officer solely resulting from such officer's employment relationship with the issuer need not be provided under Item 404(a) if the compensation is reported under Item 402 of Regulation S-K. See section 5 of this publication for those executive compensation disclosure requirements. Also, if the executive officer is not an "immediate family member" of a director or executive officer and their employment compensation would have been reported pursuant to Item 402 of Regulation S-K if they were an NEO, then disclosure under Item 404(a) is not required if the compensation has been approved by the compensation committee of the board of directors. Lastly, disclosure need not be provided under Item 404(a) if the transaction involves the recovery of erroneously awarded compensation computed as provided in Rule 10D-1 of the Exchange Act and the applicable listing standards for the registrant's securities and that transaction is disclosed pursuant to Item 402(w) of Regulation S-K (these disclosures are also discussed in section 5 of this publication).

[18] Disclosure of compensation to a director need not be provided under Item 404(a) if the compensation is reported under Item 402(k) or 402(m) of Regulation S-K. See section 5 of this publication for those director compensation disclosure requirements.

[19] If the related person transaction involves a lease or other transaction requiring periodic payments or installments, the computation of the dollar value involved in the transaction should include the aggregate amount of all periodic payments or installments due on or after the beginning of the registrant's last fiscal year, including any payments due during or at the conclusion of the transaction.

Required disclosures of such related person transactions include:

- The related person's name and relationship to the registrant
- The nature of their interest in the transaction with the registrant, including their position with, or ownership in, the entity that is a party to, or has an interest in, the transaction
- The approximate dollar value of the transaction
- The value of the related person's interest in the transaction, determined without regard to the amount of any profit or loss

The registrant also is required to disclose any other information regarding the related person transaction that is material to investors in light of the transaction's particular circumstances.

These disclosures are not necessary when the payment involved in the transaction is determined by competitive bids or the transaction involves rendering services as a common contract carrier or public utility, at rates fixed by law or governmental authority, or involves services as a bank depositary, transfer agent, registrar or trustee. Generally, the details of other related person transactions (e.g., consulting or lease agreements, purchases or sales of assets) that exceed $120,000 should be reviewed with legal counsel to determine the required disclosure.

Section 13 of the Exchange Act prohibits issuers from making substantially any loans to directors or executive officers, but for transactions with other related persons that involve indebtedness,[20] the registrant also must disclose the largest aggregate principal amount outstanding during the year, the amount outstanding as of the latest practical date, the interest rate and the amount of principal and interest paid during the year. For purposes of the $120,000 disclosure threshold, a registrant should include the largest aggregate amount of principal outstanding at any time since the beginning of the last fiscal year, as well as all amounts of interest payable during the last fiscal year. These disclosures may be omitted if the amount due from the related person was for purchases of goods and services subject to usual trade terms, ordinary business travel and expense payments, or other transactions in the ordinary course of business. Indebtedness of 5% beneficial owners and their immediate family members also need not be disclosed.

4.10.1 Review and approval of related person transactions

Item 404(b) of Regulation S-K requires registrants to describe their policies and procedures for the review, approval or ratification of any related person transaction required to be disclosed under Item 404(a) of Regulation S-K (as discussed above). Examples of items to be considered for disclosure include:

- The types of transactions covered by the registrant's policies and procedures
- The standards the registrant applies under the policies and procedures
- The persons on the board of directors or otherwise who are responsible for applying the policies and procedures
- A statement of whether the policies and procedures are written, and if not, how the policies and procedures are evidenced

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[20] If the lender is a bank, savings and loan association or broker-dealer extending credit, and the loans are not disclosed as non-accrual, past due, restructured or potential problems, disclosure under Item 404(a) may consist of a statement (if true) that the loans:

- Were made in the ordinary course of business
- Were made on substantially the same terms, including interest rate and collateral, as those prevailing at the time for comparable loans with persons not related to the lender
- Did not involve more than the normal risk of collectability or present other unfavorable factors

Registrants also are required to identify any related person transaction required to be reported under Item 404(a) of Regulation S-K since the beginning of the registrant's last fiscal year (other than those that occurred prior to the time an individual became a "related person," provided the transaction did not continue after such time) if such policies and procedures did not require review, approval or ratification or if the policies and procedures were not followed.

4.11 Promoters and control persons

Item 401(g) of Regulation S-K requires registrants that have not been subject to the reporting requirements of Sections 13(a) or 15(d) of the Exchange Act for the 12 months immediately prior to the filing of an annual report or proxy statement and that had a promoter[21] at any time during the last five years, to describe the information required by Item 401(f) of Regulation S-K regarding the involvement of any promoter in certain legal proceedings that occurred during the past 10 years to the extent material to a voting or investment decision. Such registrants also must provide this same information with respect to any control person. Item 401(f) of Regulation S-K requires the disclosure of certain types of bankruptcy, criminal, injunctive or securities-related proceedings as well as disciplinary sanctions or orders imposed by a stock, commodities or derivatives exchange or other self-regulatory organization.

4.12 Insider trading and reporting

4.12.1 Compliance with reports under Section 16(a) of the Exchange Act

Section 16 of the Exchange Act governs the reporting of stock transactions by "insiders" (e.g., officers, directors and principal shareholders) and the recovery of "short-swing profits." Item 7 of Schedule 14A requires the disclosures set forth under Item 405 of Regulation S-K. Item 405 of Regulation S-K requires disclosure of delinquent reports filed by insiders during the most recent fiscal year or prior fiscal years. However, any instance of a delinquent report is only required to be disclosed once and is not required to be reported in subsequent disclosures.

Registrants must disclose for each insider (1) the number of late reports, (2) the number of transactions not reported on a timely basis and (3) any known failure to file a required Form. A known failure to file would include, but not be limited to, a failure to file a Form 3, which is required of all insiders, and a failure to file a Form 5, in the absence of a written representation by the insider that no such filing is required.[22]

Registrants will not be liable for incorrect disclosure of Section 16 reporting violations if the information disclosed is consistent with the information reported on Forms 3, 4 and 5 or amendments sent to the registrant by the insider pursuant to Section 16. A registrant does not have an obligation to research or make inquiry regarding delinquent filings. As noted above, the registrant may rely on a written statement by the insider that a Form 5 filing was not required.

The Section 16 definition of "officer" is modeled after the definition of "executive officer" currently used for other proxy statement disclosures and focuses on the functional responsibilities of the officer rather than the officer's title (see section 5 of this publication for the definition of executive officer). For

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[21] Rule 12b-2 of the Exchange Act defines a promoter as (1) any person who, acting alone or in conjunction with one or more other people, directly or indirectly takes initiative in founding and organizing the business of an issuer or (2) any person who, in connection with the founding and organizing the business of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10% or more of any class of securities of the issuer or 10% or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter if such person does not otherwise take part in founding and organizing the enterprise.

[22] If the registrant receives written representation from the insider that no Form 5 is required and the representation is maintained for two years and available to the SEC upon request, the registrant need not report the insider as having failed to file a Form 5 for that fiscal year.

purposes of determining whether a person is the beneficial owner of greater than 10% of a class of equity security, the focus is on "voting power" or "investment power" regardless of whether there is a monetary interest in the security. However, only transactions in those securities in which the insider has a monetary interest are reported under Section 16. The rules also specify that ownership of derivative securities (e.g., options) will be treated as functionally equivalent to ownership of the underlying securities.

To encourage appropriate reporting by insiders and avoid potentially embarrassing disclosures, registrants may wish to coordinate with their insiders to develop and implement an effective system to monitor compliance with Section 16 reporting. Basic insider reporting forms and requirements include the following:

- Form 3 is to be filed with the SEC within 10 days after a person becomes a director or officer or a greater than 10% beneficial owner of a class of equity securities.
- Form 4 must be filed within two business days following reportable changes. The SEC has created exceptions for two narrowly defined types of transactions for which filing within the two-business day deadline is not feasible. In these cases, if the insider does not control and cannot reasonably be expected to know immediately the precise transaction date, the execution date is deemed to be the later of the date the insider is actually notified of the transaction or the third business day after execution.
- Form 5 is to be filed no later than 45 days after the end of the issuer's fiscal year. This form is used to report transactions not required to be reported on an interim basis (e.g., gifts) and transactions or holdings that were required to be reported previously, but were not (i.e., failures to file Forms 3 or 4). A Form 5 is not required to be filed for a year if there were no transactions or holdings required to be reported on that Form.

In addition to filing with the SEC, all three forms must be filed with the principal exchange on which the class of equity security is listed, and a duplicate copy must be sent to the issuer of the security. Generally, questions about the scope of disclosure obligations with respect to Section 16 reporting violations should be discussed with legal counsel.

The SEC final rule, *Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5*, mandates the electronic filing via EDGAR of all reports of "insiders" under Section 16(a) of the Exchange Act (i.e., Forms 3, 4 and 5). The SEC also requires each issuer with a corporate website to post all insider reports with respect to its equity securities by the end of the business day after the report's filing.

4.12.2 Insider trading arrangements and policies

In December 2022, the SEC adopted amendments to require new disclosures about a registrant's insider trading policies and procedures. Item 7 of Schedule 14A requires the disclosures set forth under Item 408(b) of Regulation S-K. Item 408(b) of Regulation S-K requires disclosure of whether a registrant has adopted insider trading policies and procedures governing the purchase, sale and/or other dispositions of its securities by directors, officers and employees or the registrant itself.[23] If a registrant has not adopted such policies and procedures, it must explain why.

[23] If the registrant has adopted such policies and procedures, it must file them as an exhibit to Form 10-K. This requirement would be satisfied if all of the registrant's insider trading policies and procedures are included in its code of ethics, as defined in Item 406(b) of Regulation S-K, and the code of ethics is filed as an exhibit pursuant to Item 406(c) of Regulation S-K.

5 Item 8 — Compensation of directors and executive officers

The required proxy disclosures about the compensation of directors and executive officers are governed by Item 402 of Regulation S-K. All elements of the Item 402 disclosures, except Item 402(t), are required in proxy or information statements for a shareholders' meeting at which directors will be elected or other action will be taken on compensation matters involving directors, executive officers, or nominees (e.g., adoption or amendment of bonus or profit-sharing plans, pension or retirement plans, stock compensation plans). These same elements of the Item 402 disclosures are required under Item 11 of Part III of Form 10-K, except Item 402(v).

The following summarizes the requirements of Item 8 of Schedule 14A:

Disclosure Requirement of Item 8 of Schedule 14A	Regulation S-K Item	Required in Form 10-K?
CD&A	402(b)	Yes (Part III — Item 11)
Summary compensation table (SCT)	402(c)	Yes (Part III — Item 11)
Grants of plan-based awards table	402(d)	Yes (Part III — Item 11)
Narrative disclosures to the SCT and grants of plan-based awards table	402(e)	Yes (Part III — Item 11)
Outstanding equity awards at fiscal year-end table	402(f)	Yes (Part III — Item 11)
Option exercises and stock vested table	402(g)	Yes (Part III — Item 11)
Pension benefits table	402(h)	Yes (Part III — Item 11)
Nonqualified deferred compensation table	402(i)	Yes (Part III — Item 11)
Potential post-employment or change in control payments	402(j)	Yes (Part III — Item 11)
Director compensation table (DCT)	402(k)	Yes (Part III — Item 11)
Smaller reporting company disclosures	402(l)–(r)*	Yes (Part III — Item 11)
Disclosure of registrant's compensation policies and practices for risk management	402(s)	Yes (Part III — Item 11)
Golden parachute compensation	402(t)**	Yes (Part III — Item 11)
Pay ratio rule	402(u)	Yes (Part III — Item 11)
Pay versus performance	402(v)	No
Disclosure of a registrant's action to recover erroneously awarded compensation	402(w)	Yes (Part III — Item 11)
Disclosure of the registrant's policies and practices related to the grant of certain equity awards close in time to the release of material nonpublic information	402(x)	Yes (Part III - Item 11)
Board compensation committee report on executive compensation	407(e)(5)	Yes (Part III — Item 11)***
Disclosure of compensation committee interlocks and insider participation	407(e)(4)	Yes (Part III — Item 11)

* Information about SRCs is included in section 9 of this publication.

** Item 402(t), *Golden Parachute Compensation*,[1] is required only for a proxy or consent solicitation material for shareholders to approve an acquisition, merger, consolidation or the proposed sale or other disposition of all or substantially all of a company's assets. Although Item 402(t) is not required in annual meeting proxy statements, companies may include disclosure under Item 402(t) voluntarily if they believe it would help shareholders understand their compensation programs. See section 8 for further discussion of Item 402(t).

*** Instruction 1 to Item 407(e)(5) of Regulation S-K provides that the compensation committee report is not deemed to constitute "soliciting material" or a "filed" document and will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except if the registrant decides to specifically incorporate it by reference.

[1] SEC Release Nos. 33-9178 and 34-63768, *Shareholder Approval of Executive Compensation and Golden Parachute Compensation.*

5.1 Overview

CD&A is required to provide a general overview of the material principles underlying the registrant's executive compensation policies and decisions, and the most important factors for analysis of those policies and decisions.

Registrants also must present a summary compensation table (SCT), which includes three years of compensation data. The SCT is supplemented by a table about grants of plan-based awards and related narrative disclosures providing a more detailed description of any material factors necessary to understand the tabular disclosures. Additional disclosures are required about exercises and holdings of previously awarded equity, post-employment compensation (including benefits from defined benefit plans and non-qualified defined contribution plans and other deferred compensation) and director compensation.

The following section explains these requirements. It is based on SEC proxy rule requirements, interpretive guidance issued by the SEC and its staff and our experience helping clients comply with the proxy rules.

This SEC staff interpretative guidance includes the SEC staff's report, *Staff Observations in the Review of Executive Compensation Disclosure*,[2] issued in October 2007 (October 2007 Observations Report), which provides valuable insight about the SEC staff's expectations for executive compensation disclosures. The report encourages public companies to review their executive compensation disclosures, and draft future disclosures, in light of the principles and themes of the comments issued by the SEC staff. The SEC staff continues to issue comments similar to those addressed in the October 2007 Observations Report.

The SEC staff's comments have sought more direct, specific, clear and understandable disclosure. The report cites two principal themes:

- CD&A should focus on clearly explaining how and why a company arrives at specific executive compensation decisions and policies. CD&A should help the reader understand the basis and the context for granting different types and amounts of executive compensation.
- Executive compensation disclosures should be presented in plain English and should be organized in a way that helps the reader understand a company's disclosure. The SEC staff encourages companies to make their disclosure more useful and meaningful by providing an executive summary or creating tables or charts tailored to their particular executive compensation program.

5.2 Definition of executive officer

Rule 3b-7 of the Exchange Act defines a registrant's executive officer as "its president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy making functions for the registrant."

5.3 Definition of named executive officers

Information generally is required only about the NEOs, which include: (1) the registrant's principal executive officer (PEO, who is often the CEO) and principal financial officer (PFO, who is often the CFO) or any individual(s) acting in those capacities at any time during the year,[3] regardless of compensation level; (2) the registrant's three highest paid executive officers, other than the CEO and CFO, who were

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[2] The Division of Corporation Finance staff report is available on the SEC's website at **http://www.sec.gov/divisions/corpfin/guidance/execcompdisclosure.htm**.

[3] Because the SEC requires disclosure for any person who acted as PEO or PFO during the year, more than one PEO and PFO may be reported in the proxy statement. See Regulation S-K C&DI 117.06 at **http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

serving as executive officers at the end of the last completed fiscal year and (3) up to two additional executive officers who would have met the requirements in (2), but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year.

Determination of the registrant's NEOs is based on total compensation for the most recent fiscal year as determined for purposes of disclosure in the SCT, with the exception of the change in pension value and non-qualified deferred compensation earnings amounts reported in column (h) of the SCT (see below). However, no disclosure is required for any executive, other than the CEO and CFO, whose total compensation does not exceed $100,000.

In determining the NEOs to include in the SCT, an individual's status during the fiscal year governs. If an executive officer at year end is determined to be an NEO for the first time, disclosure should be provided of the NEO's compensation for the full year including any compensation during the current year when the individual was not an executive officer. However, that NEO's total compensation is not required to be reported for any periods presented in which the NEO was not an executive officer. The SCT generally must include information for the current reporting year and the two preceding years, or such shorter period that the company was publicly traded.

For any NEOs that terminated employment with the registrant during the year, the individual's information should be disclosed for all years for which the individual was an NEO, including the portion of the current year before termination. No disclosure is required for "former NEOs" in years following the year during which they were terminated.

Consistent with how NEOs are defined under Rule 402(a)(3) of Regulation S-K, the pay versus performance rules require registrants to disclose compensation information for both PEOs and the remaining NEOs, including separate disclosure of the PEO's total compensation and other NEOs' average total compensation disclosed in the SCT (see section 5.5.4 below).

5.4 Definition of compensation

Disclosure is required for all plan and non-plan compensation awarded to, earned by or paid to the NEOs for all services rendered in all capacities to the registrant and its subsidiaries. Amounts reported as compensation in one fiscal year should not be reported as compensation for a subsequent fiscal year (e.g., bonuses earned in one fiscal year and paid in the following fiscal year). The nature of the compensation generally has no bearing on the application of the disclosure requirements. However, registrants may omit information about group life, health, hospitalization, medical reimbursement and disability plans that do not discriminate in scope, terms, or operation in favor of executive officers or directors of the registrant, and that are generally available to all salaried employees.[4]

5.5 Executive compensation disclosures

Executive compensation disclosures required by Regulation S-K Items 402(b) through 402(i) should begin with the narrative disclosure, CD&A, which should address in one place the registrant-specific factors affecting both the separate elements of executive compensation and executive compensation as a whole.

In addition, two tables are required that present information on compensation paid to or awarded to the NEOs:[5] (1) Summary Compensation Table (SCT) and (2) Grants of Plan-Based Awards. Four additional tables also are required for NEO compensation: (1) Outstanding Equity Awards at Fiscal Year End, (2) Option Exercises and Stock Vested, (3) Pension Benefits and (4) Nonqualified Deferred Compensation.

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[4] Regulation S-K C&DI 117.07 is available at **http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

[5] The SEC's final rule, *Proxy Disclosure Enhancements* (see SEC Release No. 33-9089), requires disclosure in the SCT and director compensation table (DCT) of the aggregate grant date fair value of stock and option awards.

The SCT includes a three-year comparison of compensation; however, the remaining tables only present information with respect to the latest fiscal year. The SEC staff has asked registrants in comment letters to relocate any tables placed before CD&A so that they follow CD&A.

Generally, the rules do not permit registrants to deviate from the formatted tabular presentations required for the tables noted above, except to omit any column or table otherwise not applicable. If registrants believe additional disclosure is needed to prevent the required tabular information from being misleading, such information should be presented in a narrative footnote to the appropriate table.

The SEC staff has said that charts, tables and graphs tailored to a registrant's specific circumstances may be helpful in addition to the required tables. However, the SEC staff requests changes when additional tables are found to be confusing, include calculations inconsistent with the requirements of Item 402 of Regulation S-K or overshadow or detract from the required tables. The SEC staff also may ask registrants to change the titles of supplemental tables that too closely resemble the titles of required tables and to explain any differences between compensation amounts presented in the supplemental and required tables. In some instances, the SEC staff may ask registrants to specifically state that their supplemental tables are not a substitute for the required tabular disclosure.

5.5.1 Compensation discussion and analysis

CD&A (Item 402(b) of Regulation S-K) must provide, in plain English and without boilerplate or repetitive disclosures, context for the registrant's other compensation disclosures and explain the objectives and material elements of the compensation for NEOs by answering the following questions:

- What are the objectives of the registrant's compensation programs?
- What is the compensation program designed to reward?
- What is each element of compensation?
- Why does the registrant choose to pay each element?
- How does the registrant determine the amount (and, if applicable, the formula) for each element?
- How does each element, and the registrant's decisions about that element, fit into the registrant's overall compensation objectives and affect decisions about other elements?
- Whether, and if so how, the registrant has considered the results of the previous shareholder say-on-pay votes in determining compensation policies?

