

20 April 2015

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Disclosure of Hedging by Employees, Officers, and Directors (Release No. 33-9723; 34-74232; File No. S7-01-15)

Dear Mr. Fields:

CFA Institute¹ appreciates the opportunity to comment on the Securities and Exchange Commission's (SEC) proposed disclosure in proxy statements relating to permissible hedging by company employees, officers or directors. CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency, integrity and accountability of global financial markets.

Executive Summary

We have concerns about the actual practice of company employees in the position of decision-making engaged in the practice of hedging their stock holdings, as we believe this may prove to be a disincentive for aligning company actions with shareowner interests. However, we understand that the SEC is under a mandate from the Dodd-Frank Act to implement a *disclosure* requirement of these hedging policies, and not to *prohibit* hedging practices.

To that end, we support the proposal's requirement of disclosure through a new corporate governance measure. We also support the inclusion of officers in the group of employees to which the disclosure requirement would extend.

Background

Section 955 of the Dodd-Frank Act added new section 14(j) to the Securities Exchange Act. Section 14(j), in turn, requires an issuer to disclose in a proxy or consent solicitation materials for an annual shareowner meeting whether an employee or member of the board of directors (or their designees) is permitted to purchase financial instruments (including prepaid variable

¹ CFA Institute is a global, not-for-profit professional association of more than 129,000 investment analysts, advisers, portfolio managers, and other investment professionals in 147 countries, of more than 122,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 144 member societies in 69 countries and territories.

forward contracts, equity swaps, collars and exchange funds) that are designed to hedge against or offset decreases in the market value of equity securities (1) granted as part of compensation or (2) otherwise held. In order to implement section 14(j), the SEC is proposing to add a new subsection (i) to existing Item 407 of Regulation S-K.

While section 14(j) calls for disclosure in any proxy or consent solicitation materials for an annual shareholder meeting, the proposal takes a slightly different approach. Instead, it would require the disclosure whenever there is action to be taken with respect to the election of directors, given that annual meetings usually are linked with the election of directors. The proposal reasons that this approach provides shareholders with additional information about the financial incentives of employees and directors at a relevant time.

Currently, disclosure on hedging is required by Item 402(b) of Regulation S-K and is provided through the compensation discussion and analysis (CD&A). The requirement applies only to named executive officers, however, and does not apply to smaller reporting companies, emerging growth companies, registered investment companies or foreign private issuers.

In deciding how to implement a hedging disclosure requirement, the SEC has chosen not to amend Item 402(b) requirements, but instead to implement it as a corporate governance measure. As proposed, the new disclosure requirement would amend Item 407, by adding new section (i). By taking this approach, staff believes the requirements would appropriately apply to a broader group than reached under section 402(b) and would more effectively meet the original intention of Section 14(j).

Discussion

Transactions Subject to Disclosure Requirements

While Section 14(j) requires disclosure of whether directors, officers and employees are permitted to “purchase” the financial instruments, this proposal would require additional disclosure of “transactions with economic consequences comparable to the purchase of the specified financial instruments.”

The proposal makes clear that is strictly a disclosure one; it does not prohibit the hedging or otherwise try to create a policy with respect to how it should be done. As a principles-based disclosure item, this provision would require disclosure not only of an employee’s ability to purchase financial instruments such as “prepaid variable forward contracts, equity swaps, collars, and exchange funds,” but also of the ability to otherwise engage in transactions that “are designed to or have the effect of hedging or offsetting any decrease in the market value of equity securities.”

To ensure a full understanding of the policy relating to hedging, a company must disclose the types of hedging transactions that it permits as well as those that are prohibited. Similarly, if some, but not all people covered by the proposal can engage in hedging transactions, the

company would be required to disclose the categories of persons allowed or not allowed to hedge.

While we do not support permitting officers and directors to hedge their share ownership, we strongly agree with the principle that, where permitted, companies should have to disclose their policies about whether directors and officers can hedge shares they hold as part of their compensation. We support the proposed approach as best aimed to provide shareowners with the fullest understanding of who may engage in hedging, as well as the types of hedging transactions that are allowed.

Defining “Equity Securities”

Section 14(j) does not specify the issuer of equity securities. Thus, in an attempt to clarify the scope of securities that would be subject to this proposal, the rule would provide an instruction that “equity securities” would include equity securities “issued by the company, any parent of the company, any subsidiary of the company or any subsidiary of any parent of the company that are registered under Section 12 of the Exchange Act.” We agree that this is a reasoned approach to narrow the scope of securities that is more likely to be subject to hedging strategies.

Employees and Directors Subject to the Proposed Disclosure Requirement

Section 14(j) references employees and directors. In keeping with what the SEC thinks is the legislative intent of this provision, it proposes to specifically include officers of the company in the definition of employees. We support this approach.

Issuers Subject to the Disclosure Requirement

Under the proposal, listed closed-end investment companies, emerging growth companies and smaller reporting companies would be required to comply with the new disclosure requirement deriving from section 14(j). Open end investment companies and foreign private issuers would not be subject to the requirement.

Emerging Growth and Smaller Reporting Companies

Under the proposal, both emerging growth and smaller reporting companies would be subject to the Item 407(i) disclosure to the same extent as other companies that must comply with federal proxy rules. Given that the disclosure requirement is not expected to impose a substantial burden on these companies, the SEC found no reason to exclude them.

We agree. We believe that with respect to emerging growth companies, it is particularly important for investors to receive meaningful disclosure about policies that could rise to conflicts of interest or that could disadvantage investors.

Conclusion

We support the SEC's proposal that takes a principles-based approach to requiring disclosure of hedging transactions of directors and officers relating to shares of securities held as part of their compensation. Should you have any questions about our positions, please do not hesitate to contact Kurt N. Schacht, CFA at kurt.schacht@cgainstitute.org, 212.756,7728 or Linda Rittenhouse at linda.rittenhouse@cfainstitute.org, 434.951.5333.

Sincerely,

/s/ Kurt N. Schacht

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Managing Director, Standards and
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