

LEGAL UPDATES

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Looking Ahead to the 10-K and Proxy Season: New Requirements and Considerations for the 2025 Reporting Season

As we approach 2025, we want to remind registrants about several new rules that will impact disclosure for the 2024 Form 10-K and 2025 proxy season, note the 2025 deadlines for filings with the Securities and Exchange Commission (SEC), and highlight potential topics on which the SEC may alter its current regulatory course given the upcoming change in administrations.

New disclosure requirements

Annual insider trading policy disclosures

Two years ago, the SEC adopted several amendments and new disclosure requirements to address what it viewed as potentially abusive practices associated with Rule 10b5-1 plans, grants of options and other equity instruments with similar features, and the gifting of securities (for additional discussion of these rules generally, please see our July 2023 client alert).

Under those December 2022 amendments, beginning in 2025 for calendar year companies (with the filing of their fiscal 2024 Form 10-K), companies will be required to disclose whether they have adopted insider trading policies and procedures governing the purchase, sale, and other dispositions (including gifts) of their securities by directors, officers, and employees—or the company itself—that are reasonably designed to promote compliance with insider trading laws, rules, and regulations, and any listing standards applicable to the company. If a company has not adopted insider trading policies or procedures, it will be required to disclose the explanation for why it has not adopted such policies or procedures. These disclosures will be required in annual reports on

Form 10-K pursuant to new Item 408(b) of Regulation S-K and, for Foreign Private Issuers, pursuant to a new Item 16J added to Form 20-F.

Pursuant to Items 408(b) and 601(b)(19) of Regulation S-K, as well as Item 15 of Form 10-K, companies will also need to file their insider trading policies and procedures as exhibits to their Annual Reports on Form 10-K. Item 408(b) further notes that, if all relevant insider trading policies and procedures are included in a company's Code of Ethics (as defined in Item 406(b) of Regulation S-K), and the Code of Ethics is filed as an exhibit to the Form 10-K, that also would satisfy the exhibit filing requirement.

The required narrative disclosure may, if companies so choose, be incorporated by reference into Part III, Item 10 of Form 10-K from a proxy statement that is filed within 120 days of the end of the fiscal year covered by the Form 10-K. The amended rules will require registrants to tag the information specified by new Items 408(a), and 408(b)(1) of Regulation S-K in Inline XBRL in accordance with Rule 405 and the EDGAR Filer Manual.

Because calendar year companies will be required to make an additional disclosure in their 2024 Annual Reports on Form 10-K filed in 2025 regarding the company's insider trading policies and procedures, or lack thereof, and file the insider trading policies and procedures as exhibits to the Form 10-K, companies will want to determine if any updates to the insider trading policy are warranted in light of (1) the Rule 10b5-1 Plan requirements that were added as part of the December 2022 Amendments, (2) the Department of Justice's recent shadow trading prosecutions, or (3) the fact that the insider trading policy will become a document that is publicly available to all investors through the SEC website. Although insider trading policies typically have only covered individual insiders, because the new rules specifically address whether the policy includes the company itself, companies may want to consider updating their existing policies to expand coverage to the company itself.

Equity grant policy disclosures

The December 2022 amendments also added new Item 402(x) to Regulation S-K, which will require companies, beginning with the 2024 Form 10-K for all calendar year issuers, to include in their proxy and information statements a discussion of their policies and practices on the timing of awards of options, stock appreciation rights (SARs) or similar awards in relation to their disclosure of material nonpublic information (MNPI), including:

how their board or compensation committee determines when to grant such awards (for example, whether awards are granted on a predetermined schedule);

whether their board or compensation committee takes MNPI into account when determining the timing and terms of such awards (and, if so, how); and

whether the company has timed the disclosure of MNPI for the purpose of affecting the value of executive compensation.