While the CD&A disclosure requirements are principles-based, their scope is intended to be comprehensive, incorporating material elements of both in-service and post-termination compensation. The CD&A narrative should focus on the most important factors relevant to an understanding and analysis of the registrant's compensation policies and decisions. While CD&A should address compensation for the most recently completed fiscal year, an instruction to Item 402(b) of Regulation S-K directs that CD&A also should cover actions taken on executive compensation after the registrant's last fiscal year end. Subsequent executive compensation changes that might require discussion include: (1) the adoption or implementation of new or modified programs and policies or (2) specific decisions that were made after year end that could affect a fair understanding of each NEO's compensation for the last fiscal year.[6]

[6] Regulation S-K C&DI 118.07 reinforces that CD&A is required to address only executive compensation for the company's most recent fiscal year and need not discuss compensation (or related performance targets) to be paid in the current or future years. Although Instruction 2 to Item 402(b) provides that the CD&A also should cover actions about executive compensation that were taken after the registrant's last fiscal year's end, such disclosure requirement is limited to those actions or steps that could "affect a fair understanding of the named executive officer's compensation for the last fiscal year." Regulation S-K C&DI 118.07 is available at **http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

Item 402(b)(2) of Regulation S-K provides an illustrative list of matters that might be appropriate for inclusion in CD&A, including:

- Policies for allocating between compensation paid currently and on a longer-term basis
- Policies for allocating between cash and non-cash compensation, and among different forms of non-cash compensation
- How the determination is made about when awards are granted, including awards of equity-based compensation such as options
- The specific aspects of corporate performance that are taken into account in setting compensation policies and making compensation decisions
- How specific forms of compensation are structured and implemented to reflect aspects of the registrant's performance and the executive's individual performance, including whether discretion can be or has been exercised (e.g., to award compensation without attainment of the relevant performance goals, to increase the size of an award), instances of such discretion and how such discretion applied to one or more specified NEOs or to some or all of the compensation subject to the relevant performance goal(s)
- Policies and decisions about the adjustment or recovery of awards or payments if the relevant performance measures on which they are based are restated or otherwise adjusted in a manner that would reduce the size of an award or payment
- The factors considered in decisions to increase or decrease compensation materially
- How compensation or amounts realizable from prior compensation are considered in setting other elements of compensation
- The basis for selecting particular events as triggering payment when entering a written or unwritten contract, agreement, plan or arrangement, that provides for payment(s), following or in connection with any termination or change in control (e.g., the rationale for providing a single trigger for payment in the event of a change in control)
- The effect of accounting and tax treatments of a particular form of compensation
- The registrant's equity or other security ownership requirements or guidelines for executives (specifying applicable amounts and forms of ownership), and any registrant policies about the permissibility for executives to hedge the economic risk of such ownership
- Whether the registrant engaged in any benchmarking[7] of total compensation or any material element of compensation, and, if so, what benchmark was used and, if applicable, its components (including component companies)[8]
- The role of executive officers in determining executive compensation

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[7] Benchmarking generally entails using compensation data about other companies as a reference point on which, either wholly or in part, to base, justify or provide a framework for a compensation decision. It would not include a situation in which a company reviews or considers a broad-based third-party survey for a more general purpose, such as to obtain a general understanding of current compensation practices. See Regulation S-K C&DI 118.05 at **http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

[8] Benchmarking disclosures have historically been a source of frequent SEC staff comment. The SEC staff asks registrants to provide a more detailed explanation of how they used comparative information and how that comparison affected compensation decisions. In addition, when a registrant discloses it had benchmarked its compensation to that of its peers, but did not identify the peer group used, the SEC staff may ask the registrant to identify which companies it has benchmarked against, as well as how the pay for NEOs compared with the benchmarks.

If the compensation policies and decisions for individual named executives vary materially, CD&A should provide sufficient information for investors to understand the material differences, including a discussion of the policies and decisions applicable to an individual executive officer, if necessary.

CD&A is treated as "filed" information subject to the civil liability provisions of Section 18 of the Exchange Act for making false or misleading statements in reports filed with the SEC. If CD&A and any of the other disclosure about executive officer and director compensation are included or incorporated by reference into a periodic report filed under the Exchange Act, such as a Form 10-K, the disclosure is covered by the certifications that the principal executive officer and principal financial officer are required to make in such periodic reports.[9]

CD&A is a focus area of the SEC staff and often a subject of comment. The SEC staff has asked companies to enhance their analyses of compensation policies and discussions, including providing more insight into how they arrived at the particular levels and forms of compensation that they chose to award to their NEOs.

5.5.1.1 Performance targets

Item 402(b) of Regulation S-K provides a principles-based framework for disclosing the use of individual or corporate performance targets when they are material elements of a company's compensation policies and decisions. These targets are often the focus of SEC staff reviews. The SEC staff has said that companies frequently allude to using corporate or individual performance targets, but do not explain exactly what the targets were and how they were considered when making compensation decisions.

Instruction 4 to Item 402(b) of Regulation S-K clarifies that "registrants are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm for the registrant." However, when relying on this instruction, the registrant must discuss how difficult or likely it will be for the executive or registrant to achieve the undisclosed target levels or other factors.

In its comment letters, the SEC staff has asked registrants that did not disclose their performance targets to either (1) disclose the targets or (2) demonstrate to the SEC staff how disclosure of such targets could cause competitive harm. If a registrant discusses the difficultly of achieving undisclosed targets, the SEC staff may seek more specific disclosure to enhance investor understanding.

Regulation S-K C&DI 118.04[10] addresses how a company should determine whether it may omit disclosure of performance target levels under Instruction 4 to Item 402(b). The SEC staff stated that a company should begin its analysis of whether it is required to disclose performance targets by determining the materiality of the performance target in the context of the company's executive compensation policies or decisions. If performance targets are not material in this context, the SEC staff stated that a company is not required to disclose the performance targets. When performance targets are a material element of a company's executive compensation policies or decisions, the SEC staff stated that a company may omit targets involving confidential trade secrets or confidential commercial or financial information only if their disclosure would result in competitive harm. A company should use the same standard for evaluating whether target levels (and other factors or criteria) may be omitted as it would use when making a confidential treatment request under Securities Act Rule 406 or Exchange Act Rule 24b-2. However, no confidential treatment request is required to be submitted for the omission of a performance target level or other factors or criteria.

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[9] Exchange Act Rules 13a-14 and 15d-14, promulgated under Section 302 of the Sarbanes-Oxley Act of 2002, require each report filed on Form 10-Q, Form 10-K, Form 20-F or Form 40-F to include certifications, in the exact form specified, signed (separately) by the registrant's principal executive officer and principal financial officer, or persons performing similar functions.

[10] Regulation S-K C&DI 118.04 is available at **http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

To reach a conclusion that disclosure would result in competitive harm, the SEC staff stated that a company must undertake a competitive harm analysis taking into account its specific facts and circumstances and the nature of the performance targets. In the context of the company's industry and competitive environment, the company must analyze whether a competitor or contractual counterparty could extract information from the disclosure of performance targets about the company's business or business strategy that the competitor or counterparty could use to the company's detriment.

The SEC staff has stated that it is often more difficult for companies to persuade the SEC staff that disclosure of performance targets will result in competitive harm after the company has disclosed the amounts. This is especially true for targets that are tied to company-wide financial results that are publicly reported (e.g., targets tied to company-wide earnings per share). The SEC staff commented that it has not seen persuasive analyses explaining how competitors could compile sufficiently specific information about a company's future operations and strategy from the disclosure of these types of targets to cause the company harm. The SEC staff has stated that absent highly unusual circumstances, companies should plan to disclose these kinds of performance targets if material to their compensation policies and decisions.

The SEC staff also has stated that when a company concludes that it may omit a performance target because disclosure would cause it competitive harm, it must disclose with "meaningful specificity" how difficult or likely it would be for the company or executive to achieve the undisclosed target. A statement that the target is intended to be "challenging" is insufficient absent more detailed information. Rather, a company should provide support for the level of difficulty it asserts (e.g., a discussion of the correlation between historical and future achievement of the relevant performance metric).

5.5.1.2 Non-GAAP financial measures as performance targets

Instruction 5 to Item 402(b) of Regulation S-K notes that disclosures of non-GAAP financial measures as performance targets, pursuant to the requirements in Item 402(b), are not subject to all of the requirements for the presentation of non-GAAP measures in Regulation G and Item 10(e) of Regulation S-K. As a result, non-GAAP measures used as performance targets may not be appropriate to present outside of the CD&A if they could be considered misleading and in violation of Regulation G and Item 10(e) of Regulation S-K. Registrants must disclose how the non-GAAP performance target is calculated from the registrant's audited financial statements. This provision pertains to both performance targets and actual performance[11] for the relevant period. Additionally, Instruction 2 to Item 402(b) of Regulation S-K states, "Moreover, in some situations it may be necessary to discuss prior years in order to give context to the disclosure provided."

When a registrant presents non-GAAP financial measures in the proxy or information statement outside CD&A that do not satisfy the disclosure requirements of Rule 402(b) of Regulation S-K, the non-GAAP financial measures must comply with all requirements in Regulation G and Item 10(e).[12] The SEC staff will not object if a registrant includes the required reconciliation and other disclosures by including a prominent cross reference to either an annex to the proxy statement or to the relevant pages of the Form 10-K that include such disclosures.

[11] See Regulation S-K C&DI 118.09 at **http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

[12] See Regulation S-K C&DI 118.08 at **http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

5.5.1.3 Disclosure of option grants

Additional disclosures are required about company programs, plans or practices for the granting of options to executives, including in particular the timing of option grants in coordination with the release of material nonpublic information (MNPI) and the selection of exercise prices that differ from the underlying stock's closing price on the grant date.

Starting with 2025 proxy statements for calendar year-end registrants,[13] Item 402(x) of Regulation S-K requires non-SRC registrants to disclose their policies and practices regarding the timing of awards of options in relation to the disclosure of MNPI, including:

- How the board determines when to grant options
- Whether the board or compensation committee takes MNPI into account when determining the timing and terms of an award
- Whether the registrant has timed the disclosure of MNPI for the purpose of affecting the value of awards

For calendar year-end companies, this will be required in 2025 proxy statements but will cover grants made in 2024. Companies should therefore consider their equity grant policies and enhancements to their disclosures on this topic.

Although Item 402(x) of Regulation S-K does not specify the location of the disclosures in the proxy and information statement, registrants subject to CD&A disclosure requirements can consider including them in that section.[14]

CD&A also requires enhanced narrative disclosure about option grants to executives. Companies must analyze and discuss, as appropriate, material information such as the reasons a company selects particular grant dates for awards or the methods a company uses to select the terms of awards, such as the exercise prices of stock options. With regard to the timing of stock options in particular, the SEC expects CD&A to address the following: [15]

- Does the company have any program, plan or practice[16] to time option grants to its executives in coordination with the release of MNPI?[17]
- How does any program, plan or practice for time option grants to executives compare to the company's program, plan or practice, if any, with regard to option grants to employees more generally?
- What was the role of the compensation committee in approving and administering such a program, plan or practice? How did the board of directors or compensation committee take such information into account when determining whether, and in what amount, to make those grants? Did the compensation committee delegate any aspect of the actual administration of a program, plan, or practice to any other persons?
- What was the role of executive officers in the company's program, plan or practice of option timing?

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[13] The proxy statement for the first annual meeting for the election of directors (or information statements for consent solicitations in lieu thereof) after completion of the first full fiscal year beginning on or after 1 April 2023.

[14] See SEC Release Nos. 33-11138; 34-96492, *Insider Trading Arrangements and Related Disclosures*.

[15] See SEC Release No. 33-8732A, *Executive Compensation and Related Person Disclosure*.

[16] When a registrant has a program, plan or practice of timing option grants, CD&A also should disclose that the board of directors or compensation committee may grant options at times when the board or committee is in possession of MNPI.

[17] Disclosure also is required if a registrant has not previously disclosed a program, plan or practice of timing option grants, but has since adopted such a program, plan or practice.

- Does the company set the grant date of its stock option grants to new executives in coordination with the release of MNPI?
- Does the company plan to time, or has it timed, its release of MNPI for the purpose of affecting the value of executive compensation?

In addition, Item 402(x) requires registrants to disclose in a table details regarding any options granted to NEOs in the most recently completed fiscal year that were granted within a period of four business days before and one business day after the (1) filing of a periodic report on Form 10-Q or 10-K or (2) filing or furnishing of a current report on Form 8-K that contains MNPI (other than disclosure of a material new option award grant under Item 5.02(e) of Form 8-K).

Tabular disclosure of certain equity awards granted to corporate insiders					
(a)	(b)	(c)	(d)	(e)	(f)
Name	Grant date	Number of securities underlying the award	Exercise of securities underlying the awards	Grant date fair value of the award	Percentage change in the closing market price of the securities underlying the award between the trading day ending immediately prior to the disclosure of material nonpublic information and the trading day beginning immediately following the disclosure of material nonpublic information

The table includes:

- The name of the NEO (column (a))
- For each award:
  - The grant date of the option award (column (b))
  - The number of securities underlying the option (column (c))
  - The per-share exercise price of the option (column (d))
  - The grant date fair value of each award computed using the same methodology as used for the registrant's financial statements under GAAP (column (e))
  - The percentage change in the market price of the underlying securities one trading day before and after disclosure of MNPI (column (f))

5.5.2 Risk and compensation policies and practices

Item 402(s) of Regulation S-K requires a company to disclose its broader compensation policies and actual compensation practices for all employees, including non-executive officers, if risks arising from those compensation policies or practices are "reasonably likely to have a material adverse effect on the company."

These disclosures are provided outside the company's CD&A because their scope goes beyond the NEOs to consider the company's broader compensation policies and practices for all employees. If risk considerations are a material aspect of the company's compensation policies or decisions for its NEOs, the company is required to discuss those considerations as part of its CD&A.

Situations requiring disclosure under Item 402(s) of Regulation S-K vary depending on the particular company and its compensation programs. However, the SEC's Proxy Disclosure Enhancements rule release[18] identifies situations that could potentially trigger further discussion because they might create material risks to a company that otherwise would not be apparent in a discussion focused solely on executive compensation policies. These situations include compensation policies and practices:

- At a business unit of a company that represents a significant portion of the company's risk profile
- At a business unit with compensation structured significantly differently than other business units within the company
- At business units that are significantly more profitable than others within the company
- At business units for which compensation expense is a significant percentage of the unit's revenues
- That vary significantly from the overall risk and reward structure of the company

Item 402(s) provides the following examples of the issues that a company might need to address. The level of detail required depends on a company's particular facts and circumstances.

- The general design philosophy of a company's compensation policies for employees whose behavior would be most affected by the incentives established by the policies
- A company's risk assessment or incentive considerations, if any, in structuring its compensation policies or in awarding and paying compensation
- How a company's compensation policies relate to the recognition of risks resulting from the actions of employees in both the short term and long term
- A company's policies about adjustments to its compensation programs to address changes in its risk profile
- Material adjustments a company has made to its compensation policies or practices as a result of changes in its risk profile
- The extent to which a company monitors its compensation policies to determine whether its risk management objectives are being met with respect to incentivizing its employees

[18] SEC Release No. 33-9089, *Proxy Disclosure Enhancements*.

5.5.3 Summary compensation table

The SCT (Item 402(c) of Regulation S-K) is intended to provide a comprehensive overview of a registrant's executive pay practices.

5.5.3.1 Summary compensation table for 2024, 2023 and 2022

Name and principal position (a)	Year (b)	Salary ($) (c)	Bonus ($) (d)	Stock awards ($) (e)	Option awards ($) (f)	Non-equity incentive plan compensation ($) (g)	Change in pension value and nonqualified deferred compensation earnings ($) (h)	All other compensation ($) (i)	Total ($) (j)
PEO	2024 2023 2022								
PFO	2024 2023 2022								
A	2024 2023 2022								
B	2024 2023 2022								
C	2024 2023 2022								

The SCT requires disclosure of the following types of compensation for each NEO for each of the years in a three-year period:

Salary and bonus — Columns (c) and (d), the salary and bonus columns respectively, must reflect the total salary and bonus amounts earned by each NEO during the respective year. If the salary or bonus amounts for the most recent fiscal year cannot be calculated as of the most recent practicable date, a footnote must disclose that the amount of salary or bonus is not calculable and provide the date that the amount of salary or bonus is expected to be determined. Such amount, when finally determined, must be timely disclosed in a filing under Item 5.02(f) of Form 8-K. Any amounts deferred, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code, or otherwise, should be included in the appropriate column for the fiscal year in which earned.[19] As discussed below, the amount deferred also generally would be reflected in the nonqualified deferred compensation table.

Any amount of salary or bonus forgone at the election of the NEO in exchange for an equal amount of stock, equity-based or other forms of non-cash compensation should be included in the respective Salary or Bonus column [Instruction 2 to Item 402(c)(2)(iii) and (iv) of Regulation S-K]. If the amount of salary or bonus forgone is less than the fair value of noncash compensation awarded, the additional amount of share-based compensation (measured as the grant date fair value) should be included in the stock awards or option awards columns. If the amount of salary or bonus forgone exceeds the fair value of noncash compensation, the entire grant date fair value of such compensation should be classified in the stock

[19] Instruction 4 to Item 402(c) of Regulation S-K directs that any amounts deferred still must be reported in the respective column in the SCT. This applies to all deferrals, not just deferrals made at the election of the NEO or the deferral of salary and bonus.

awards or option awards columns.[20] A footnote to the respective SCT column(s) must disclose the receipt of non-cash compensation in lieu of salary or bonus and refer to the grants of plan-based awards table (discussed below) in which the stock, option or non-equity incentive plan award elected by the NEO would be reported.

Stock awards and option awards — Column (e), the stock awards column, must disclose the dollar value of stock-related awards (other than "option awards" that are disclosed in a separate column, as discussed below) that derive their value from the registrant's equity securities or that permit settlement by issuance of the registrant's equity securities. "Stock" is defined as instruments such as common stock, restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or any other similar instruments that do not have option-like features [Item 402(a)(6)(i) of Regulation S-K].

Column (f), the option awards column, must disclose the dollar value of option-related awards. The term "option" is defined as instruments such as stock options, stock appreciation rights (SARs) and similar instruments that have option-like features [Item 402(a)(6)(i) of Regulation S-K].

The dollar amount reported for stock awards and option awards for the SCT should be the aggregate grant date fair value of awards granted during the year computed for financial statement reporting purposes in accordance with ASC 718.[21] When a service inception date as defined in ASC 718 precedes the grant date, it may be appropriate to report the value measured as of the service inception date if reporting the award in this manner better reflects the compensation committee's decision to establish the award arrangement.[22]

For stock and option awards containing a performance-based vesting condition, the value reported in the SCT should reflect the value of the award at the grant date based on the probable outcome of the performance conditions. A company must report the grant-date fair value for stock and stock option awards subject to performance conditions based on the probable outcome of the performance conditions as of the grant date, even if the actual outcome is known when disclosed.[23] This amount should be consistent with the estimate of aggregate compensation cost to be recognized over the service period determined as of the grant date under ASC 718, excluding the effect of estimated forfeitures. The value of the award at the grant date, assuming that the highest level of performance conditions will be achieved, should be included in a footnote to the table (assuming an amount less than the maximum was included in the table).

