

SEC/CORPORATE

SEC Adopts Final Rules for Disclosure of Hedging Policies

The Securities and Exchange Commission recently announced that it had at last adopted final rules to implement Section 14(j) (Disclosure of Hedging by Employees and Directors) of the Securities Exchange Act of 1934, which was enacted in 2010 by the Dodd-Frank Wall Street Reform and Consumer Protection Act. New Item 407(i) of Regulation S-K will require a company to describe any practices or policies it has adopted regarding the ability of employees (including officers) or directors, or their designees, to purchase financial instruments, or otherwise engage in transactions, that hedge or offset, or are designed to hedge or offset, any decrease in the market value of equity securities of the company held directly or indirectly by employees or directors, including company equity securities granted as compensation. This disclosure will be required in proxy or information statements relating to the election of directors. The final rules specify that the disclosure requirement will apply to equity securities of the company, its parents, its subsidiaries and subsidiaries of the company's parents, but do not define the term "designee" (instead requiring a facts and circumstances analysis).

Companies can satisfy the new requirements by either providing a fair and accurate summary of any practices or policies (whether written or not) or disclosing such practices or policies in full. A summary should include the categories of persons covered and any categories of hedging transactions that are specifically permitted and any that are specifically disallowed. If a company does not have any such practices or policies, the company must disclose that fact or state that hedging transactions are generally permitted. The adopting release clarifies that neither Section 14(j) nor Item 407(i) would require a company to prohibit hedging transactions or to otherwise adopt practices or policies addressing hedging by any category of individuals. The final rules do not define the term "hedge," with the SEC noting in the adopting release that it believes the language of Section 14(j) (which refers to financial instruments "that are designed to hedge or offset any decrease in the market value") is sufficiently clear and indicates that "hedge" should be applied as a broad principle.

The new disclosure requirements will become effective 30 days after their publication in the *Federal Register*. Companies will generally be required to comply with these requirements in proxy and information statements for the election of directors during fiscal years beginning on or after July 1 (or, in the case of "smaller reporting companies" or "emerging growth companies" during fiscal years beginning on or after July 1, 2020). A company will not be required to include the information in registration statements or in annual reports on Form 10-K, even if it elects to incorporate the Form 10-K Part III disclosure by reference from the company's definitive proxy statement or information statement.

Still yet to be adopted by the SEC are rules implementing the Dodd-Frank requirements regarding "Pay Versus Performance" (rules proposed April 29, 2015) and "Listing Standards for Recovery of Erroneously Awarded Compensation" (Clawbacks) (rules proposed July 1, 2015).

A copy of the SEC's adopting release is available [here](#).

BROKER-DEALER

SEC Announces Examination Priorities for 2019

On December 20, the Office of Compliance Inspections and Examinations (OCIE) of the Securities and Exchange Commission announced its 2019 examination priorities. This year, OCIE's examination priorities are divided into six categories:

1. examining compliance and risk in registrants responsible for critical market infrastructure;
2. protecting retail investors, including seniors and those saving for retirement;
3. continuing oversight of the Financial Industry Regulatory Authority and Municipal Securities Rulemaking Board;
4. monitoring digital assets, including cryptocurrencies, coins and tokens;
5. prioritizing cybersecurity; and
6. reviewing anti-money laundering programs.

OCIE's release on its examination priorities is available [here](#).

FINRA Files Proposed Rule Change Regarding Arbitration Subpoenas, Orders of Appearance of Witnesses and Production of Documents

On December 20, the Financial Industry Regulatory Authority filed a proposed rule change with the Securities and Exchange Commission to amend various FINRA Code of Arbitration Procedure Rules that govern objections in arbitration proceedings to subpoenas, orders of appearance of witnesses and production of documents by non-parties. Since non-parties to a FINRA arbitration do not have access to FINRA's Dispute Resolution Party Portal, they currently are served using other, slower methods, including first class mail. Untimely delivery of subpoenas and orders can result in a non-party waiving its ability to object to such subpoena or order. In the event a non-party fails to make a timely objection, it must respond to the subpoena or order or risk incurring sanctions or disciplinary action.

To ensure that non-parties to a FINRA arbitration have adequate time to respond to subpoenas and orders, FINRA is proposing amendments to its Rules that would extend the period non-parties have to object to a subpoena or order from 10 to 15 days after the receipt of the subpoena or order and would exclude first-class mail as an option to serve documents on a non-party and for a non-party to object to subpoenas and orders. FINRA also proposed amendments to codify the current practice that the director of the Office of Dispute Resolution sends, at the same time, objections and responses to the arbitration panel after the reply date has elapsed, unless otherwise directed by the arbitration panel (i.e., the director sends the complete set of motion papers to the panel to ensure that the panel receives the advocacy positions of all parties at the same time).

If the SEC approves the proposed rule change, FINRA will announce the effective date of the rule change in a Regulatory Notice to be published no later than 60 days following such approval, and the effective date will be no later than 30 days following the Regulatory Notice announcing such approval.

The Proposed Rule Change is available [here](#).

UK DEVELOPMENTS

FCA Publishes Instruments Implementing the EU Securitization Regulation

On January 3, the UK Financial Conduct Authority (FCA) published the Securitization Regulation Implementation (Fees for Third Party Verifiers) Instrument 2019 (FCA 2019/1) and Enforcement (EU Securitization Regulation) Instrument 2019 (FCA 2019/2) (collectively, the Securitization Instruments).

The Securitization Instruments have been published in light of the Financial Services and Markets Act 2000 (Securitization) Regulations 2018 (UK Securitization Regulations), which became effective on January 1, and

reflect the United Kingdom's implementation of the European Union's Securitization Regulation (EU Securitization Regulation). The Securitization Instruments subsequently became effective on January 3.

Additionally, the FCA published a statement jointly with the UK Prudential Regulation Authority (PRA) on December 20, 2018, in which they set out their intention to exercise the power granted to them under the UK Securitization Regulations to direct the manner in which the originator, sponsor or securitization special purpose entity of a private securitization established in the United Kingdom must make information available to the FCA or PRA. The FCA and PRA intend to exercise this power beginning January 15.

Only a summary of the relevant information would need to be notified to the relevant UK competent authority—the full set of information would remain available to each UK competent authority upon request. The FCA and PRA's joint statement also sets out the frequency with which notifications would need to be provided and provides a link to the FCA-PRA private securitization notification template.

FCA 2019/1 is available [here](#) and FCA 2019/2 is available [here](#).

The UK Securitization Regulations are available [here](#).

The FCA and PRA's joint statement is available [here](#).

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UK DEVELOPMENTS

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