

ClearBridge

Market Update

Regulatory Update: New SEC Disclosure
Rules on Option Grant Timing

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ClearBridge
Compensation Group

www.clearbridgecomp.com

Recently, the [SEC adopted final rules](#) requiring proxy disclosure of insider trading policies and practices. As part of these rules, the SEC has amended disclosure requirements regarding the timing of option grants. In particular, companies will be required to disclose information about the timing of option grants (excludes other equity vehicles) relative to the release of Material Non-Public Information (“MNPI”) in their Compensation Discussion and Analysis (“CD&A”).

Specifically, there are two forms of disclosure that will be required: Narrative Disclosure in the CD&A (*disclosed annually*), and Tabular Disclosure in the event that options are granted prior to, or directly after, the release of MNPI (*only disclosed if triggered*):

Narrative CD&A Disclosure (*Included Annually*): Discuss the timing of stock option grants and similar option-like instruments relative to the release of MNPI, including:

- How grant timing is determined (e.g., granted on a predetermined schedule)
- How MNPI is accounted for when determining the timing/terms of an award
- Whether the timing of disclosing MNPI affects the value of executive compensation

Tabular CD&A Disclosure (*if Triggered*): Companies that grant options within 4 business days before or 1 business day after release of MNPI (e.g., earnings) must disclose the following:

- Name of NEO(s) that were granted the relevant awards
- Grant date of award(s)
- Number of securities underlying the award(s)
- Per-share exercise price
- Grant date fair value of each award
- Percent change in the stock price between the closing price one trading day prior to, and one trading day after, the release of the MNPI

Compliance Dates: Companies will be subject to the disclosure requirements beginning on the first fiscal year on or after the following dates:

- Smaller Reporting Companies: October 1, 2023
- All Other Issuers (including Foreign Private Issuers): April 1, 2023

Key Takeaways & Next Steps: While this new disclosure will not be effective for most companies until their 2025 proxy statement, companies should begin to consider the timing of equity awards relative to these rules. (Given many companies grant all types of equity awards at the same time each year, we expect grant timing for all equity awards – not just options – will be impacted by these new rules). To ensure compliance with the narrative disclosure, as well as potentially avoiding the tabular disclosure, companies should discuss the following:

- Review equity grant practices and timing holistically, including reviewing and/or potentially implementing a pre-determined standard annual grant policy that considers typical MNPI release dates (e.g., earnings calls, annual report filings)
- Implement safeguards to avoid inadvertently triggering tabular disclosure requirement
- Evaluate on a case-by-case basis any situations in which companies may need to deliver option grants close to the release of MNPI and discuss potential disclosures



Contact Us

To discuss this topic and any additional issues, please contact us:



Yonat Assayag

(212) 886-1007

YAssayag@ClearBridgeComp.com



Ken Foulks

(212) 886-1011

KFoulks@ClearBridgeComp.com

New York Office: 10 East 53 St, Floor 24, New York, NY 10022

Boulder Office: 1245 Pearl Street, Suite 212, Boulder, CO 80302