If the exercise price of options or stock appreciation rights has been adjusted during the last completed fiscal year through an amendment, cancellation, replacement or has otherwise been materially modified, the incremental fair value of the modified award, computed as of the repricing or modification date in accordance with ASC 718, should be reported in column (f) of the SCT.

The all other compensation column in the SCT also is required to report the payment of any dividends or earnings on stock awards and option awards but only if such dividends or earnings were not considered in the grant date fair value computation for those awards under ASC 718. For example, the fair value of a share of stock includes the present value of dividends expected to be paid in the future. Therefore, if nonvested stock granted to an officer entitles the officer to dividends paid during the vesting period, and the fair value of the award is based on the quoted market price of the stock (which considers the expected dividends), then no disclosure would be required in the SCT when those dividends are actually paid.

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[20] Regulation S-K C&DI 119.03 is available at **http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

[21] Instruction 1 to Item 402(c)(2)(v) and (vi) of Regulation S-K requires a footnote to the stock and option award columns disclosing all assumptions made in the valuation, which may be accomplished by referring to a discussion of those assumptions in the notes to the registrant's financial statements or in MD&A of financial condition and results of operations.

[22] Regulation S-K C&DI 119.24 is available at **http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

[23] Regulation S-K C&DI 119.28 is available at **http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

Non-equity incentive plan compensation — Column (g) of the SCT must report the dollar value of all other amounts earned by the NEO during the fiscal year pursuant to non-equity incentive plans of the registrant. This column reports awards only if the incentive plan's relevant performance measure is not based on the price of the registrant's equity securities or the award may not be settled by issuance of the registrant's equity securities and which, therefore, are not within the scope of ASC 718. Performance-based compensation under an incentive plan that is not indexed to or settled in the registrant's stock will be disclosed in this column in the SCT in the year when the plan's specified performance criteria are satisfied and the compensation is earned (whether or not payment is actually made in that year).[24]

As discussed further below, the grant of such an award would be initially disclosed in the supplemental grants of plan-based awards table in the year of grant, which might be one or more years before disclosure is made in this column of the SCT (in contrast to stock and option awards which are always reported in the SCT in the year of grant). Once non-equity incentive plan compensation has been earned and disclosed in column (g) of the SCT, no further disclosure is required when payment is actually made to the NEO.

Earnings on outstanding awards under non-equity incentive plans also must be included in the Non-Equity Incentive Plan Compensation column of the SCT and identified and quantified in a footnote to the table. Footnote disclosure also is required about whether such earnings were paid during the fiscal year, payable during the year but deferred, or payable by their terms at a later date.

Change in pension value and nonqualified deferred compensation earnings — Column (h) of the SCT must disclose the sum of: (1) the aggregate increase in actuarial present value of each NEO's accumulated benefit under all defined benefit and actuarial plans (including supplemental plans) during the year and (2) any earnings on nonqualified deferred compensation. Footnote identification and quantification of the separate amounts attributable to (1) and (2) above are required.

- Change in pension value — The amount that must be disclosed in this column is the aggregate annual increase in the actuarial present value of each NEO's accumulated benefit under all such plans, computed using the same assumptions and pension plan measurement date used for financial reporting purposes under generally accepted accounting principles in the registrant's audited financial statements. If the aggregate amount attributable to all defined benefit and actuarial plans for any NEO is a negative number, that amount should be disclosed by footnote but should not be reflected in the amount reported in column (h).

- Nonqualified deferred compensation earnings — For compensation that has been deferred on a basis that is not tax-qualified (including under non-qualified deferred contribution plans), column (h) of the SCT must disclose any earnings on such deferred compensation if those earnings are above-market or preferential.[25] Footnote or narrative disclosure may be provided explaining the registrant's criteria for determining any portion considered to be above-market or preferential. If the ultimate interest rates vary depending on future conditions, such as a minimum period of continued service, registrants must calculate the amount of above-market or preferential earnings assuming satisfaction of all conditions to the NEO receiving the highest rate.

This column is included in the sum of total compensation reflected in the total column, column (j) of the SCT, but it is ignored for determining the NEOs.

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[24] Disclosure is required in the year earned even if the award remains subject to forfeiture conditions. The SEC encourages registrants to use the related narrative section to discuss material award features that are not reflected in the tabular disclosures, including, for example, forfeiture provisions related to amounts reported in the SCT.

[25] The above-market or preferential portion is, for interest, the extent to which such interest exceeds 120% of the applicable federal long-term rate and, for dividends, the extent to which such dividends exceed the dividend rate on the company's common stock [Instruction 2 to Item 402(c)(2)(viii) of Regulation S-K].

All other compensation — All other compensation to an NEO during the fiscal year that has not been reported in another column of the SCT must be disclosed in the all other compensation column (column (i)). The only exception, as discussed below, is if perquisites and other personal benefits[26] for the NEO aggregated to an amount less than $10,000 during the year, in which case disclosure of such amount may be omitted.

Each item of compensation included in the all other compensation column for the last fiscal year that exceeds $10,000 for each NEO must be separately identified and quantified in a footnote to the table. Conversely, any individual item of compensation that is less than $10,000 for each NEO will be included in the all other compensation column but does not require separate identification and quantification in a footnote to the table.

Items to be disclosed under all other compensation for each NEO include:

- Perquisites and other personal benefits — All perquisites and other personal benefits must be included in the total of all other compensation unless the aggregate amount of such benefits for the fiscal year for the respective NEO is less than $10,000. If the total value of all perquisites and other personal benefits is $10,000 or more for an NEO, each perquisite or other personal benefit, regardless of its amount, must be identified by type for the respective NEO. Further, a footnote to the SCT is required to identify and quantify each individual perquisite or other personal benefit for the last fiscal year that exceeds the greater of $25,000 or 10% of the total amount of perquisites and other personal benefits for the respective NEO. In each such case, the footnote must identify the particular nature of the benefit received.

Item 402(c) of Regulation S-K does not identify specific benefits that represent perquisites and other personal benefits based on bright line tests. Instead, the SEC has set forth interpretive guidance that should be considered, among other factors, in determining whether an item is a perquisite or other personal benefit. In particular, "An item is not a perquisite or personal benefit if it is integrally and directly related to the performance of the executive's duties,"[27] but "otherwise, an item is a perquisite or personal benefit if it confers a direct or indirect benefit that has a personal aspect, without regard to whether it may be provided for some business reason or for the convenience of the company, unless it is generally available on a non-discriminatory basis to all employees."[28] Perquisites and other personal benefits should be valued on the basis of the aggregate incremental cost to the registrant and its subsidiaries, not the amount attributed to such benefits for federal income tax purposes. Footnote disclosure must be made of the methodology used for computing the aggregate incremental cost for the perquisites [Instruction 4 to Item 402(c)(2)(ix) of Regulation S-K].

- Gross-ups — All gross-ups or other amounts reimbursed during the fiscal year for the payment of taxes. Notably, reimbursements of taxes with respect to perquisites or other personal benefits are required to be included under all other compensation, subject to separate identification and quantification as tax reimbursements, even if the associated perquisites and other personal benefits are not required to be separately identified and quantified because in aggregate they fell below the $10,000 *de minimis* threshold discussed above.

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[26] The SEC staff provided guidance in Regulation S-K C&DI 219.05 on whether benefits provided to executive officers because of the COVID-19 pandemic constitute perquisites or personal benefits for purposes of these disclosures. It is available at **https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

[27] The concept of "integrally and directly related" to job performance is "narrow." The fact that the registrant may have determined that an expense is an "ordinary" or "necessary" business expense for tax or other purposes should not affect the disclosure determination. However, if an item is integrally and directly related to the performance of an executive's duties, there is no requirement to disclose any incremental cost over a less expensive alternative (e.g., it is not necessary to disclose the cost differential between renting a mid-sized car over a compact car used for business travel).

[28] The SEC described several examples of items requiring disclosure as perquisites or personal benefits including: club memberships not used exclusively for business entertainment purposes; personal financial or tax advice; personal travel using vehicles owned or leased by the registrant; personal travel otherwise financed by the registrant; housing and other living expenses (including relocation assistance and payments for the executive to stay at their personal residence); security provided at a personal residence or during personal travel; commuting expenses (whether or not for the registrant's convenience or benefit); and discounts on the registrant's products or services not generally available to employees on a non-discriminatory basis.

- Securities purchased at a discount — The grant date fair value computed in accordance with ASC 718 for any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (whether through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is generally available either to all security holders or to all salaried employees of the registrant.
- Termination or change in control — The amount paid to (or for which payment has become due to) any NEO pursuant to a plan or arrangement in connection with any termination or change in control of the registrant.[29] Termination-related compensation includes, without limitation, any compensation for retirement, resignation, severance or constructive termination of employment. (Amounts potentially payable under post-employment benefits, but for which payment has not become due, are covered by separate disclosure requirements described in the section titled Post-employment compensation below.)
- Company contributions to defined contribution plans — All registrant contributions or other allocations to vested and unvested defined contribution plans, including 401(k) plans, during the fiscal year.
- Insurance premiums — The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the fiscal year with respect to life insurance[30] for the benefit of the NEO.
- Earnings on stock or option awards — The dollar value of any dividends or other earnings paid on stock or option awards when such earnings were not considered in the grant date fair value computation of those awards under ASC 718.

Total — Column (j), the total compensation column in the SCT, representing the sum total of columns (c) through (i).

If a registrant recovered erroneously awarded incentive-based compensation from an executive officer (e.g., a cash bonus) in accordance with its clawback policy, the amount presented in the SCT in the fiscal year in which the applicable compensation was initially reported should be reduced by the amounts recovered, and such amounts should be identified in a footnote.

5.5.4 Pay versus performance

The pay versus performance rules[31] (Item 402(v) of Regulation S-K) are intended to provide investors with more transparent and comparable disclosures of registrants' executive compensation in the context of their financial performance. Although the pay versus performance disclosure requirements do not specify the location of the disclosures in the proxy and information statement, registrants can include them in CD&A if the information was considered in compensation decisions.

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[29] For any compensation as a result of a business combination (other than pursuant to a plan or arrangement in connection with any termination of employment or change-in-control), such as a retention bonus, acceleration of option or stock vesting periods, or performance-based compensation intended to serve as an incentive for NEOs to acquire other companies or enter into a merger agreement, disclosure is required in the appropriate SCT column and in the other tables or narrative disclosure that require the particular element of compensation to be disclosed. However, if a company assumes another entity's outstanding options in a business combination without modifying them (other than to reflect the merger exchange ratio), the acquirer would not include any acquiree options granted in total compensation for the purposes of determining its NEOs nor report the acquiree company options in its SCT and grants of plan-based awards table in the year of the acquisition. Because the acquiree options become the acquirer's options, the acquirer should report them in its outstanding equity awards at fiscal year-end table and options exercised and stock vested table, as applicable, for the acquisition year and subsequent years, with footnote disclosure describing the assumption of the acquiree options. Regulation S-K C&DI 119.27 is available at **http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

[30] Registrants are allowed to omit information about group life, health, hospitalization or medical reimbursement plans that do not discriminate in scope, terms or operation in favor of executive officers or directors of the registrant and that are generally available to all salaried employees [Item 402(a)(6)(ii) of Regulation S-K].

[31] The rules apply to all reporting companies, except EGCs, FPIs and registered investment companies other than business development companies, though SRCs will be permitted to provide scaled disclosures. See section 9.3 of this publication for the Item 402 requirements for SRCs.

5.5.4.1 Pay versus performance table

Pay versus performance table								
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Year	Summary compensation table total for PEO	Compensation actually paid to PEO	Average summary compensation table total for non-PEO NEOs	Average compensation actually paid to non-PEO NEOs	Value of initial fixed $100 investment based on:		Net income	Company-selected measure
					TSR	Peer group TSR		

A registrant is required to provide a table that includes the following information for up to five years:

Summary compensation table total for PEO and remaining NEOs – For columns (b) and (d), registrants are required to disclose information pertaining to both PEOs and other NEOs, including separate disclosure of the PEO's total compensation and other NEOs' average (i.e., mean) total compensation calculated in accordance with Item 402(c)(2)(x) of Regulation S-K(i.e., amounts disclosed in the SCT are discussed in section 5.5.3 of this publication).

For a year in which a registrant had more than one PEO, the registrant is required to provide separate columns for information about each PEO. That is, the registrant would provide SCT totals for each PEO and compensation actually paid for each PEO.

Registrants are required to report one total for average compensation for other NEOs and one total for compensation actually paid to this group for each year, even if there is a change in the individuals included in the group during the year. For example, if an NEO leaves the company, the registrant would need to include that individual's total compensation and the successor NEO's total compensation through the end of the year. Registrants are also required to disclose in a footnote to the table the names of NEOs whose compensation amounts are included in the average for each year to help investors understand whether changes in the NEOs' compensation were due to changes in the composition of the group.

The "actual" compensation paid to the PEO and the other NEOs – For columns (c) and (e), to determine the executive compensation that is "actually paid" for the PEO and NEOs in a given fiscal year, registrants are required to make certain adjustments to the total executive compensation reported in the summary compensation table for pension and equity awards that are calculated in accordance with US GAAP.[32] For equity awards, a registrant would first deduct the grant date fair value of equity awards granted during the year that are reported in the summary compensation table and add back the fair value of the equity awards in the year of grant measured at year end plus changes in the value of awards issued in prior years until the awards vest.[33] Pension amounts would be adjusted by deducting the change in pension value reflected in the summary compensation table and adding back the actuarially determined service cost for services rendered by the executive during the applicable year and the prior service cost (i.e., the entire cost of benefits granted in a plan amendment (initiation) during the covered fiscal year that are attributed by the benefit formula to services rendered in periods prior to the plan amendment or initiation). For more information on these and other adjustments, see our Technical Line publication, ***How to apply the SEC's new pay versus performance disclosure requirements***.

[32] Registrants must provide footnote disclosures to describe the adjustments they make to calculate "executive compensation actually paid" for their most recent fiscal year, and for other years if it is material to an investor's understanding of the information reported in the most recent fiscal year, or to the relationship between compensation and performance. Registrants must describe the adjustments for all periods presented the first time they provide the table. The SEC staff said that registrants must describe each adjustment in this footnote disclosure and may not describe the adjustments in the aggregate (e.g., describe all pension adjustments as one adjustment). See Regulation S-K C&DI 128D.04 at **https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

[33] Registrants are required to disclose any valuation assumptions that materially differ from those disclosed at grant date. Although the final rules are not prescriptive on the assumption disclosure, the staff believes a registrant could provide the disclosures about valuation assumptions as required under ASC 718 (e.g., including a range of assumptions when a range of assumptions is used). See Regulation S-K C&DI 128D.22 at **https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

Consistent with the requirements for the SCT, registrants are required to include signing bonuses, severance and other one-time payments in the amount of compensation actually paid.

Total shareholder return — For columns (f) and (g), registrants are required to disclose their cumulative TSR and that of their peer group[34] (i.e., peer group TSR), both calculated and presented based on an initial fixed investment of $100 for each fiscal year.

The cumulative amounts are also calculated in the same manner as is required for the performance graph required by Item 201(e) of Regulation S-K (i.e., the TSR for the first year in the table will represent the TSR over that first year, the TSR for the second year will represent the cumulative TSR over the first and the second years).

The "measurement period" for the cumulative TSR is the period beginning at the "measurement point" established by the market close on the last trading day before the registrant's earliest fiscal year in the table, through and including the end of the fiscal year for which cumulative TSR is being calculated. The closing price at the measurement point must be converted into a fixed investment of $100 (in the registrant's stock, or in the stock of the companies in the peer group).

Registrants are required to determine their peer group using one of the following: (1) a published industry or line-of-business index, (2) peer companies selected in good faith or (3) registrants with similar market capitalization, if certain criteria are met. Registrants should include a footnote disclosing the index chosen.[35] Registrants are required to use the same peer group they use for the performance graph or the one used in the CD&A. To calculate peer group TSR, registrants are required to weight each issuer's TSR based on their stock market capitalization at the beginning of each period for which a return is reported. If a registrant is using a published industry or line-of-business index, the weighting requirement does not apply.[36]

A registrant that does not use a published industry or line-of-business index as its peer group is required to disclose the composition of the peer group in a footnote. Consistent with the approach taken in Item 201(e) of Regulation S-K, if a registrant changes the peer group for its pay versus performance disclosure from one year to the next, it is not required to include tabular disclosure of peer group TSR for the new peer group for all periods presented. However, the registrant must disclose in a footnote the reason for the change and a comparison of its TSR to both the old and new peer groups.[37]

Registrant's net income and its company-selected measure – For columns (h) and (i), registrants are also required to disclose GAAP net income presented in their financial statements[38] and the most important financial performance measure the registrant uses to link compensation paid to its PEO and other NEOs to company performance for the most recently completed fiscal year (i.e., the company-selected measure). A registrant may provide a company-selected measure that is derived from, is a component of or is similar to the measures that must be included in the pay versus performance table, such as earnings

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[34] Registrants may use a peer group disclosed in its CD&A as its peer group for the purpose of the pay versus performance disclosures, even if the group is not used for compensation "benchmarking" under Item 402 of Regulation S-K. See Regulation S-K C&DI 128D.05 at **https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

[35] See Regulation S-K C&DI 128D.24 at **https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

[36] See Regulation S-K C&DI 128D.26 at **https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

[37] A comparison of the registrant's cumulative total return with that of both the newly selected peer group and the peer group used in the immediately preceding fiscal year is not required if (1) an entity is omitted solely because it is no longer in the line of business or industry, or (2) the changes in the composition of the index/peer group are due to the application of pre-established objective criteria. In these two cases, a specific description of, and the bases for, the change must be disclosed, including the names of the companies deleted from the new index/peer group. See Regulation S-K C&DI 128D.27 at **https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

[38] Other subtotals, such as net income attributable to the registrant and net income attributable to continuing operations, are not permitted as a substitute for the required net income disclosure on the pay versus performance table.

per share, gross profit, income or loss from continuing operations, or relative total shareholder return.[39] Registrants can use their stock price as a company-selected financial performance measure if it is a market condition in an incentive plan award or if it is used to determine the size of a bonus pool (i.e., if the registrant uses stock price to link compensation actually paid to its NEOs to company performance).[40] For example, if the company-selected measure for the most recent fiscal year is operating profit, the registrant would disclose its operating profit in each fiscal year presented on the pay versus performance table.

If the registrant's "most important" measure is already included in the pay versus performance table (i.e., net income), the registrant would select its next most important measure as its company-selected measure.

The company-selected measure can be a non-GAAP financial measure. Consistent with the current CD&A provision, if a registrant uses a non-GAAP financial measure as its company-selected measure, the disclosure will not be subject to the general rules regarding disclosures of non-GAAP financial measures (i.e., Regulation G and Item 10(e) of Regulation S-K) for the purposes of the table. However, the registrant must disclose how the number is calculated from its audited financial statements. If the same non-GAAP financial measure is used elsewhere in a registrant's filing, the general rules on non-GAAP measures would apply.

5.5.4.2 Tabular list of performance measures

The rules require registrants to provide an unranked list of at least three and up to seven performance measures that are the most important measures they use to link executive compensation actually paid to company performance for the most recent fiscal year. The company-selected measure included in the pay versus performance table must be a financial performance measure and needs to be included in the tabular list.

If a registrant uses fewer than three performance measures, the registrant is only required to disclose the measures it actually uses. Nonfinancial performance measures (e.g., active customers, number of memberships, number of data breaches) can also be included in the list if such measures are among the registrant's most important performance measures.

Registrants may disclose the tabular list in three different ways: (1) one list for all NEOs, including the PEO, (2) two separate lists (i.e., one list for the PEO and one for the other NEOs) or (3) separate lists for the PEO and each other NEO. If the registrant elects to provide the tabular disclosure in multiple lists, each list must include three to seven metrics.

