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SEC Adopts Final Rules for Disclosure of Hedging Policies

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The Securities and Exchange Commission recently approved final rules to require disclosure of hedging practices, implementing a Dodd-Frank Act mandate. New Item 407(i) of Regulation S-K requires a company to describe in its proxy statement any employee or director hedging practices or policies or to state that it does not have any such policies.

Issuers (including emerging growth companies and smaller reporting companies) must include the required disclosure in proxy or information statements for the election of directors during fiscal years beginning on or after July 1, 2019.

We note that new Item 407(i) does not mandate the adoption of hedging policies or otherwise prohibit hedging transactions. Additionally, the rule does not define the term "hedge," and the adopting release makes clear that the term should be applied broadly. The rule requires a fair and accurate summary of the applicable practices and policies, including the categories of persons they affect and any categories of hedging transactions that are specifically permitted or specifically disallowed.

The full text of the Commission's adopting release and guidance is available ***here***.