Further, if a company actually awarded any options, SARs, or similar awards to a named executive officer (NEO) during its last completed fiscal year within four business days before or one business day following the filing of a Form 10-K, Form 10-Q, or a Form 8-K (either filed or furnished) that disclosed MNPI (other than disclosure of the grant of a material new option or similar award under Item 5.02(e) of Form 8-K), it must provide the following information in a prescribed tabular format in its proxy statement:

the name of the NEO;

the date the award was granted;

the number of securities underlying the award;

the per-share exercise price of the award;

the grant date fair value of the award computed using the same methodology as used for the company's financial statements under generally accepted accounting principles; and

the percentage change in the market price of the securities underlying the award between the closing market price of the security one trading day preceding the disclosure and one trading day following the disclosure of the MNPI.

Smaller reporting companies (SRCs) with fiscal years other than the calendar year are required to provide these disclosures for the first time in proxy statements for annual meetings following the filing of a Form 10-K for their first fiscal year that began on or after October 1, 2023 (i.e., beginning with the fiscal year ending June 30, 2025 for SRCs with a June 30 year-end). These rules also require registrants to tag the information specified by new Item 402(x) of Regulation S-K in Inline XBRL in accordance with Rule 405 and the EDGAR Filer Manual.

Cybersecurity and artificial intelligence (AI) disclosure considerations

As we have discussed in a recent client alert, in October 2024 the SEC announced that it had charged four companies with making materiality misleading disclosures regarding cybersecurity risks and intrusions, with one company also charged with disclosure controls and procedures violations. While the facts of these cases predated the SEC's new cybersecurity disclosure rules which took effect in

2023 (see our related August 2023 client alert), they underscore the SEC's continued aggressive focus on both accuracy and completeness in public companies' disclosures of the (even arguably) material details of cybersecurity incidents, and on avoiding risk factor disclosure that characterizes as "potential" any risks that a company has actually experienced. Companies should also note that the new cybersecurity disclosures required for the first time in last year's Form 10-K Annual Reports pursuant to new Item 106 of SEC Regulation S-K become subject to Inline XBRL tagging requirements in this year's Form 10-K.

Similarly, companies should bear in mind that the SEC continues to scrutinize public companies' disclosures concerning the use and impact of emerging AI technologies on their businesses. It is important for companies to ensure that all such disclosures are accurate and appropriately supported, and that material risks related to the use or impact of AI technologies on their business are appropriately described in their risk factors disclosures.

EDGAR Next

The SEC has adopted final rules intended to improve access to and management of accounts on its Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system that are related to certain technical changes to EDGAR (collectively referred to as EDGAR Next).

The changes will require individual account credentials to log into EDGAR (allowing identification of the specific person making each submission) and multifactor authentication. Filers will also be required to authorize individuals to manage their EDGAR accounts on a new EDGAR Next dashboard. Filers will need to authorize at least two individuals as account administrators to manage the filer's EDGAR account (one is permitted if the filer is an individual or single-member company). As part of the changes, optional EDGAR Application Programming Interfaces (APIs) will be added to allow filers to make submissions, retrieve information, and perform account management tasks on a machine-to-machine basis.

The compliance date for EDGAR Next is September 15, 2025. Thereafter, existing filers may continue to enroll until December 19, 2025, but enrollment will be a prerequisite to filing. Beginning December 22, 2025, filers that have not enrolled in EDGAR Next or received access through submission of an amended Form ID will be required to submit an amended Form ID to request access to their existing accounts.

Starting March 24, 2025, the EDGAR Next dashboard will go live, and existing filers will obtain access by enrolling in the dashboard (while still being able to file pursuant to the legacy filing process, which will remain available through September 12, 2025). New filers (and existing filers unable to enroll) must complete amended Form ID, the application for access to EDGAR, which will reflect the EDGAR Next changes and will be modernized to make the form more user friendly.

The SEC has opened to filers a beta software environment that will be available for filer testing and feedback at least through December 19, 2025, and companies should consider whether to participate in the beta testing to familiarize themselves with the updated platform.