While registrants are not required to do this, they may disclose how the measures in the list are calculated and why the registrant uses them to link executive compensation to performance.

5.5.4.3 Description of relationship between pay and performance

Registrants are required to describe the relationship between the actual executive compensation paid, as disclosed in the pay versus performance table, and the registrant's TSR, net income and company-selected measure. Registrants will also be required to disclose the relationship between the company's TSR and the TSR of its selected peer group.

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[39] See Regulation S-K C&DI 128D.09 at **https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

[40] See Regulation S-K C&DI 128D.10 at **https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

The relationships can be described in words, graphics or a combination of both. For example, a registrant may show the percentage change for each year in both executive compensation actually paid and net income together with a brief description of the relationship.

A registrant with multiple PEOs in a fiscal year may aggregate the PEOs' compensation for purposes of the narrative, graphical or combined comparison between "compensation actually paid" and TSR, net income and the company-selected measure if that presentation is not misleading to investors.[41]

5.5.4.4 Supplemental disclosures

The rules permit registrants to voluntarily disclose other measures of compensation or financial performance measures, as long as these supplemental disclosures are not misleading or presented more prominently than the required disclosures. The supplemental disclosures may be presented in the table or in other disclosures, but each supplemental disclosure needs to be identified as supplemental.

Additional performance measures have to be accompanied by a clear description of the relationship between the measure and executive compensation actually paid to the registrant's executives.

EY resources

- Technical Line, ***How to apply the SEC's new pay versus performance disclosure requirements***

5.5.5 Grants of plan-based awards table

A supplemental table, grants of plan-based awards (Item 402(d) of Regulation S-K), must include information about each grant made to an NEO in the last completed fiscal year under any plan,[42] including awards that subsequently have been transferred.

5.5.5.1 Grants of plan-based awards for 2024

Name (a)	Grant date (b)	Estimated future payouts under non-equity incentive plan awards			Estimated future payouts under equity incentive plan awards			All other stock awards: number of shares of stock or units (#) (i)	All other option awards: number of securities underlying options (#) (j)	Exercise or base price of option awards ($/sh) (k)	Grant date fair value of stock and option awards (l)
		Threshold ($) (c)[43]	Target ($) (d)	Maximum ($) (e)	Threshold (#) (f)	Target (#) (g)	Maximum (#) (h)				
PEO											
PFO											
A											
B											
C											

[41] See Regulation S-K C&DI 128D.13 at **https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

[42] "Plan" is defined in Item 402(a)(6)(ii) of Regulation S-K as including, but not limited to, "any plan, contract, authorization or arrangement, whether or not set forth in any formal document, pursuant to which cash, securities, similar instruments, or any other property may be received. A plan may be applicable to one person. […]"

[43] If non-equity incentive plan awards are denominated in units or other rights, a separate adjoining column between columns (b) and (c) must be added to quantify the units or other rights awarded.

Disclosure in this table complements the SCT by disclosing the number of shares of stock or units comprising or underlying the award, the terms of the grants made during the year, including estimated future payouts for both equity incentive plans and non-equity incentive plans,[44] and the grant date fair value of stock and option awards. The table requires separate disclosures for each grant (e.g., a grant-by-grant basis), including the identity of the respective plan under which each such grant was made if grants are made under more than one plan. A tandem grant of two instruments, only one of which is granted under an incentive plan, such as an option granted in tandem with a performance share, only needs to be reported in column (i) or (j), as applicable. For example, an option granted in tandem with a performance share only would be reported as an option grant in column (j), with the tandem feature noted either by a footnote or in the accompanying textual narrative.

If the grant date[45] disclosed in column (b) is different from the date on which the compensation committee (or a committee of the board of directors performing a similar function or the full board of directors) takes action or is deemed to take action to grant such awards, a separate, adjoining column must be added by the registrant between columns (b) and (c) showing such date.

This table requires disclosure about the estimated future payout or range under three scenarios: (1) threshold (minimum amount payable for a certain level of performance under the plan), (2) target (amount payable if the specified performance target(s) under the plan are achieved) and (3) maximum (the maximum payout possible under the plan). If an award provides only for a single estimated payout, that amount should be reported as the target.

If the exercise or base price reported in column (k) is less than the closing market price of the underlying security on the grant date, a separate adjoining column must be added after column (k) showing the closing market price on the grant date. In determining whether the exercise or base price is less than the closing market price on the grant date, if a market exists for the security, the registrant must use the price at which the registrant's security was last sold in the principal US market for such security, or the principal foreign market for a foreign company security. If no market exists, any other formula prescribed for the security may be used to determine the closing market price. Whenever the exercise or base price reported in column (k) is not the closing market price, a footnote or the accompanying textual narrative must describe the methodology defined in the appropriate plan for determining the exercise or base price.[46]

Column (l) of the table requires disclosure of the grant date fair value of each stock award and option award, on a grant-by-grant basis, determined under ASC 718. This column would include the grant date fair value of, among others, stock awards that are classified as liabilities under ASC 718 and awards with performance-based vesting conditions.[47] Also, previously awarded options or freestanding SAR awards that the registrant repriced or otherwise materially modified[48] during the most recent fiscal year must be reported in column (l) based on the incremental fair value computed as of the date of such repricing or modification in accordance with ASC 718.

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[44] "Incentive plan" is defined in Item 402(a)(6)(iii) of Regulation S-K as "any plan providing compensation intended to serve as incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the registrant or an affiliate, the registrant's stock price or any other performance measure." "Equity incentive plan" is defined as "an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of [ASC 718)];" and "non-equity incentive plan" is defined as "an incentive plan or portion of an incentive plan that is not an equity incentive plan."

[45] Disclosure in the table should be of the grant date as determined for financial statement reporting purposes under ASC 718.

[46] For example, a plan may determine the exercise or base price based on the average of the high and low market price on the grant date, rather than the closing market price.

[47] Instruction 8 to Item 402(d) of Regulation S-K states that for equity awards subject to performance conditions, the amount reported in column (l) of the grants of plan-based awards table should be consistent with the estimate of the aggregate compensation cost to be recognized over the service period determined as of the grant date under ASC 718, excluding the effect of estimated forfeitures.

[48] Instruction 7 to Item 402(d) of Regulation S-K directs that options or SAR awards that are repriced through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in the plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs, need not be disclosed in this table.

Registrants also must disclose in a footnote to the appropriate column the dollar amount of consideration, if any, paid by an NEO for any award depicted in the table.

5.5.6 Narrative disclosures to the SCT and grants of plan-based awards table

Item 402(e) of Regulation S-K requires a narrative disclosure to provide context to the tabular disclosures in the SCT and the grants of plan-based awards table, including a description of any additional material factors necessary to provide an understanding of the information disclosed in the tables.[49] The material factors will vary depending on registrant-specific facts and circumstances, but may include descriptions of the material terms in the NEO's employment agreement or arrangement (whether written or unwritten), despite the separate requirement to file such employment agreement(s) or arrangement(s) under Item 601 of Regulation S-K, *Exhibits*.

Registrants are not required to disclose any factor, criteria or performance-related or other condition to payout or vesting of a particular award that involves confidential trade secrets or confidential commercial or financial information, disclosure of which would result in competitive harm to the company.[50,51] However, in that case, the registrant must discuss how difficult or likely it will be for the executive or registrant to achieve the undisclosed target levels or other factors.

If at any time during the last fiscal year, any outstanding option or other equity-based award was repriced or otherwise materially modified (such as by extension of exercise periods, change of vesting or forfeiture conditions, change or elimination of applicable performance criteria, or change of the bases on which returns are determined), this narrative should discuss each repricing or any other material modification.[52]

The narrative disclosure also must describe the following, if material and necessary to provide an understanding of the disclosure in the grants of plan-based awards table or the SCT:

- Award terms, such as a general description of the formula or criteria to be applied in determining the amounts payable
- The vesting schedule
- A description of any performance-based conditions[53]
- Any other material conditions applicable to the award, including whether dividends or other amounts will be paid, the applicable rate and whether that rate is preferential
- An explanation of the amount of salary and bonus in proportion to total compensation

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[49] If a registrant does not believe that the full grant date fair value of stock or option awards disclosed in the SCT reflects the compensation earned, awarded or paid during the fiscal year, the registrant may provide appropriate explanatory disclosure in this accompanying narrative section.

[50] As stated in Instruction 4 to Item 402(b) of Regulation S-K, the standard to use when determining whether disclosure would cause competitive harm for the registrant is the same standard that would apply when a registrant requests confidential treatment of confidential trade secrets or confidential commercial or financial information pursuant to Securities Act Rule 406 and Exchange Act Rule 24b-2. A registrant is not required to seek confidential treatment under the procedures in these two rules if the registrant determines that the disclosure would cause competitive harm in reliance on this instruction, provided it makes alternative disclosure about the likelihood of achieving the undisclosed performance target.

[51] C&DI 128D.22 also confirms that a registrant is not required to disclose quantitative or qualitative performance conditions for its awards in the pay versus performance disclosure if the disclosure of such information would result in competitive harm. However, the registrant must provide as much information as possible without disclosing the confidential information, such as a range of outcomes or a discussion of how a performance condition impacted the fair value. Consistent with Instruction 4 to Item 402(b), the registrant should also discuss how the material difference in the assumption affects how difficult it will be for the executive or how likely it will be for the registrant to achieve undisclosed target levels or other factors.

[52] However, an instruction to Item 402(e)(1) of Regulation S-K provides that any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in the plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs, need not be disclosed.

[53] Performance-based conditions include both performance conditions and market conditions as those terms are defined in ASC 718.

5.5.7 Outstanding equity awards at fiscal year-end table

Because grants of equity awards represent potential amounts that the NEOs might or might not realize, the Outstanding Equity Awards at Fiscal Year-End table (Item 402(f) of Regulation S-K) provides detailed information about all outstanding equity awards.

5.5.7.1 Outstanding equity awards at [fiscal year end] 31 December 2024

	Option awards					Stock awards			
Name (a)	Number of securities underlying unexercised options (#) exercisable (b)	Number of securities underlying unexercised options (#) unexercisable (c)	Equity incentive plan awards: number of securities underlying unexercised unearned options (#) (d)	Option exercise price ($) (e)	Option expiration date (f)	Number of shares or units of stock that have not vested (#) (g)	Market value of shares or units of stock that have not vested ($) (h)	Equity incentive plan awards: number of unearned shares, units or other rights that have not vested (#) (i)	Equity incentive plan awards: market or payout value of unearned shares, units or other rights that have not vested ($) (j)
PEO									
PFO									
A									
B									
C									

This table requires separate disclosure of the outstanding number of securities and related market value (i.e., not the fair value measured under ASC 718) measured as of the end of the most recent fiscal year for outstanding option and unvested stock awards as follows:

5.5.7.2 Outstanding option awards (columns (b) through (f))

- On an award-by-award basis,[54] registrants must disclose the number of securities underlying unexercised options, including awards that have been transferred by the NEO to another party other than for value,[55] with separate identification for those instruments that are currently exercisable (column (b)) and unexercisable (column (c)), other than those awarded under an equity incentive plan that are reported in column (d)
- On an award-by-award basis,[54] registrants must disclose in column (d) the total number of shares underlying unexercised options awarded under any equity incentive plan that have not been earned. Awards disclosed in this column would be those that may or may not be realized depending on the outcome of the measure(s) (e.g., stock price, performance benchmarks) to which the awards relate

[54] Multiple awards may be aggregated when the expiration date and the exercise or base price of the instruments are identical (e.g., a single grant of options with tranches that vest on various dates but otherwise have identical terms). However, a single award consisting of a combination of options, SARs or similar option-like instruments must be reported as separate awards with respect to each tranche with a different exercise or base price or expiration date.

[55] An instruction to Item 402(f)(2) of Regulation S-K requires registrants to identify by footnote any award that has been transferred other than for value and to disclose the nature of the transfer.

- On an award-by-award basis,[54] for each instrument disclosed in columns (b), (c) and (d), the registrant must disclose the exercise or base price of that instrument (column (e)) and the expiration date (column (f)), as applicable

5.5.7.3 Outstanding stock awards (columns (g) through (j))

- Registrants must disclose in column (g) the total number of shares of stock that have not vested and that were not awarded under an equity incentive plan and, in column (h), the corresponding aggregate market value (see description of calculation below)
- Registrants must disclose in column (i) the total number of shares of stock, units, or other rights awarded under any equity incentive plan (including the number of shares underlying any such unit or right, if applicable) that have not yet vested and that have not been earned, and, in column (j), the corresponding aggregate market or payout value (see description of calculation below)

Instruction 5 to Item 402(f)(2) of Regulation S-K provides that options or stock awarded under an equity incentive plan are reported in columns (d) or (i) and (j),[56] respectively, until the relevant performance condition has been satisfied. Once the relevant performance condition has been satisfied, even if the option or stock award is subject to forfeiture conditions, option awards would then be reported in column (b) or (c), as appropriate, until they are exercised or expire, and stock awards would be reported in columns (g) and (h) until they vest. The vesting dates of options, shares of stock and equity incentive plan awards held at fiscal year end are required to be disclosed by footnote to the applicable column (i.e., column (c), (d), (g), or (i)).

Instruction 3 to Item 402(f)(2) of Regulation S-K directs that the market value of stock reported in column (h) and equity incentive plan awards of stock reported in column (j) should be computed by multiplying the closing market price of the registrant's stock at the end of the last completed fiscal year by the number of outstanding shares or units of stock or the amount of outstanding equity plan awards, respectively.

5.5.8 Option exercises and stock vested table

The option exercises and stock vested table (Item 402(g) of Regulation S-K) must report exercises of stock options, SARs, and similar instruments, as well as the vesting of stock, restricted stock and similar instruments for the last completed fiscal year on an aggregate basis.

5.5.8.1 Option exercises and stock vested for 2024

	Option awards		Stock awards	
Name (a)	Number of shares acquired on exercise (#) (b)	Value realized on exercise ($) (c)	Number of shares acquired on vesting (#) (d)	Value realized on vesting ($) (e)
PEO				
PFO				
A				
B				
C				

[56] If the award provides only for a single estimated payout, that amount should be reported. Otherwise, Instruction 3 to Item 402(f)(2) of Regulation S-K states the number of shares or units reported in column (d) or (i), and the payout value reported in column (j), should be based on achieving threshold performance goals, except if the previous fiscal year's performance exceeded the minimum threshold, in which case the disclosure should be based on the next higher performance measure (target or maximum) that exceeds the previous fiscal year's performance under the terms of the equity incentive plan. In any case, if the target amount is not determinable, the registrant must disclose a representative amount based on the previous fiscal year's performance.

For all exercises of stock options, SARs and similar instruments during the last fiscal year, the table requires registrants to disclose the number of shares acquired upon exercise (column (b)) and the aggregate dollar value realized upon the exercise or the transfer of an award for value (column (c)).[57] For all vestings of stock, including restricted stock, restricted stock units and similar instruments during the last fiscal year, the table requires registrants to disclose the number of shares acquired upon vesting (column (d)) and the aggregate dollar value realized upon the vesting or the transfer for value (column (e)).[58]

5.5.9 Pension benefits table

The Pension Benefits table (Item 402(h) of Regulation S-K) requires disclosure of the actuarial present value of each NEO's accumulated benefit under each pension plan. A separate line of tabular disclosure is required for each plan in which an NEO participates that provides for payments or other benefits at, following, or in connection with retirement.[59] The number of years of credited service and actuarial present value of accumulated benefits must be computed using the same assumptions and measurement date as used for financial reporting purposes for the last completed fiscal year under generally accepted accounting principles (except that retirement age should be assumed to be the normal retirement age as defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age).[60]

5.5.9.1 Pension benefits at [fiscal year-end] 31 December 2024

Name (a)	Plan name (b)	Number of years credited service (#) (c)	Present value of accumulated benefit ($) (d)	Payments during last fiscal year ($) (e)
PEO				
PFO				
A				
B				
C				

If an NEO's number of years of credited service with respect to any plan is different from the NEO's actual years of service with the registrant, footnote disclosure must quantify the difference and any resulting benefit augmentation.

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[57] The instruction to Item 402(g)(2) of Regulation S-K provides that, for purposes of column (c), the value realized should be computed by determining the difference between the market price of the underlying securities at exercise and the exercise or base price of the options. For any amount realized upon exercise for which receipt has been deferred, registrants should provide a footnote quantifying the amount deferred and disclosing the terms of the deferral.

[58] The instruction to Item 402(g)(2) of Regulation S-K provides that, for purposes of column (e), the value realized should be computed by multiplying the number of shares of stock or units vested by the market value of the underlying securities on the vesting date. For any amount realized upon vesting for which receipt has been deferred, registrants should provide a footnote quantifying the amount deferred and disclosing the terms of the deferral.

[59] The required disclosures apply to each plan that provides for specified retirement payments or benefits, or payments or benefits that will be provided primarily following retirement, including tax-qualified defined benefit plans and supplemental executive retirement plans (SERPs), but excluding tax-qualified defined contribution plans and nonqualified defined contribution plans (for which disclosure is required in a separate table as discussed below).

[60] Instruction 2 to Item 402(h)(2) of Regulation S-K requires that the registrant disclose, in the accompanying narrative to the table, the valuation method and all material assumptions applied in quantifying the actuarial present value of the accumulated benefit. These could include interest rate, form of benefit, years of service, levels of compensation used to determine the benefit, and mortality tables. A benefit specified in the plan document or the executive's contract itself is not deemed to be an assumption. Registrants may satisfy all or part of this disclosure by reference to a discussion of those assumptions in specific footnotes to its financial statements or in its MD&A.

A narrative description of any material factors necessary to understand each plan included in the tabular disclosure also is required. While recognizing that such material factors will vary depending on the facts, Item 402(h)(3) of Regulation S-K provides the following examples of factors that might require disclosure:

- The material terms and conditions of payments and benefits available under the plan, including the plan's "normal retirement" benefit formula and eligibility standards, and any effect of the form of benefit elected on the amount of annual benefits. For this purpose, "normal retirement" means retirement at the normal retirement age as defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age.
- If any NEO is currently eligible for "early retirement" under any plan, the identity of the NEO and the plan and a description of the plan's early retirement benefit formula and eligibility standards. For this purpose, "early retirement" means retirement before "normal retirement" as defined in the plan, or otherwise if benefits currently would be available to the executive under the plan.
- The specific elements of compensation (e.g., salary, bonus) included in computing the retirement benefit, identifying each such element.
- If NEOs participate in multiple plans, the different purposes for each plan.
- The registrant's policies with regard to such matters as granting extra years of credited service.

5.5.10 Nonqualified deferred compensation table

Item 402(i) of Regulation S-K requires disclosure, in the following tabular form, with respect to all defined contribution or other plans that provide for the deferral of compensation to any NEO on a basis that is not tax-qualified.[61]

5.5.10.1 Nonqualified deferred compensation table for 2024

Name (a)	Executive contributions in last FY ($) (b)	Registrant contributions in last FY ($) (c)	Aggregate earnings in last FY ($) (d)	Aggregate withdrawals/ distributions ($) (e)	Aggregate balance at last FYE ($) (f)
PEO					
PFO					
A					
B					
C					

Column (b) should include contributions made or deferrals elected by the NEO, while column (c) should include any contributions made directly by the registrant to the account of the respective NEO, whether under formal or informal plans. Column (d) requires disclosure of all earnings accrued during the registrant's most recent fiscal year on all non-tax-qualified deferred compensation arrangements. By contrast, column (h) in the SCT, Change in Pension Value and Nonqualified Deferred Compensation Earnings, is required to disclose only preferential or above-market earnings accrued during each fiscal year on non-tax-qualified deferred compensation. Column (e) requires disclosure of the aggregate amount of all withdrawals by and distributions to the NEO. Lastly, column (f) requires the NEO's total account balance as of the end of the registrant's latest fiscal year.

