

# SEC Proposes Rules for Disclosure of Hedging by Employees, Officers and Directors

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On February 9, 2015, the **SEC** proposed amendments to its proxy rules to implement Section 955 of the **Dodd-Frank Act**. *Section 955* added a new *Section 14(j)* to the *Exchange Act* that directs the SEC to require by rule each issuer to disclose in any proxy or consent solicitation material for an annual meeting of shareholders whether any employee or member of the board of directors of the issuer is permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities either granted to the employee or director by the issuer as part of the compensation of the employee or director, or held, directly or indirectly, by the employee or director.

The SEC proposes to implement Section 14(j) by adding a new paragraph (i) to Item 407 of Regulation S-K to require companies to disclose in proxy or information statements with respect to the election of directors whether they permit any employees (including officers) or directors to hedge their company's securities by engaging in transactions with the economic consequences comparable to the financial instruments specified in Section 14(j). With respect to registered investment companies, the SEC proposes that the new rules apply only to closed-end funds that are listed and registered on a national securities exchange because they typically hold annual meetings to elect directors and hedging transactions might be more

likely with listed closed-end funds, which often trade at a discount, than with open-end funds or exchange-traded funds. The SEC stated that the hedging information may be important to the voting decision of an investor when evaluating fund directors, including considering whether directors may be more or less incentivized as a result of holding shares to seek to decrease a fund's discount. The SEC also noted that officers and directors of listed closed-end funds are already required to report hedging transactions under Section 16(a) of the Exchange Act.

Comments on the proposed amendments are due by April 20, 2015.

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