2025 SEC filing calendar deadlines

For 2025, the deadlines for the filing of Annual Reports, Quarterly Reports, and Part III Information in Proxy Statements for companies with a December 31 fiscal year end are as follows:

Annual Report on Form 10-K		
Large Accelerated Filer	60 days after fiscal year end	March 3 ⁽¹⁾
Accelerated Filer	75 days after fiscal year end	March 17 ⁽¹⁾
Non-Accelerated Filer	90 days after fiscal year end	March 31
Quarterly Report on Form 10-Q		
Large Accelerated Filer	40 days after fiscal quarter end	May 12 ⁽¹⁾ , August 11 ⁽¹⁾ , November 10 ⁽¹⁾
Accelerated Filer	40 days after fiscal quarter end	May 12 ⁽¹⁾ , August 11 ⁽¹⁾ , November 10 ⁽¹⁾
Non-Accelerated Filer	45 days after fiscal quarter end	May 15, August 14, November 14
Part III Information in Proxy Statement		
If incorporating by reference from the Proxy Statement Part III of Form 10-K information	120 days after fiscal year end	April 30

(1) The date that is the first business day after the deadline because the deadline falls on a weekend.

The filing status of a public company for 2025 Form 10-Ks and Form 10-Qs is determined in part based on its public float as of the last business day of its most recent second fiscal quarter (June 30,

2024, for calendar year companies). Any change in accelerated filer status takes effect on the last day of the fiscal year, with the loss of emerging growth company status also taking effect at that time.

The public float test also affects smaller reporting company (SRC) status. Companies becoming SRCs can start using scaled SRC disclosures immediately, while those exiting SRC status must stop using scaled SRC disclosures beginning with the Form 10-Q for the first quarter of the subsequent fiscal year.

Looking ahead through the current political landscape

Over the past three years, as President Biden's SEC Chair Gary Gensler aggressively steered the Commission into expanding the obligations of reporting companies, the SEC has embarked on new environmental, social, and governance (ESG) disclosure initiatives related to matters such as climate change and corporate "greenwashing" (exaggerated/unsupported disclosures of a company's supposed environmentally friendly achievements). Similarly, the SEC under President Biden also has expanded its focus on the disclosure of risks related to matters—such as the expanding use of artificial intelligence (AI) and cybersecurity exposures—and has brought more individual compliance cases against public companies and investment firms it regulates (with or without any showing of actual investor harm). With the Republican Party having gained control of both the White House and Congress in the recent election, companies may expect a somewhat less aggressive approach to SEC regulation, with a renewed focus on more traditional investor protection topics during President Trump's second term.

For instance, based on prior statements of President Trump's nominee to chair the SEC, former Commissioner Paul Atkins, it seems likely that under his leadership the SEC may take a less adversarial approach to policing cybersecurity disclosures and the regulation of new investment products focused on the emerging cryptocurrency industry, in addition to scaling back ESG-focused rulemaking and abandoning efforts to implement the climate change disclosure rules adopted in 2024 (which are currently on hold amid legal challenges).

In short, an SEC led by former Commissioner Atkins under the incoming Trump administration is expected to be much less likely to test new jurisdictional boundaries and instead operate within its existing regulatory framework.

What this means to you

Companies should be mindful of the disclosure requirements outlined above that will phase in for this year's annual reporting and proxy season, as well as changes that the pending implementation of EDGAR Next will require in their management of SEC filings. We also expect potentially significant

changes to some of the SEC's near-term enforcement and regulatory priorities as the new administration takes office in the first quarter of 2025.

Contact us

If you have questions regarding the new SEC rules that will impact disclosure for the 2024 Form 10-K and 2025 proxy season, please contact Craig Adoor, Steve Barrett, Robert Joseph, Victoria Sitz, Andrew Spector, Blake Heyer, Ashley Inbau, Brian Wetzstein, or your Husch Blackwell attorney.