[61] SEC Release No. 33-8732A, *Executive Compensation and Related Person Disclosure*, notes that nonqualified defined contribution and other nonqualified deferred compensation plans are "plans providing for deferral of compensation that do not satisfy the minimum coverage, nondiscrimination and other rules that 'qualify' broad-based plans for favorable tax treatment under the Internal Revenue Code."

The instruction to Item 402(i)(2) of Regulation S-K requires footnote disclosure quantifying (1) the extent to which amounts reported in the contributions and earnings columns (columns (b), (c) and (d) above) are reported as compensation in the most recent fiscal year in the SCT and (2) the portion of the aggregate balance at last fiscal year end (column (f) above) that has been previously reported as compensation to the NEO in the registrant's SCT for previous years. The latter disclosure is intended to complement the instruction to the SCT that requires any amounts deferred to be included in the appropriate column for the fiscal year in which earned [Instruction 4 to Item 402(c) of Regulation S-K].

A narrative description of any material factors necessary to understand each plan covered by the above tabular disclosure also is required. While recognizing that such material factors will vary depending on the facts, Item 402(i)(3) of Regulation S-K provides the following examples of factors that might require disclosure:

- The types of compensation permitted to be deferred and any limitations (by percentage of compensation or otherwise) on the extent to which compensation may be deferred
- The measures and provisions for calculating interest or other plan earnings (e.g., whether such measure(s) are selected either by the NEO or the registrant; the frequency and manner in which selections may be changed), including quantification of the interest rates and other earnings measures applicable during the registrant's most recent fiscal year
- Material terms with respect to payouts, withdrawals and other distributions from such plans and arrangements

5.5.11 Other potential post-employment payments

Item 402(j) of Regulation S-K requires certain disclosures about each contract, agreement, plan, or arrangement, whether written or unwritten, that provides for payment(s) to an NEO at, following, or in connection with any termination (including without limitation resignation, severance, retirement, or constructive termination), or a change-in-control of the registrant or a change in the NEO's responsibilities.[62] A description and explanation are required about each of the following items:

- The specific circumstances that would trigger payment(s) or the provision of other benefits, including perquisites and health care benefits
- The amount of the estimated payments and benefits that would be provided in each covered circumstance (including any tax gross-ups), whether they would or could be paid in a lump sum or annually (including the duration), and by whom they would be provided
- How the respective payment and benefit levels would be determined under the various circumstances that trigger payments or provision of benefits
- Any material conditions or obligations applicable to the receipt of payments or benefits, including noncompete, non-solicitation, non-disparagement or confidentiality agreements, including the duration of such agreements and provisions about waiver of breach of such agreements
- Any other material factors about each such contract, agreement, plan or arrangement

[62] Instruction 5 to Item 402(j) states, "the registrant need not provide information with respect to contracts, agreements, plans or arrangements to the extent they do not discriminate in scope, terms or operation, in favor of executive officers of the registrant and that are available generally to all salaried employees."

Instruction 1 to Item 402(j) of Regulation S-K makes clear that the registrant must quantify any such payments or benefits assuming that the triggering event had taken place on the last business day of the registrant's last completed fiscal year using the closing price per share of the registrant's securities as of that date. In the event that uncertainties exist as to the amounts payable in given circumstances, the registrant must make a reasonable estimate (or a reasonably estimated range) of the payment or benefit and disclose any material assumptions underlying such estimates or ranges, which might include forward-looking information. Consistent with the requirements of the SCT, Instruction 2 to Item 402(j) states that perquisites and other personal benefits may be excluded from the disclosure only if the amount of such compensation is expected to be less than $10,000 in the aggregate with respect to an individual NEO. Otherwise, all potential perquisites and other personal benefits must be disclosed for the respective NEO in a manner similar to the disclosure in the SCT.[63]

Instruction 4 to Item 402(h) of Regulation S-K states that when a triggering event actually has occurred for an NEO and that individual was not serving as an NEO of the registrant at the end of the last completed fiscal year, the registrant should provide the required disclosures of post-employment payments with respect to that NEO only for that triggering event.

5.6 Director compensation

Under Item 402(k) of Regulation S-K, director compensation is required to be provided in the director compensation table (DCT), a format similar to the SCT. However, director compensation only is required for the most recent fiscal year, as opposed to the last three years for NEOs in the SCT. The tabular disclosure of director compensation is required to be accompanied by narrative disclosure of any factors necessary to understand the tabular disclosure. For any columns in the DCT that are analogous to the SCT, registrants should follow the instructions for the SCT in preparing the DCT.

5.6.1 Director compensation table for 2024

Name (a)	Fees earned or paid in cash ($) (b)	Stock awards ($) (c)	Option awards ($) (d)	Non-equity incentive plan compensation ($) (e)	Change in pension value and nonqualified deferred compensation earnings (f)	All other compensation ($) (g)	Total ($) (h)
A							
B							
C							
D							
E							
F							

All directors who served as directors during the most recent fiscal year are required to be listed in the DCT, not just the five most highly compensated directors. However, any NEO who also serves as a director does not need to be listed in the DCT as long as all of the NEO's compensation is fully reflected in the SCT (including any separate compensation as a director, with director compensation identified and quantified by appropriate footnotes to the SCT). Two or more directors are allowed to be grouped in a single row in the DCT only if all elements of their compensation are identical and their identities are clear from the disclosure.

[63] Instruction 3 to Item 402(j) states, "to the extent that the form and amount of any payment or benefit that would be provided in connection with any triggering event is fully disclosed pursuant to paragraph (h) or (i) of this Item, reference may be made to that disclosure. However, to the extent that the form or amount of any such payment or benefit would be enhanced or its vesting or other provisions accelerated in connection with any triggering event, such enhancement or acceleration must be disclosed pursuant to this paragraph."

Fees earned or paid in cash — In column (b), registrants are required to disclose all fees earned or paid in cash for services as a director, including annual retainer fees, committee or committee chair fees and meeting fees. Consistent with the requirements of the SCT, any amount of director's fees payable in cash that is forgone at the election of the director in exchange for stock, equity-based or other forms of non-cash compensation should be included in column (b). A footnote to column (b) must disclose the receipt of non-cash compensation in lieu of cash and the grant date fair value of any such stock or equity-based compensation computed in accordance with ASC 718.

Stock and option awards — Registrants are required to disclose all stock awards[64] in column (c) and all option awards (with or without tandem SARs),[65] including awards that subsequently have been transferred, in column (d), based on the aggregate grant date fair value of the award determined under ASC 718.

The Instruction to Items 402(k)(2)(iii) and (iv) of Regulation S-K requires footnote disclosure, for each director, of: (1) for the most recent fiscal year only, the grant date fair value of each stock and option award on a grant-by-grant basis computed in accordance with ASC 718 and the incremental fair value related to the repricing or material modification of previously awarded options or freestanding SAR awards, and (2) the aggregate shares under stock awards, and the aggregate shares underlying option awards, which were outstanding at fiscal year end.

Non-equity incentive plan compensation — In column (e), registrants are required to disclose the dollar value of all compensation earned for services performed during the fiscal year under non-equity incentive plans and all earnings on any outstanding awards.

Change in pension value and nonqualified deferred compensation earnings — In column (f), registrants are required to disclose the sum of the following two items:

- The aggregate increase in the actuarial present value of the director's accumulated benefit under all defined benefit and actuarial pension plans (including supplemental plans) based on measurement dates used for financial statement reporting purposes
- Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans

All other compensation — similar to the SCT, the all other compensation column (column (g)) is intended to capture any other elements of director compensation not disclosed in any other column of the table. Such compensation might include:

- Perquisites and other personal benefits[66]
- Gross-ups or other amounts reimbursed for the payment of taxes
- Compensation cost for registrant securities purchased at a discount
- The amount paid or accrued pursuant to a plan or arrangement for the resignation, retirement or any other termination of the director or a change-in-control of the registrant

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[64] Stock is defined in Item 402(a)(6) of Regulation S-K as "instruments such as common stock, restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or any similar instruments that do not have option-like features."

[65] Options are defined in Item 402(a)(6) of Regulation S-K as "instruments such as stock options, stock appreciation rights and similar instruments with option-like features."

[66] Perquisites and other personal benefits may be excluded as long as the aggregate annual value for the respective director is less than $10,000. If the aggregate value of all perquisites and other personal benefits exceeds $10,000 for the respective director, the nature of each such benefit must be disclosed in a footnote, regardless of the amount. Also, each perquisite or other personal benefit that exceeds the greater of $25,000 or 10% of the total amount of perquisites and other personal benefits for the director must be quantified and disclosed in a footnote. Similar to the SCT, perquisites and other personal benefits must be valued on the basis of the aggregate incremental cost to the registrant with footnote disclosure of the registrant's methodology for computing such aggregate incremental cost.

- Registrant contributions or other allocations to vested and unvested defined contribution plans
- Consulting fees earned from, or paid or payable by the registrant or its subsidiaries (including corporate joint ventures)
- The annual cost of payments and promises of payments pursuant to director legacy programs and similar charitable award programs[67]
- The dollar value of any insurance premiums paid by, or on behalf of, the registrant with respect to life insurance for the benefit of the director
- The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award as a footnote to the DCT

Total — The total compensation column (column (h)) in the DCT represents the sum total of columns (b) through (g).

5.6.2 Narrative disclosures to the DCT

Similar to the SCT, Item 402(k)(3) of Regulation S-K requires registrants to provide a narrative description of any material factors necessary to understand the information disclosed in the DCT, including, for example, a description of standard director compensation arrangements and whether any director has a different compensation arrangement, identifying the director and describing the terms of that arrangement. The SEC encourages registrants to consider whether narrative disclosures similar to those described in section 5.5.1.3 about option timing and dating practices might be necessary when directors receive stock option grants.

5.7 Other disclosures

In addition to the required tables and narrative disclosures, the following disclosures must be included in the annual meeting proxy statement.

5.7.1 Board compensation committee report on executive compensation

Registrants must "furnish" a compensation committee report (CCR) [Item 407(e)(5) of Regulation S-K]. The compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) must state whether: (1) it has reviewed and discussed CD&A disclosure with management and (2) based on this review and discussion, recommended to the board of directors that CD&A be included in the company's annual report on Form 10-K, proxy, or information statement.

These requirements of the CCR are similar to those of the audit committee report with respect to the audited financial statements in that the report is only required once during the fiscal year and the name of each member of the compensation committee (or the group performing equivalent functions) must appear below the disclosure. However, unlike the audit committee report that is required only in the annual proxy or information statement, the CCR also is required in the company's annual report on Form 10-K, either by inclusion or incorporation by reference, so that it is presented along with CD&A. As furnished information, the CCR is not deemed to be incorporated by reference into any filing under the Securities Act or Exchange Act except if the registrant specifically incorporates it by reference.

[67] Registrants should provide footnote disclosure of the total dollar amount payable under the program and other material terms of each program for which tabular disclosure is provided.

5.7.2 Disclosure of compensation committee interlocks and insider participation

Item 407(e)(4) of Regulation S-K requires registrants to identify members of the compensation committee who are or were formerly officers or employees of the registrant or any of its subsidiaries, or had any relationship requiring disclosure (e.g., a director who is a partner in a law firm retained by the registrant).

In addition, Item 407(e)(4) of Regulation S-K requires disclosure of compensation committee "interlocks." The following illustrates "interlocks" that Company A would be required to disclose:

- An executive officer of Company A is a member of the Compensation Committee of Company B, and an executive officer of Company B is a member of the Compensation Committee of Company A.
- An executive officer of Company A is a director of Company B, and an executive officer of Company B is a member of the Compensation Committee of Company A.
- An executive officer of Company A is a member of the Compensation Committee of Company B, and an executive officer of Company B is a director of Company A.

The SEC has stated that these disclosures must be included under the caption of this section, and not dispersed throughout the proxy statement.[68] The caption "Compensation Committee Interlocks and Insider Participation" may be omitted by the registrant if the registrant has no relationships that trigger a disclosure obligation.[69]

If the registrant has no compensation committee (or other board committee performing equivalent functions), the registrant must identify each director who is an officer and employee of the registrant or any of its subsidiaries, or a former officer of the registrant or any of its subsidiaries, who, during the last completed fiscal year, participated in deliberations of the registrant's board of directors concerning executive officer compensation. An example of this situation often occurs in the year following an IPO. An example of disclosure for this situation follows.

Illustration 5-01: Example disclosure on compensation committee interlocks and insider participation

Prior to the Company's IPO on 1 July 2024, executive compensation decisions were made by the Board of Directors of the Company, of which Messrs. Jones and Smith constituted the majority of the members. Consequently, they participated in all determinations of compensation payable to themselves during the past year. Beginning 1 July 2024, the Compensation Committee made all determinations regarding executive compensation and will continue to do so. Accordingly, with respect to the fiscal year ended 30 June 2024, executive compensation was determined without reference to policies established by the Compensation Committee.

5.7.3 Disclosures related to the clawbacks of incentive-based compensation

In October 2022, the SEC adopted final rules that direct national securities exchanges to establish listing standards requiring listed companies to claw back incentive-based compensation received by current and former executive officers during the three years preceding an accounting restatement. The rules require companies to disclose their clawback policies and any compensation subject to clawback in annual reports (e.g., Form 10-K) and in proxy and information statements. Since companies have adopted these clawback policies, they should update the description of their policies in their proxy statements.

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[68] SEC Release No. 33-7032, *Executive Compensation Disclosure; Securityholder List and Mailing Requests*.

[69] See Regulation S-K C&DI 233.02 at **https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

Item 402(w) of Regulation S-K requires the following disclosures if, during the last completed fiscal year, a company was required to recover excess compensation or had an outstanding balance of excess compensation related to a prior restatement:

- For each restatement, the date the company was required to prepare a restatement, the total amount of excess compensation attributable to the restatement (including an analysis of how it was calculated) or an explanation of the reasons why the amount has not yet been determined (and disclosure of the amount and related disclosures in the next filing that is subject to Item 402 of Regulation S-K)
- The total amount of excess compensation that remains outstanding at the end of its last completed fiscal year
- The estimates used to determine excess compensation based on a stock price or total shareholder return
- The name of, and amount due from, each current and former NEO from whom excess compensation has been outstanding for 180 days or longer
- The names of current and former NEOs and the amount of any foregone recovery related to each of them, the total amount of any foregone recovery for all other current and former executive officers as a group, and a description of why recovery was not pursued
- An explanation of why the company concluded recovery was not required, if applicable

A company may choose to include the disclosures in either its CD&A or as a separate item. The clawback disclosures are not deemed to be incorporated by reference into any filing under the Securities Act or Exchange Act except if the registrant specifically incorporates it by reference.[70]

For additional information, refer to our To the Point, ***SEC adopts rules to require 'clawback' policies and disclosures***.

5.8 Pay ratio rule

Item 402(u) of Regulation S-K requires pay ratio disclosures only in SEC filings that require executive compensation information under Item 402. Such filings include annual reports on Form 10-K, registration statements, proxy and information statements.[71] The rule does not apply to SRCs, EGCs, FPIs and registered investment companies (except for business development companies).

Under the rule, registrants have to disclose:

- The median of the annual total compensation of all of a registrant's employees, excluding the PEO[72]
- The annual total compensation of the registrant's PEO (i.e., the amount also disclosed in the SCT under Item 402(c) of Regulation S-K)
- The ratio of these two amounts

The rule allows registrants to express the comparison as a ratio or as a multiple of the PEO's compensation compared to the median. For example, if the median is $45,000 and the PEO's annual total compensation is $12 million, the pay ratio would be 1 to 267. That disclosure could be expressed as that ratio or by stating it as a multiple, such as "the PEO's annual total compensation is 267 times that of the median of the annual total compensation of all employees."

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[70] Item 402(w)(3) of Regulation S-K

[71] The pay ratio must be disclosed within 120 days after the end of a registrant's fiscal year, either in the proxy or information statement, or in the original or amended annual report on Form 10-K. After that, registration statements must provide the pay ratio for the last fiscal year. The pay ratio is not required to be disclosed in any IPO registration statements.

[72] The rule uses the term "principal executive officer" rather than "chief executive officer" to be consistent with other disclosure requirements in Item 402 of Regulation S-K.

The rule gives companies substantial flexibility in how they can identify their median employee and only requires the determination to be made once every three years unless there are changes in the employee population or compensation arrangements that they reasonably believe would result in a significant change in the pay ratio.

The rule also allows affected companies to exclude from the calculation non-US employees in countries with data privacy laws or other regulations that conflict with the rule and provides a *de minimis* exemption for non-US employees of up to 5% of total employees (but any employees excluded based on data privacy considerations are also counted toward the *de minimis* exemption).[73] If a registrant excludes any non-US employees in a particular jurisdiction under the exemptions, it must exclude all non-US employees in that jurisdiction.

To determine the median employee and median employee total compensation, registrants:

- Include all full-time, part-time, temporary and seasonal employees of the registrant and its consolidated subsidiaries as of a selected date within the last three months of the registrant's last completed fiscal year, but exclude individuals employed through unaffiliated third parties and independent contractors for whom the registrant does not determine compensation
- Annualize compensation for permanent full- and part-time employees who were not employed for the entire fiscal year, but don't annualize compensation for seasonal and temporary employees
- Do not make adjustments to convert part-time or other types of employees to full-time equivalents
- Allow cost-of-living adjustments (COLA) when calculating median compensation to bring the compensation of employees in other jurisdictions to an equivalent of the compensation where the PEO resides
- Use either total compensation calculated using Item 402(c)(2)(x) of Regulation S-K or another consistently applied compensation measure (CACM) to identify the median employee, such as information derived from the registrant's tax and/or payroll records that reasonably reflects the annual compensation of employees (e.g., total cash compensation unless the registrant also distributed equity awards widely)[74]
- Use a "reasonable method" to identify the median employee that is appropriately tailored to its business, including the use of statistical sampling

The SEC staff issued C&DIs on Regulation S-K 128C.01 through 06,[75] which clarify:

- How a registrant selects a CACM in connection with the SEC interpretive guidance discussed below
- That the use of hourly or annual rates is not an appropriate CACM to identify the median employee
- That the population of employees from which to identify the median should be determined within three months of the end of the fiscal year
- How a registrant determines whether furloughed workers should be included as employees based on their facts and circumstances

The SEC staff also said in the C&DIs that it would not object if a registrant states, in any required disclosure, that the pay ratio is a reasonable estimate calculated in a manner consistent with Item 402(u).

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[73] In this case, a company still must make reasonable efforts to obtain the data, including, at a minimum, using or seeking an exemption or other relief. A company using this exclusion must obtain a legal opinion regarding its inability to comply and file it as an exhibit in each filing that discloses the pay ratio.

[74] See Regulation S-K C&DI 128C.01 at **https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

[75] See Regulation S-K C&DIs at **https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

The SEC has said that it won't bring enforcement actions challenging pay ratio disclosures based on estimates made in good faith. The guidance also clarifies that registrants can use existing internal records, such as tax or payroll records, to determine the median employee annual compensation.

Item 402(u) of Regulation S-K requires registrants to disclose:

- The method (e.g., compensation measure, determination date), material assumptions (e.g., foreign jurisdictions and approximate number of employees excluded), adjustments (e.g., COLA) or estimates used to identify the median employee and calculate that individual's total annual compensation or other CACM
- The effects of any changes (or lack of changes) from year to year in the method or material assumptions used, including a description of the changes and the reasons they were made
- Any difference between the PEO's annual total compensation used in the pay ratio disclosure and the total compensation amounts reflected in the SCT, if material

A registrant may disclose the median employee's position to put that employee's compensation in context as long as doing so couldn't result in a specific individual being identified. A registrant also may present additional information (including additional ratios) to supplement the pay ratio, but such supplemental information must be clearly identified and must not be misleading or presented with greater prominence than the required ratio.

6 Item 9 — Disclosures about independent public accountants

In the typical annual shareholders' meeting at which directors are to be elected, a registrant must name the principal auditing firm selected or recommended to shareholders for election, approval or ratification for the current year. Registrants must name the principal auditing firm for the most recently completed fiscal year if it is not the same as the one selected or recommended for the current year. Further, the registrant must state whether representatives of its principal auditing firm are expected to attend the annual meeting and whether they will have the opportunity to make a statement or respond to questions. If no firm has been selected or recommended, that fact and the reasons for it must be disclosed.

If there has been a change in principal auditors (or a change in auditors of a significant subsidiary on whom the principal auditors express reliance in their report) during the registrant's two most recent fiscal years or the subsequent interim period, disclosures pursuant to Item 304(a) of Regulation S-K (as discussed below) must be included in a proxy statement relating to the annual election of directors or the election, approval or ratification of the principal auditor, even though this information may have been reported previously on Form 8-K.

6.1 Former auditors

Item 304(a) of Regulation S-K requires the following disclosures about the issuer's former auditors:

- Whether, and on what date, the former auditor resigned, declined to stand for re-election or was dismissed
- Whether the former auditor's report on the financial statements for either of the past two years contained an adverse or disclaimer of opinion or was qualified as to uncertainty (e.g., a going concern uncertainty), audit scope or accounting principles, along with a description of the nature of any opinion modification or qualification
- Whether the decision to change auditors was recommended or approved by the audit or similar committee of the board of directors or by the board of directors if no such committee exists
- Whether there were any disagreements with the former auditor during the two most recent fiscal years and any subsequent interim period preceding such resignation, declination or dismissal
- Whether during the two most recent fiscal years and any subsequent interim period up to the date of such resignation, declination or dismissal there were any reportable events (e.g., auditor communication about a lack of sufficient internal controls, inability of the auditor to rely on management's representations, need for the auditor to expand significantly the scope of its work)

Item 304 of Regulation S-K states that "disagreements" should be interpreted broadly to include any difference of opinion concerning any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which would have caused the former auditor to make reference to the disagreement in the former auditor's report. Reportable disagreements include those resolved to the former auditor's satisfaction as well as those not resolved. It is not necessary for there to have been an argument to have had a disagreement, merely a difference of opinion at the "decision-making level" (i.e., between personnel of the registrant responsible for the presentation of its financial statements and personnel of the accounting firm responsible for rendering its report).

Disagreements do not include initial differences of opinion based on incomplete facts or preliminary information that were subsequently resolved to the former auditor's satisfaction. In determining whether any disagreement or reportable event has occurred, an oral communication by the engagement partner or another person responsible for rendering the accounting firm's opinion is sufficient to advise the registrant that there is a reportable event or disagreement at the "decision-making level" within the accounting firm.

For disagreements or reportable events, management should describe the disagreement or reportable event, state whether the audit committee or board of directors discussed the matter with the former auditor and indicate whether the registrant has authorized the former auditor to respond fully to the inquiries of the newly engaged auditor.

If the information under Item 304(a) of Regulation S-K is being provided in a proxy or information statement, and the former or newly engaged auditor believes the disclosures made by the registrant are inaccurate, either auditor may state its version (in 200 or fewer words) if they so choose. The auditor must submit its statement to the registrant within 10 business days of receipt of the disclosure for inclusion in the proxy or information statement. In addition, if the views of the newly engaged auditor have not been filed as an exhibit to Form 8-K, the registrant must file a Form 8-K concurrently with the proxy statement or information statement.

The SEC staff notes that when a registrant dismisses its independent accountant because the auditor was deregistered by the PCAOB, registrants should disclose that fact. In these circumstances, audit reports issued by the deregistered accounting firm should no longer be included in a registrant's filings made on or after the date the firm's registration was revoked, even if the accountant's report was issued before the date of revocation. Financial statements previously audited by a firm whose registration has been revoked generally would need to be re-audited by a PCAOB-registered firm before inclusion in future filings. The re-audit requirement applies to all periods presented in the financial statements.

The C&DIs on Item 304(a) disclosures include the following:

- An explanatory paragraph in the audit report describing uncertainty about the company's ability to continue as a going concern is a report modification as to uncertainty, as discussed in Item 304 of Regulation S-K, and should be disclosed.
- The auditor advising the registrant that there is a material weakness in internal control over financial reporting is a reportable event, as discussed in Item 304 of Regulation S-K, and should be disclosed even if the material weakness was remediated and did not result in an adverse opinion on the effectiveness of internal control over financial reporting.
- The auditor advising the registrant that one or more significant deficiencies in internal control over financial reporting existed without advising there is a material weakness would not be a reportable event under Item 304 of Regulation S-K. However, the factors that led to a significant deficiency could result in the conclusion that there are other reportable events that require disclosure.
- The "subsequent interim period" for purposes of disclosing disagreements and reportable events includes the period since the most recent audited year end through the termination date.
- A registrant should report if a new principal auditor is a different legal entity from the former principal accountant and is separately registered with the PCAOB even if the new and former principal accountants are related in some manner (e.g., members of a single global network).

6.2 Newly engaged auditors

Item 304(a) of Regulation S-K requires registrants to name the newly engaged auditors and the date of engagement. Consultations by the registrant with the newly engaged auditors (whether a written report or oral advice was provided) during the two most recent fiscal years or subsequent interim period before engagement also must be described if those consultations involved (1) any disagreement or reportable event described above, (2) the application of accounting principles to a specified transaction (completed or proposed) by the registrant or (3) the type of opinion that might be rendered on the registrant's financial statements.[1] Specifically, the registrant must state the issue, describe the views of the newly engaged auditor, indicate whether the registrant consulted with the former auditor on the issue and, if so, disclose the former auditor's view and request that the newly engaged auditor review the disclosure before filing with the SEC.

6.3 Auditor fees

Item 9 of Schedule 14A requires disclosure of aggregate auditor fees for each of the two most recent fiscal years using the following categories: (1) audit fees, (2) audit-related fees, (3) tax fees and (4) all other fees. In addition, Item 9 requires companies to describe, in qualitative terms, the types of services provided in the audit-related, tax and all other fees categories. Item 9 also requires disclosures about the audit committee's pre-approval policies and procedures. If the audit committee has approved *de minimis* services after the fact, the company must disclose the percentage of total fees of each category of non-audit services to which the *de minimis* exception was applied. See section 6.3.9 for a discussion of the *de minimis* exception.

The Item 9 disclosures also are required in SEC annual reports. Therefore, these disclosures also apply to companies that are not subject to the proxy rules (e.g., companies reporting solely under Section 15(d) of the Exchange Act because of public debt, FPIs that file Form 20-F). For companies subject to the proxy rules, the Form 10-K may incorporate the disclosures by reference from a timely filed proxy statement. However, these disclosures are not required in annual reports to shareholders that accompany proxy materials. Example disclosures are included in this section.

6.3.1 Basis of presentation

The amounts reported as audit-related, tax and all other fees should be based on fees billed, including out-of-pocket expenses, for services rendered during the fiscal year, even if the auditor did not bill the registrant for those services until after year end. For example, professional fees incurred for services rendered and billed in 2025 in connection with an audit of financial statements of a registrant's carve-out entity's two most recent fiscal years (2024 and 2023) would be reported in fiscal year 2025.

The amounts reported as audit fees should be based on fees, including out-of-pocket expenses, for the current-year audit and related quarterly reviews irrespective of the period in which the related services are rendered or billed. If the registrant has not received the bill for such services before filing its definitive proxy statement with the SEC, the registrant should ask the auditor for the amount that will be billed for such services and include that amount in the disclosure. For example, audit fees incurred for services rendered (both billed and unbilled) in 2024 and 2025 in connection with an audit of the registrant's 2024 financial statement and related quarterly reviews would be reported in fiscal year 2024.

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[1] The SEC adopted these rules to require disclosure of potential "opinion shopping" situations. The scope of the required disclosures does not include all communications with the successor auditor, just those involving the disclosed disagreements and reportable events or that were within the scope of AS 6105, *Reports on the Application of Accounting Principles*. See FR-31, *Clarification of the Term "Disagreements"; Disclosure of Potential Opinion Shopping Situations*.

6.3.2 Audit fees

SEC rules state that registrants should disclose, under the caption audit fees, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements and review of financial statements included in the registrant's Form 10-Q or services that are normally provided by the accountant for statutory and regulatory filings or engagements for those fiscal years.

This category includes fees for services that generally only the auditor reasonably can provide, such as statutory audits required domestically and internationally (including statutory audits required for insurance companies for purposes of state law); comfort letters; consents; assistance with and review of documents filed with the SEC; Section 404 attest services; other attest services that generally only the auditor can provide; work done by tax professionals for the audit or quarterly review; and accounting consultations billed as audit services, as well as other accounting and financial reporting consultation and research work necessary to comply with the standards of the PCAOB.

6.3.3 Audit-related fees

SEC rules state that registrants should disclose, under the caption audit-related fees, the aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit or review of the registrant's financial statements and are not reported under audit fees.

The SEC's *Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence*[2] (FR-68) and the SEC staff's Frequently Asked Questions, *Application of the Commission's Rules on Auditor Independence* (Independence FAQs), state that in general this category includes "assurance and related services (e.g., due diligence services) that traditionally are performed by the independent accountant," and "more specifically, these services would include, among others: employee benefit plan audits, due diligence related to mergers and acquisitions, accounting consultations and audits in connection with acquisitions, internal control reviews, attest services related to financial reporting that are not required by statute or regulation and consultation concerning financial accounting and reporting standards [not classified as audit fees]."[3] As indicated above, this caption is intended to include the aggregate fees, including out-of-pocket expenses, for audit-related services rendered during the year (i.e., 1 January – 31 December for a calendar year-end company) by the principal accountant. For some projects that are not billed on a monthly basis, and were in process at the beginning or end of the period, a reasonable estimate should be made of fees incurred during the fiscal year.

The SEC said in its final rule[4] on climate-related disclosures that fees relating to the proposed GHG emissions attestation would be considered "audit-related fees" if the independent accountant who audits the registrant's consolidated financial statements is also engaged to perform the GHG emissions attestation for the same filing.

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[2] SEC Release Nos. 33-8183, 34-47265, *Final Rule: Strengthening the Commission's Requirements Regarding Auditor Independence*.

[3] An additional example of audit-related fees in the Independence FAQs is an audit of the financial statements of a carve-out entity in anticipation of a divestiture. In contrast, the Independence FAQs specifically exclude operational audits from this category.

[4] SEC Release No. 33-11275, 34-99678, *Final Rule: The Enhancement and Standardization of Climate-Related Disclosures for Investors.* The SEC issued an order on 4 April 2024 to stay the final rules pending the judicial review by the Eighth Circuit of the consolidated challenges.

6.3.4 Tax fees

SEC rules state that registrants should disclose, under the caption tax fees, the aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax advice and tax planning.

FR-68 indicates that the tax fees category would "capture all services performed by professional staff in the independent accountant's tax division except those services related to the audit. Typically, it would include fees for tax compliance, tax planning and tax advice. Tax compliance generally involves preparation of original and amended tax returns, claims for refund and tax payment-planning services. Tax planning and tax advice encompass a diverse range of services, including assistance with tax audits and appeals, tax advice related to mergers and acquisitions, employee benefit plans and requests for rulings or technical advice from taxing authorities." FR-68 indicates that "the review of a registrant's tax returns and reserves is a task that often requires extensive knowledge about the audit client" and for "many public companies, the fee for tax services is substantial in relation to other services."

Practice observations

With enhanced disclosure about the types of tax services and other non-audit services rendered by the principal accountant, investors are better able to evaluate the auditor's work. Many institutional investors rely on this disclosure when voting for audit committee members and on ratifying the company's external auditor. For example, in its review of tax fees, proxy advisory firm Institutional Shareholder Services[5] (ISS) distinguishes between "tax compliance and preparation services" (e.g., preparing original and amended tax returns and refund claims, tax payment planning) and "other tax services" (e.g., tax advice, planning or consulting), which ISS categorizes as "other" fees. ISS considers non-audit (other) fees to be "excessive" when they exceed the sum of audit fees plus audit-related fees plus tax compliance and preparation fees. When non-audit fees, as defined by ISS, are considered excessive, ISS recommends that shareholders vote against audit committee members up for election and against ratification of the external auditor. Companies should consider disaggregating fees categorized as tax fees to provide more transparency and insight into the types of tax services provided, including the categories specified by ISS and other proxy advisory firms.

6.3.5 All other fees

SEC rules state that registrants should disclose, under the caption all other fees, the aggregate fees billed in each of the last two fiscal years for products and services provided by the principal accountant, other than the services reported in audit fees, audit-related fees and tax fees. All other fees are the fees for products and services other than those in the above three categories. Generally, this category would include permitted corporate finance assistance and permitted advisory services.

6.3.5.1 Fees related to the audit of a Conflict Minerals Report

In the final SEC rule release[6] on conflict minerals, the SEC staff stated that the engagement to perform an independent private sector audit of a Conflict Minerals Report should be considered a "non-audit service" subject to the pre-approval requirements of Rule 2-01(c)(7) of Regulation S-X. Also, the fees for the independent private sector audit of the Conflict Minerals Report should be included in the all other fees category of the principal accountant fee disclosures. A description of the nature of the services comprising the fees also should be disclosed (e.g., "independent private sector audit of the Conflict

[5] ISS reviews and updates its proxy voting guidelines each year. ISS' US proxy voting guidelines are available at https://www.issgovernance.com/file/policy/active/americas/US-Voting-Guidelines.pdf.

[6] SEC Release No. 34-67716, *Conflict minerals*.

Minerals Report"). A registrant that engages its external auditor to also audit its Conflict Minerals Report should consider disclosing the fees for that audit, if the amount represents a significant component of "all other fees."

6.3.6 Description of nature of services

For audit-related, tax and all other fees, Item 9 requires that registrants describe the "nature of the services" provided. Item 9 requires a general or "qualitative" description of the principal services that are included in each category, without a breakdown of the dollar amount by service. While there is no requirement to disclose the types of services in audit fees, we believe that it would be helpful to include similar descriptions. We have observed diversity in the classification of audit-related fees and other fees paid to auditors for certain ESG-related services. Given the lack of clear guidance from the SEC, it is important for companies to be transparent about the classification of such fees and the services to which they relate.

6.3.7 Sample auditor fee disclosure

Registrants may disclose the fee information in either narrative or tabular form. Below are examples of both.

6.3.7.1 Narrative approach

The following is an example of a narrative approach to fee disclosures that would satisfy the SEC's disclosure requirements.

Illustration 6-1: Example disclosure on independent auditor fee information

Audit fees

Fees for audit services and related expenses totaled approximately $16 million in 2024 and approximately $12 million in 2023, including fees associated with the annual audit, including the integrated audit of internal control over financial reporting, the reviews of the Company's quarterly reports on Form 10-Q and statutory audits required internationally.

Audit-related fees

Fees for audit-related services and related expenses totaled approximately $7 million in 2024 and approximately $5.2 million in 2023. Audit-related services principally include due diligence in connection with acquisitions, accounting consultations, audits in connection with proposed or consummated acquisitions and information systems audits.

Tax fees

Fees for tax services and related expenses consist of approximately $4 million for tax compliance including the preparation, review and filing of tax returns and approximately $6 million for tax advice and tax planning, totaling approximately $10 million in 2024, compared with approximately $4.5 million for tax compliance and approximately $7.1 million for tax advice and tax planning, totaling approximately $11.6 million in 2023.

All other fees

Fees for all other services and related expenses not included above totaled approximately $3.4 million in 2024 and $2.2 million in 2022, principally including support and advisory services for the Company's expatriate program and risk management advisory services.

6.3.7.2 Tabular approach

The following is an example of tabular disclosure of fee information.

Illustration 6-2: Example disclosure on independent auditor fee information

Fees for professional services provided by our independent auditors in each of the last two fiscal years, in each of the following categories (in millions) including related expenses are:

	2024	2023
Audit fees	$ 16.0	$ 12.0
Audit-related fees	7.0	5.2
Tax fees	10.0	11.6
All other fees	3.4	2.3
	$ 36.4[7]	$ 31.1

Fees for audit services include fees associated with the annual audit, including the audit of internal control over financial reporting, the reviews of the Company's quarterly reports on Form 10-Q and statutory audits required internationally. Audit-related fees principally include due diligence in connection with acquisitions, accounting consultations, audits in connection with proposed or consummated acquisitions and information systems audits. Tax fees consist of approximately $4 million for tax compliance including the preparation, review and filing of tax returns and approximately $6 million for tax advice and tax planning, totaling approximately $10 million in 2024, compared with approximately $4.5 million for tax compliance and approximately $7.1 million for tax advice and tax planning, totaling approximately $11.6 million in 2023. All other fees principally include support and advisory services for the Company's expatriate program and risk management advisory services.

6.3.8 Disclosure of pre-approval policies and procedures

Rule 2-01(c)(7) of Regulation S-X requires that an issuer's audit committee pre-approve the specific audit or non-audit engagement to be rendered by the independent auditor. The rule also permits the company to engage the independent auditor pursuant to pre-approval policies and procedures established by the audit committee provided that the policies are detailed as to the particular service, the audit committee is informed of each service rendered and these policies and procedures do not include delegation of the audit committee's responsibilities to management.

Item 9 requires companies to disclose the audit committee's policies and procedures for pre-approving audit and non-audit services. FR-68 indicates that the SEC expects registrants to provide clear, concise and understandable descriptions of the policies and procedures. The SEC notes that, alternatively, registrants could include a copy of those policies and procedures with the information delivered to investors and filed with the SEC, and either method should allow shareholders to obtain a complete and accurate understanding of the audit committee's policies and procedures.

In the Independence FAQs, the SEC staff noted that for purposes of satisfying the pre-approval requirements, the audit committee of a parent company may function as the audit committee of a wholly owned subsidiary that also is an issuer. However, since the wholly owned subsidiary would not be subject to the proxy rules, the wholly owned subsidiary must disclose its pre-approval policy in its Form 10-K.

[7] There is no requirement to show an aggregate total. Also, the Company may at its option show a subtotal for audit and audit-related fees.

6.3.9 *De minimis* exception

Rule 2-01(c)(7)(i)(C) of Regulation S-X provides a *de minimis* exception to the requirement that all services be pre-approved by the audit committee. The *de minimis* exception waives the pre-approval requirements for non-audit services provided that (1) all such services do not aggregate to more than 5% of total fees paid by the audit client to its accountant in the fiscal year when services are provided, (2) such services were not recognized as non-audit services at the time of the engagement and (3) such services are promptly brought to the attention of the audit committee and approved by the audit committee or one or more designated representatives before the completion of the audit.

If the audit committee has applied the *de minimis* exception for non-audit services, the company must disclose the percentage of total fees disclosed in audit-related, tax and all other fees to which the *de minimis* exception was applied.

6.3.10 Disclosure of use of leased employees

SEC rules state that, if people other than the principal accountant's full-time permanent employees performed more than 50% of the hours of work on the audit of a company's financial statements for the most recent fiscal year, the company must disclose the percentage.

This disclosure relates to audits performed by accounting firms that lease their employees from another party.

7 Item 10 — Compensation plans

Shareholders frequently are requested to approve the adoption or amendment of employee compensation or incentive plans at the annual shareholders' meeting. Item 10 of Schedule 14A specifies information that must be disclosed in a proxy statement whenever shareholder action is to be taken on a plan involving either cash or noncash compensation.

The specified information is intended to allow shareholders to evaluate the cost to the registrant of establishing or amending these plans, including the effect it will have on executive officers' and directors' compensation. The information also allows shareholders to consider these effects in relation to the potential dilution that could occur from past and future equity grants for all existing plans and arrangements. Three copies of the written document for any proposed plan must be filed with the SEC at the time the proxy statement is filed. Electronic filers must file with the SEC a copy of the written plan document in electronic format as an appendix to the proxy statement.

The NYSE and Nasdaq require, as part of their listing standards, shareholder approval of equity compensation plans, including stock option plans. These rules adopted by the NYSE and Nasdaq provide only limited exceptions to the shareholder approval requirement. They also require shareholder approval of repricings and material plan changes.

7.1 General disclosure requirements about plans subject to security holder action

The proxy rules require general disclosures about the adoption of, or amendment to, all types of compensation plans submitted to a vote. A registrant must briefly describe the material features of the plan being acted on and identify each class of persons who will be eligible to participate in the plan, including the approximate number of persons in each class[1] and the basis of such participation. In addition, if determinable, the benefits or amounts that will be received by or allocated to each of the classes must be presented in tabular format, as shown below:

	New plan benefits[2] plan name	
Name and position	Dollar value ($)	Number of units
CEO	xxx	yyy
CFO	xxx	yyy
Named executive A	xxx	yyy
Named executive B	xxx	yyy
Named executive C	xxx	yyy
Executive group (number)	xxx	yyy
Non-executive director group (number)	xxx	yyy
Non-executive officer employee group (number)	xxx	yyy

[1] C&DI 161.03 of Proxy Rules and Schedules 14A/14C notes that this amount should be reported even if "0:" https://www.sec.gov/corpfin/proxy-rules-schedules-14a-14c-cdi.

[2] If security holders are asked to approve more than one plan (or a material amendment to an existing plan), each plan should be disclosed separately by inserting additional columns to the table.

If such benefits or amounts to be received are not determinable, a registrant must disclose the benefits that would have been received by, or allocated to, each of the classes for the last completed fiscal year as if the plan had been in effect, provided such benefits can be determined.

If management can modify the plan without shareholder approval, either by increasing the total cost to the registrant or by reallocating benefits, that also must be disclosed, including the nature of the modifications that management can make unilaterally.

If the action to be taken is a material amendment or modification of an existing plan, the registrant is required to furnish the required Item 10 information for the plan as proposed to be modified or amended and must indicate any material differences from the existing plan.

In addition to the general disclosures to be made for all compensation plans, the proxy statement must make additional disclosures, as described below, for pension or retirement plans and options, warrants or rights submitted for shareholder action.

7.1.1 Pension or retirement plans

An estimate must be made of the total amount necessary to fund the plan with respect to past service costs, including estimated annual payments and the period over which past service costs will be funded. The registrant also must disclose the estimated annual payment with respect to current service costs.

7.1.2 Options, warrants or rights

The proxy statement must list basic information about options, warrants or stock rights for the new plan or the plan being amended. Specifically, it should list the title and amount of securities, prices, expiration dates, current market value of the related securities, the consideration received or to be received for granting or extending options, warrants or rights, and the federal income tax consequences of the issuance and exercise of options to both the registrant and the recipient. Further, the proxy statement must disclose the number of options received or to be received by each NEO; for current executive officers as a group; current directors (excluding executive officers) as a group; director nominees; associates of any of the directors, executive officers or nominees;[3] each other person who received or is to receive 5% of such options, warrants or rights; and all employees, including all current officers (excluding executive officers) as a group.

7.2 Information about plans and other arrangements not subject to security holder action

For proxy and information statements for meetings of, or action by, security holders, Item 201(d) of Regulation S-K requires registrants to furnish certain additional disclosures whenever a compensation plan is being submitted for shareholder action. These disclosures also are required in every Form 10-K. The disclosures summarize the potential dilution that could occur from past and future equity grants for all plans and arrangements.

[3] "Associate" is defined in Rule 14a-1 of the Exchange Act as (1) any corporation or organization (other than the registrant or a majority-owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10% or more of any class of equity securities, (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity and (3) any relative or spouse of such person or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

The following tabular information is required for all equity compensation plans and individual compensation arrangements (whether with employees or non-employees, such as directors, consultants, advisers, vendors, customers, suppliers, and lenders), in effect as of the end of the latest fiscal year:

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by security holders			
Equity compensation plans not approved by security holders			
Total			

The disclosures are required to be segregated into two categories: plans that have been approved by security holders and plans that have not been approved by security holders. However, a registrant may choose to aggregate the data about all plans and arrangements that fall into each respective category. Further, for individual plans and arrangements assumed in a merger or acquisition, a registrant is permitted to aggregate data about those plans with the respective tabular information about the registrant's own plans, provided that a footnote to the table provides the column (a) and (b) data for any assumed awards that are still outstanding.

If more than one class of equity security is issuable under the various plans, the tabular information should be provided separately for each class of security. The disclosure should be provided without regard to whether the securities to be issued are authorized but unissued securities, or reacquired shares. If column (c) includes securities available for future issuance other than upon exercise of an option, warrant or right (e.g., restricted stock), a footnote to the table should disclose for each relevant plan the type of plan and associated number of securities. If any equity compensation plan includes a formula for calculating the number of securities available for future issuance (e.g., the plan provides available securities equal to a percentage of outstanding securities), a footnote to the table should describe such formula.

When a registrant is submitting a new plan for security holder approval, the number of securities subject to future grants under that new plan would not be included in the table. Instead, the proxy statement would identify the number of shares to be authorized under any proposed new plan. When a registrant is submitting a plan amendment for security holder action, the tabular disclosures should include the information pursuant to the existing plan, and not for any proposed changes subject to security holder approval. The number of additional securities to be issued under a proposed plan amendment should be disclosed elsewhere in the proxy statement.

A registrant also must identify and provide a brief narrative summary of the material features of each equity compensation plan in effect at the end of the most recently completed fiscal year that was adopted without security holder approval. This requirement may be satisfied by a cross-reference if the required information is included in the notes to the financial statements. In addition, a registrant must file as an exhibit to its periodic Exchange Act reports (e.g., Forms 10-K, 10-Q) any equity compensation plan adopted without the approval of security holders in which any employee participates (including those assumed in a merger, consolidation or acquisition, under which future grants may be made), unless immaterial in amount or significance.

8 Other proxy-related disclosures

In some cases, financial statements and other disclosures must be furnished as part of the proxy soliciting material. The basic financial statement requirements are set forth in Items 13 and 14 of Schedule 14A. Item 5 of Schedule 14A requires golden parachute disclosures.

The financial statements that registrants must provide to shareholders under the proxy rules normally are provided to shareholders in a document that is separate from the annual meeting proxy statement (e.g., glossy annual report). However, the financial statements must be included or incorporated by reference in the proxy statement when the proxy is being used to solicit a shareholder vote on any of the matters under Items 13 or 14 of Schedule 14A, which are summarized below.[1]

Despite the requirements of Regulation S-X, no financial statement schedules are required in the proxy statement other than those required by Rules 12-15 (Article 7 of Regulation S-X for insurance companies), 12-28 and 12-29 of Regulation S-X (or Rule 12-12 through 12-14 of Regulation S-X for management investment companies).

To assist in its review of proxy statements that contain financial statements, the SEC requests written representation that the preliminary proxy material has been considered by the auditors and that the auditors are prepared to permit the use of their report. A manually signed auditors' report will satisfy this requirement.

8.1 Item 13. Financial and other information

Registrants must provide the information in Item 13 of Schedule 14A when the proxy is being used to solicit a shareholder vote to:

- Authorize or issue additional securities under Item 11 (e.g., securities to be issued for cash in a public offering) other than for an exchange for outstanding securities of the registrant, which would fall under Item 12
- Modify[2] or exchange outstanding securities under Item 12

Registrants are required to provide various information including (1) financial statements meeting the requirements of Regulation S-X,[3] (2) Item 302, *Supplementary Financial Information*, of Regulation S-K, (3) Item 303, *Management's Discussion and Analysis of Financial Condition and Results of Operations*, of Regulation S-K, (4) Item 304, *Changes in and Disagreements with Accountants on Accounting and Financial Disclosure*, of Regulation S-K, (5) Item 305, *Quantitative and Qualitative Disclosures About Market Risk*, of Regulation S-K and (6) a statement as to whether (i) representatives of the principal accountants for the current year and for the most recently completed fiscal year are expected to be present at the shareholders' meeting, (ii) they will make a statement and (iii) they are available to respond to questions. However, any or all of this information may be omitted if it is not material to the exercise of prudent

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1 The ability to incorporate by reference financial statements required in a proxy statement is specified in Items 13 and 14 of Schedule 14A. These guidelines generally follow incorporation by reference rules for registration statements on Forms S-1, S-3, and S-4. Subject to certain conditions required by Item 13(c) of Schedule 14A, all registrants may incorporate by reference financial statements from the annual shareholders' report or other previously filed document as long as the report or document is delivered with the proxy statement.

2 Modifications for this purpose include the limitation of preemptive rights from a security. See C&DI 163.01 of Proxy Rules and Schedules 14A/14C at **https://www.sec.gov/corpfin/proxy-rules-schedules-14a-14c-cdi**.

3 Registrants also must include any financial information required by Rule 3-05 and Article 11 of Regulation S-X for transactions other than the one on which action is being taken in the proxy statement.

judgment. For example, Item 13 of Schedule 14A presumes this information would be material to the decision to authorize or issue a material amount of senior securities. However, the information usually is not material if shareholders are being asked to authorize or issue common stock (except in an exchange, merger, consolidation, acquisition or similar transaction); authorize preferred stock that the registrant has no specific plans to issue; or authorize preferred stock for issuance for cash at fair value.

8.2 Mergers, consolidations, acquisitions and similar matters

Depending on state law and its articles of incorporation, a company often needs approval for merger and consolidation transactions from shareholders of the acquirer, shareholders of the target company or both, and solicits proxies from such shareholders.

Merger, acquisition or similar transactions in which shareholders of the target will receive equity securities of the acquirer may require amendments to the organizational documents of the acquirer. If the proposed amendments are material, the acquirer's proxy statement must present these proposed amendments separately from the proposal to complete the transaction.[4] For example, changes to governance and control-related provisions to require classified or staggered boards, limitations on the removal of directors, supermajority voting provisions, delays of the annual meeting for more than a year, the elimination of the ability to act by written consent or changes in minimum quorum requirements would ordinarily be considered material matters. In contrast, provisions such as entity name changes,[5] restatements of charters or technical changes, such as those resulting from antidilution provisions, would likely be considered immaterial.

Any material amendments to the acquirer's organizational documents that are presented as separate matters on the acquirer's proxy statement would also be presented separately on the proxy statement of the target company, when the target company is subject to Regulation 14A and its shareholders are required to vote on the same transaction.[6]

8.2.1 Golden parachute disclosures and shareholder vote

In any proxy or consent solicitation material for shareholders to approve an acquisition, merger or similar transaction, including the proposed sale or other disposition of all or substantially all the assets of an issuer, the soliciting issuer is required to disclose all golden parachute arrangements[7] in Item 5 of Schedule 14A and hold a shareholder advisory vote on certain of these arrangements.

8.2.1.1 Item 402(t) of Regulation S-K

Item 402(t) of Regulation S-K specifies the required golden parachute disclosures.[8] All golden parachute arrangements involving the NEOs of either the acquirer or the target (regardless of whether the acquirer or target would make the payments and regardless of the identity of the party soliciting the proxy) fall within the scope of Item 402(t). Thus, Item 402(t) includes disclosure of:

- Arrangements by the target with its NEOs and the NEOs of the acquirer

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4 Exchange Act Rule 14a-4(a)(3) requires that the form of proxy "identify clearly and impartially each separate matter intended to be acted upon. [...]"

5 C&DI 126.02 of Proxy Rules and Schedules 14A/14C on corporate name changes: **https://www.sec.gov/corpfin/proxy-rules-schedules-14a-14c-cdi**.

6 C&DI 201.01 and 201.02 of Exchange Act Rule 14a-4(a)(3) on unbundling of separate matters that are submitted to a shareholder vote by a registrant in the context of mergers and acquisitions: **https://www.sec.gov/divisions/corpfin/guidance/exchange-act-rule-14a-4a3.htm**.

7 Agreements or understandings with NEOs concerning any compensation (present, deferred or contingent) that is based on or related to a merger or similar transaction.

8 Agreements or understandings with senior management of an FPI target or acquirer are exempt from the Item 402(t) disclosures.

- Arrangements by the acquirer with its NEOs and the NEOs of the target

Item 402(t) requires a table with quantitative disclosure of the individual executive compensation elements for each NEO with respect to amounts that will be paid or payable in connection with the transaction subject to shareholder approval.

8.2.1.2 Golden parachute compensation table

Name (a)	Cash ($) (b)	Equity ($) (c)	Pension/NQDC ($) (d)	Perquisites/ benefits ($) (e)	Tax reimbursement ($) (f)	Other ($) (g)	Total ($) (h)
PEO							
PFO							
A							
B							
C							

The table requires quantitative disclosure of the following types of compensation for each NEO:

- Cash severance payment (column b) (e.g., base salary, bonus and pro-rata non-equity incentive plan)
- Dollar value of accelerated stock awards, in-the-money options awards for which vesting would be accelerated and payments in consideration of canceling stock and option awards (column c)
- Pension and nonqualified deferred compensation benefit enhancements (column d)
- Perquisites and other personal benefits and property, health care and welfare benefits (column e)
- Tax reimbursements (column f)
- "Other," for any additional elements not specifically included in other columns of the table[9] (column g)
- Aggregate total of all golden parachute compensation (column h)

In addition, an issuer is required to describe the following in narrative form:

- Material conditions or obligations applicable to the receipt of golden parachute payments (e.g., noncompete or confidentiality agreements)
- Circumstances that would result in payment
- Whether payments would or could be lump-sum or annual and their duration
- Who would make the payments

Item 402(t) does not affect the disclosures required by Item 402(j) in Form 10-K and in annual meeting proxy statements for potential payments that would be made to NEOs of the issuer on termination or change-in-control.

8.2.1.3 Shareholder vote on golden parachute arrangements[10]

A separate nonbinding shareholder vote is required on golden parachute arrangements between the soliciting company and its NEOs or the NEOs of the counterparty to the transaction. An advisory vote is

[9] Amounts included in "other" should be identified in a footnote to the table.

[10] As noted in section 2.5 of this publication, EGCs are not required to comply with the say-on-pay provisions of the Dodd-Frank Act.

not required on all golden parachute compensation arrangements for which disclosure is required under Item 402(t) of Regulation S-K. For example, when a target company solicits a proxy to approve a merger, golden parachute compensation arrangements between the acquiring company and the NEOs of the target company do not require a shareholder advisory vote, but those arrangements require disclosure under Item 402(t).

If the golden parachute arrangement has been subject to a previous shareholder advisory vote on executive compensation, an additional vote is not required. Some issuers, therefore, may voluntarily provide Item 402(t) disclosures about arrangements with their NEOs as part of their executive compensation disclosures in annual meeting proxy statements and include them within the scope of the recurring shareholder advisory votes on executive compensation.

If the golden parachute arrangements change, issuers that already have held votes on these arrangements would need to hold a vote only on the changes.

8.2.2 Financial statements

Item 14 of Schedule 14A requires financial statements of the registrant and the target to be included in the proxy statement, if shareholders are voting on any transaction involving:

- The merger or consolidation of the registrant into or with any other company or of any other company into or with the registrant
- The acquisition by the registrant of securities of another company
- The acquisition by the registrant of any other business or of the assets of another business
- The sale or other transfer of all or any substantial part of the assets of the registrant
- The liquidation or dissolution of the registrant

The requirements for financial statements are similar to those in a Form S-4 filing, which are discussed below. Item 14 provides the following relief:

- If the transaction is a cash merger or third-party cash tender offer, the acquirer's financial statements are not required unless the information is material to an informed voting decision (e.g., the target's shareholders are voting and financing is not assured). If only the shareholders of the target are voting, financial statements of the target are not required.
- If the transaction includes the offer of securities exempt from registration under the Securities Act or includes a combination of exempt securities and cash to the target's shareholders and only the shareholders of the acquirer are voting, the acquirer's financial statements are not required unless they would be material to an informed voting decision. If only the shareholders of the target are voting, financial statements of the target are not required.[11]
- No financial statements for either the acquirer or the target are required if the vote only involves the merger of the acquirer and one or more of its wholly owned subsidiaries.

Despite any Item 14 relief, depending on its significance to the registrant, the target's audited financial statements may be required to be filed in a Form 8-K on consummation of the acquisition. For additional information, see our publication Technical Line, ***Applying the SEC's requirements for significant acquired businesses***.

[11] However, financial statements of the target must be provided if the transaction is a going-private or a roll-up transaction.

A subpart of Regulation S-K, entitled Regulation M-A, contains the disclosure requirements for tender offers, going-private transactions and other extraordinary transactions. If action will be taken on any matter in Item 14, confidential treatment will be available for the preliminary proxy statement as long as:

- The preliminary proxy statement does not relate to a matter or proposal subject to Rule 13e-3 of the Exchange Act, or a roll-up transaction as defined in Item 901(c) of Regulation S-K.
- No party to the transaction has made any public communications relating to the transaction except for statements in which the content is limited to the information specified in Securities Act Rule 135.[12]
- The materials are filed in paper and marked "Confidential, For Use of the Commission Only." In all cases, the materials may be disclosed to any department or agency of the United States Government and to the Congress, and the SEC may make any inquiries or investigation into the materials as may be necessary to conduct an adequate review.

If communications are made publicly that go beyond the information specified in Securities Act Rule 135,[12] the registrant must promptly and electronically re-file the preliminary proxy statement with the SEC as public information.

8.3 Registration statements on Form S-4

If a merger takes the form of an exchange of one registrant's securities for the securities or assets of another company, the securities to be issued usually are registered under the Securities Act using Form S-4. In these situations, the proxy statement becomes the basis for the prospectus and some additional information is added. Thus, the registration statement is "wrapped around" the proxy statement.

Form S-4 streamlines the disclosures required to be made to investors for business combinations and certain other transactions. Form S-4 permits incorporation by reference of the Exchange Act reports to the same extent as Form S-1 or Form S-3 as applicable. Form S-4 often reduces the complexity and length of exchange offer registration statements.

The financial statement requirements of a target on Form S-4 are separate from the financial statement requirements of completed and probable business combinations under Rule 3-05 of Regulation S-X. Generally, financial statements of the target that is a reporting company must be provided, regardless of the target's level of significance. Under Form S-4 and Regulation 14A, audited balance sheets as of the two most recent fiscal years and statements of comprehensive income and cash flows for each of the three most recent fiscal years are required for a reporting target (regardless of whether the acquirer's shareholders are voting) in takeover transactions.

As discussed below, financial statement requirements differ if the target is a non-reporting entity, depending on whether the registrant's shareholders are voting and/or the securities are being registered for resale. The *Form 10-K and registration statement checklist supplement to GAAP disclosure checklist* (EY Form A69) should be reviewed when evaluating compliance with Form S-4.

8.3.1 Non-reporting target and acquirer's shareholders are voting

If the acquirer's security holders are voting on the transaction, the annual financial statements of the non-reporting target would be required as if the target were issuing an annual report to shareholders under Rules 14a-3(b)(1) and (b)(2). If the Form S-4 will be used to register securities for resale to the public by any person who is deemed an underwriter within the meaning of Rule 145(c) of the Securities

[12] See the discussion in section 2 of this publication about the provisions of Rule 135.

Act,[13] the financial statements of the non-reporting target must be audited for the periods required under Rule 3-05 of Regulation S-X. Otherwise, financial statements of the non-reporting target must be audited for the latest fiscal year only if practicable and the financial statements for the two years prior to the most recent fiscal year need not be audited if they were not previously audited. However, in these circumstances, the registrant will continue to have the obligation to provide audited financial statements of the target in a Form 8-K on consummation of the acquisition for the periods required under Rule 3-05 based on the significance of the target company.

Form S-4 also requires a non-reporting target to furnish the year-to-date financial and other information as would have been required had the company being acquired been required to file Part I of Form 10-Q for the most recent quarter for which such a report would have been on file at the time the registration statement becomes effective or for a period ending as of a more recent date.

Even if a private target company is a non-reporting company that does not need to file a proxy statement to solicit its shareholders' approval for a business combination with an acquirer subject to federal proxy rules, the target company could still be engaged in a solicitation of the acquirer's shareholders if its public communications promote the proposed transaction or may be reasonably expected to influence the voting decisions of the acquirer's shareholders. Any target company communication that constitutes a solicitation would be subject to the liability provision of Exchange Act Rule 14a-9, which prohibits materially false or misleading statements or material omissions. It would also be subject to the filing and information requirements of the federal proxy rules.[14]

The SEC staff may not object to the private target company and/or a nonpublic acquirer relying on Rule 14a-12 for its public written communications if certain conditions are satisfied.[15]

8.3.2 Non-reporting target and acquirer's shareholders are not voting[16]

If the acquirer's shareholders are not voting on the transaction, and the non-reporting target is not in excess of 20% significance to the acquirer, no financial information (including interim or pro forma information) for the target company is required. However, for any subsequent registration statement, a registrant will continue to have the obligation under Rule 3-05 to evaluate individually insignificant acquisitions in the aggregate.

If the acquirer's shareholders are not voting on the transaction, the non-reporting target is in excess of 20% significance to the acquirer and the Form S-4 will *not* be used to register securities for resale to the public by any person who is deemed an underwriter under Rule 145(c) of the Securities Act, annual financial statements of the target for the most recent fiscal year are required in Form S-4. If the target provided its shareholders with GAAP financial statements for either or both of the two fiscal years before the most recent fiscal year, financial statements for those years are required as well.

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[13] Securities Act Rule 145 does not restrict the ability of a non-affiliate to sell registered securities received in a business combination transaction, unless a shell company was involved in the transaction. See SEC Release No. 33-8869, *Revisions to Rules 144 and 145*.

[14] See C&DI 101.02 of Proxy Rules and Schedules 14A/14C at **https://www.sec.gov/corpfin/proxy-rules-schedules-14a-14c-cdi**.

[15] See C&DIs 132.01 and 132.02 of Proxy Rules and Schedules 14A/14C at **https://www.sec.gov/corpfin/proxy-rules-schedules-14a-14c-cdi**.

[16] See Section 2200.5 in the FRM at **https://www.sec.gov/corpfin/cf-manual**.

In addition, cumulative year-to-date interim information for the latest[17] and comparable interim periods is required. Financial statements of the non-reporting target for the latest fiscal year must be audited only to the extent practicable, and the financial statements for the two years before the most recent fiscal year need not be audited if they were not previously audited. However, in these circumstances, the registrant will continue to have the obligation to provide audited financial statements of the target in a Form 8-K upon consummation of the acquisition for the periods required under Rule 3-05 based on the significance of the target company.

If the acquirer's shareholders are not voting on the transaction, the non-reporting target is in excess of 20% significance to the acquirer, and the Form S-4 will be used to register securities for resale to the public by any person who is deemed an underwriter within the meaning of Rule 145(c) of the Securities Act, financial statements required under Rule 3-05 of Regulation S-X are required in Form S-4. The financial statements of the non-reporting target must be audited for the periods required under Rule 3-05.

[17] As recent as would have been filed on Form 10-Q had the target company been subject to the Exchange Act.

9 Smaller reporting and emerging growth companies

9.1 Definition of a smaller reporting company

An SRC may use the scaled disclosure and reporting requirements described in Regulation S-K. In addition to the information presented below, please see section 9 of our publication, *SEC annual reports – Form 10-K*, for more information about SRCs, including SRC status entry provisions.

EY resources

- Technical Line, ***Reminders on reporting and filer status considerations for SEC registrants***

9.1.1 SRC disclosure relief

If a registrant is an SRC for purposes of its annual report on Form 10-K, it also may choose to use SRC disclosure relief in its proxy statement for its next annual meeting of shareholders. The SEC staff has said a company indicating on the cover page of its Form 10-K that it will no longer qualify for the use of SRC disclosures for the next fiscal year still may use SRC disclosures in its proxy statement relating to that Form 10-K.[1]

An SRC may choose, on an item-by-item basis within any filing, whether to apply Regulation S-K's scaled disclosure requirements or the more rigorous disclosure requirements applicable to larger public companies. Nevertheless, the SEC stresses the importance of consistent disclosures that allow investors to make period-to-period comparisons, whether quarterly or annually.

When Item 13 of Schedule 14A applies, Article 8 of Regulation S-X allows an SRC to file an audited balance sheet as of the end of the two most recent fiscal years and audited statements of income, comprehensive income (if applicable), cash flows and changes in stockholders' equity for the two most recent fiscal years (compared with three fiscal years required of larger issuers).

[1] See Exchange Act Forms C&DI 104.13 at **https://www.sec.gov/divisions/corpfin/guidance/exchangeactforms-interps.htm**.

9.2 Proxy filing by an SRC

The following summarizes the requirements of Item 7 of Schedule 14A, *Directors and Executive Officers*, for SRCs and which of those disclosures also are required in the Form 10-K of an SRC:

Disclosure requirement of Item 7 of Schedule 14A	Regulation S-K Item	Required in Form 10-K?
Identification of directors and executive officers	401(a) – (f); 103(c)(2)	Yes (Item 401 in Part III – Item 10; Item 103(c)(2) in Part I – Item 3)
Independence of directors	407(a)	Yes (Part III – Item 13)
Board meetings and committees; annual meeting attendance	407(b)	No
Nominating committee disclosures	407(c)(1) & (2)	No*
▸ Audit committee charter	407(d)(1)	No
▸ Nonindependence of audit committee members	407(d)(2)	No
▸ Audit committee report	407(d)(3)	No
▸ Audit committee disclosures by listed issuers	407(d)(4)	Yes (Part III – Item 10)
▸ Audit committee financial expert**	407(d)(5)	Yes (Part III – Item 10)
Compensation committee disclosures	407(e)(1), (2) & (3)	No
Security holder communications with directors	407(f)	No
Board leadership structure and role in risk oversight	407(h)	No
Employee, officer and director hedging	407(i)	No
Transactions with related persons	404(d)(1) & (2)	Yes (Part III – Item 13)
Parents***	404 (d)(3)	Yes (Part III – Item 13)
Promoters and control persons	401(g)	Yes (Part III – Item 10)
Compliance with reports under Section 16(a) of the Exchange Act	405	Yes (Part III – Item 10)
Insider trading arrangements and policies	408(b)(1)	No****

* SRCs are required to report any material change to the procedures for security holders to recommend a director candidate in their periodic Exchange Act report for the period that the material change occurs (e.g., for a change that occurred during the fourth fiscal quarter, the disclosure would be required in the registrant's annual report on Form 10-K). Such disclosure is not required by Item 7 of Schedule 14A.

** Disclosure requirements for Item 407(d)(5) are discussed in section 3.3.2.

*** These disclosures are not required for larger issuers.

**** If the registrant has adopted insider trading arrangements policies and procedures, Item 408(b)(2) requires filing them as an exhibit to Form 10-K. Registrants must also disclose under Part II, Item 9B in Form 10-K the information required by Items 408(a) of Regulation S-K. Such disclosure is not required by Item 7 of Schedule 14A.

9.3 Compensation of directors and executive officers

Items 402(l) through 402(r) and Item 402(v)(8) of Regulation S-K require specific disclosure for SRCs. SRCs are only required to provide the following compensation-related tables, along with related narrative disclosures (with requirements virtually identical to those of larger issuers but with slightly modified reporting thresholds in some cases):

- Summary compensation table
- Outstanding equity awards at fiscal year-end table

- Director compensation table
- Pay versus performance disclosures

Note that an SRC's SCT is required to provide information only for the last two fiscal years (compared with three years for larger issuers) and only for the PEO and the two most highly compensated executive officers other than the PEO (compared with the PEO, the principal financial officer and the other three most highly compensated executive officers for larger issuers).

Item 402(q) of Regulation S-K also requires a narrative description of (1) the material terms of each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement and (2) the material terms of each contract, agreement, plan or arrangement that provides for payments to an NEO at or following the resignation, retirement or other termination of the NEO, or a change in control of the registrant or a change in the NEO's responsibilities following a change in control.

SRCs are not required to provide several of the elements of the executive compensation disclosures required of larger issuers, including:

- CCR
- CD&A
- Grants of plan-based awards table
- Option exercises and stock vested table
- Pension benefits table
- Nonqualified deferred compensation table
- Pay ratio disclosure
- Disclosure of compensation policies and practices related to risk management (Item 402(s) of Regulation S-K)
- Disclosure of compensation committee interlocks and insider participation

Item 402(v)(8) of Regulation S-K (SRC pay versus performance disclosures) only requires SRCs to provide three years of disclosures after the phase-in period. In addition, SRCs are not required to make adjustments to pension amounts when calculating executive compensation actually paid, to disclose their peer group TSR, the company-selected measure or the tabular list of their most important financial performance measures.[2] SRCs may phase in Inline XBRL tagging (i.e., they can wait until the third filing in which they make pay versus performance disclosures to tag them).

[2] The SEC staff has said it will not object if a registrant that loses SRC status as of January 1, 2024, continues to include scaled disclosure under Regulation S-K Item 402(v)(8) in its definitive proxy or information statement filed not later than 120 days after its 2023 fiscal year end from which the registrant's Form 10-K will forward incorporate the disclosure required by Part III of Form 10-K. The pay versus performance disclosure in such filing must cover fiscal years 2021, 2022, and 2023. Unless the registrant regains SRC status in subsequent years, any proxy or information statement requiring pay versus performance disclosures and filed after 1 January 2024 must include non-scaled pay versus performance disclosure. See Regulation S-K C&DI 128D.28 at **https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm** for additional guidance on pay versus performance disclosures for registrants that have lost SRC status.

The following summarizes the disclosures on compensation of directors and executive officers otherwise required in the proxy statement of a larger issuer, along with a designation whether those disclosures are required for an SRC[3] and the applicable disclosure Item in Regulation S-K.

Compensation of directors and executive officers disclosure item	Required for SRCs?	Regulation S-K item
Compensation discussion and analysis (CD&A)	No	
Summary compensation table (SCT)	Yes[4]	402(n)
Grants of plan-based awards table	No	
Narrative disclosure to the SCT	Yes	402(o)
Outstanding equity awards at fiscal year-end table	Yes	402(p)
Option exercises and stock vested table	No	
Pension benefits table	No	
Nonqualified deferred compensation table	No	
Other potential post-employment payments	Yes[5]	402(q)
Director compensation table (DCT)	Yes[4]	402(r)
Narrative disclosures to the DCT	Yes	402(r)(3)
Disclosure of overall compensation policies and practices for risk management and risk-taking incentives	No	
Golden parachute compensation	Yes[6]	402(t)
Pay ratio rule	No	
Pay versus performance	Yes[7]	402(v)(8)
Disclosure of a registrant's action to recover erroneously awarded compensation	Yes	402(w)
Disclosure of the registrant's policies and practices related to the grant of certain equity awards close in time to the release of material nonpublic information	Yes[8]	402(x)

[3] EGCs may follow the reporting requirements in Item 402 of Regulation S-K applicable to smaller reporting companies. See section 9.6 for further discussion.

[4] SRCs are only required to provide information for the last two fiscal years for only the CEO and the two most highly compensated executive officers other than the CEO in the SCT. SRCs are not required to report the change in pension value in the SCT or the DCT.

[5] Item 402(q) of Regulation S-K requires a narrative description of (1) the material terms of each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, and (2) the material terms of each contract, agreement, plan or arrangement that provides for payments to an NEO at or following the resignation, retirement or other termination of the NEO or a change in control of the registrant or a change in the NEO's responsibilities following a change in control.

[6] Item 402(t) of Regulation S-K applies to SRCs only for a proxy or consent solicitation material for shareholders to approve an acquisition, merger, consolidation or the proposed sale or other disposition of all or substantially all of a company's assets. Although Item 402(t) information is not required in annual meeting proxy statements, SRCs also may include such information voluntarily if they believe it would give shareholders a better understanding of the SRC's compensation programs. See section 8 of this publication for a discussion of Item 402(t).

[7] Item 402(v) of Regulation S-K only requires SRCs to provide three years of disclosures after the phase-in period. In addition, SRCs are not required to adjust pension amounts to calculate executive compensation actually paid, in order to disclose their peer group TSR, the company-selected measure or the tabular list of their most important financial performance measures.

[8] SEC Release No. 33-11138, *Insider Trading Arrangements and Related Disclosures*, and Regulation S-K C&DI 120.27 note that SRCs must provide Item 402(x) disclosures in proxy statements for the first annual meeting for the election of directors (or information statements for consent solicitations in lieu thereof) after completion of the first full fiscal year beginning on or after 1 October 2023 (e.g., 2025 proxy statements calendar year-end SRC registrants). Instructions to Item 402(x)(2) of Regulation S-K note that an SRC or an EGC may limit the disclosures in the table to its PEO, the two most highly compensated executive officers other than the PEO who were serving as executive officers at the end of the last completed fiscal year, and up to two additional individuals who would have been the most highly compensated but for the fact that the individual was not serving as an executive officer at the end of the last completed fiscal year.

Compensation of directors and executive officers disclosure item	Required for SRCs?	Regulation S-K item
Board compensation committee report on executive compensation	No	
Disclosure of compensation committee interlocks and insider participation	No	

9.4 Certain relationships and related transactions

Item 404(d) of Regulation S-K, *Transactions with Related Persons, Promoters and Certain Control Persons*, has more rigorous disclosure requirements than those otherwise required for larger issuers under Items 404(a) through 404(c) of Regulation S-K. An SRC must comply with these more rigorous disclosures even if it does not otherwise elect to use the scaled disclosures available under other Items of Regulation S-K.

Instruction 2 to Item 404(d) of Regulation S-K requires an SRC to provide disclosures covering a longer period. An SRC must disclose related person transactions since the beginning of its two most recent fiscal years, as well as any proposed transactions. However, the identification of related persons for purposes of SRC disclosure only considers relationships with respect to the most recent fiscal year.

In addition, Item 404(d)(1) of Regulation S-K provides a lower quantitative threshold for reporting related person transactions. An SRC is required to describe related person transactions in which the amount involved exceeds the lesser of $120,000 or 1% of the average of the SRC's total assets at year-end for the last two completed fiscal years (versus a single $120,000 disclosure threshold for larger issuers). Instruction 1 to Item 404(d) of Regulation S-K also requires an SRC to provide specific information about material underwriting discounts and commissions paid when a related person was a principal underwriter (or a controlling person or member of a firm serving as principal underwriter).

SRCs are not required to provide the disclosures otherwise required by Item 404(b) of Regulation S-K, *Review, Approval or Ratification of Transactions with Related Persons*. However, under Item 404(d)(3) of Regulation S-K, an SRC must provide a list of all its parents, if any, showing the respective basis of control and the percentage of voting securities owned, or other basis of control by its immediate parent.

9.5 Annual report to shareholders

As discussed in section 2 of this publication, management also must provide an annual report to all shareholders when soliciting proxies for the annual meeting (or a special meeting to elect directors). The proxy rules require that the following items be included in the annual report to shareholders for registrants filing under the reduced disclosures available to SRCs under Regulation S-K:

- Consolidated financial statements — Audited balance sheets as of the end of the two most recent fiscal years and statements of income, comprehensive income (if applicable) and cash flows for each of the two most recent fiscal years, prepared in accordance with GAAP (Article 8 of Regulation S-X)
- MD&A of financial condition and results of operations (Item 303 of Regulation S-K) — However, an SRC must provide only two years of analysis if it presents only two years of financial statements
- Changes in and disagreements with accountants on accounting and financial disclosures (Item 304(b) of Regulation S-K)
- A brief description of the general nature and scope of the business done by the registrant and its subsidiaries for the latest fiscal year
- Director and executive officer information — Name, principal occupation or employment and name of employer and its principal business

- Market disclosures for the issuer's common equity and related stockholder matters (Items 201(a), (b) and (c) of Regulation S-K)
- A statement, which may be in the proxy statement instead of the annual report to shareholders, that the annual report (Form 10-K), including the financial statements, will be furnished free of charge on written request

Note that SRCs are not required to provide a stock performance graph (Item 201(e) of Regulation S-K), supplementary financial information (Item 302 of Regulation S-K), or the quantitative and qualitative disclosures about market risk (Item 305 of Regulation S-K).

9.6 Emerging growth companies

An EGC is defined as a company with total annual gross revenues of less than $1.235 billion in its most recently completed fiscal year. An EGC may lose its status by any of the following:

- Exceeding $1.235 billion in revenues during its most recently completed fiscal year (determined at year end)
- Becoming a large accelerated filer (i.e., a seasoned issuer with public float of $700 million or more), which is ultimately determined at year end with public float measured on the last day of the second fiscal quarter
- Issuing more than $1 billion in nonconvertible debt securities over a rolling three-year period, including securities issued in registered or unregistered offerings (determined on an ongoing basis)
- Hitting the last day of the fiscal year in which it celebrates the fifth anniversary of its first sale of registered common equity securities

The Jumpstart Our Business Startups (JOBS) Act exempts EGCs from certain reporting and disclosure requirements. EGCs may take an "à la carte" approach, providing some EGC scaled disclosures but not using the relief available to satisfy other SEC disclosure requirements.

Other than pay versus performance disclosures, which are not required for EGCs,[9] an EGC may provide in its proxy statement executive compensation disclosures required under Item 402 of Regulation S-K in a manner consistent with an SRC and, therefore, is not required to include a CD&A, among other items. See section 9.3 of this publication for the Item 402 requirements for SRCs.

EGCs also are not required to comply with the provisions of the Dodd-Frank Act that require companies to hold a shareholder advisory vote on executive compensation and golden parachutes, nor are they required to comply with the pay ratio disclosure or employee and director hedging policies disclosure rule. For more discussion on shareholder advisory votes on executive compensation and golden parachutes, see sections 2.5 and 8.2.1.3, respectively.

[9] A registrant is required to provide pay versus performance disclosure in any proxy or information statement it files after it loses its EGC status. See Regulation S-K C&DI 128D.29 at **https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm**.

A Abbreviations

Abbreviation	FASB Accounting Standards Codification
ASC 718	FASB ASC Topic 718, *Compensation — Stock Compensation*
ASC 932	FASB ASC Topic 932, *Extractive Activities — Oil and Gas*
ASC 942	FASB ASC Topic 942, *Financial Services — Depository and Lending*
ASC 944	FASB ASC Topic 944, *Financial Services — Insurance*
ASC 948	FASB ASC Topic 948, *Financial Services — Mortgage Banking*
ASC 954	FASB ASC Topic 954, *Health Care Entities*

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