

LEGAL UPDATES AND NEWS

New Disclosure Rules and Timing Considerations for Grants of Stock Option and Similar Awards

Item 402(x) of Regulation S-K, promulgated as part of the U.S. Securities and Exchange Commission’s final rule on insider trading arrangements, is effective as of February 27, 2024. Item 402(x) will require additional narrative disclosure of internal policies and practices governing the timing of stock option grants, as well as tabular disclosure that is triggered if, during the last completed fiscal year, stock options or similar rights were awarded to a named executive officer within four business days before, or within one day after, (a) the filing of an Annual Report on Form 10-K or a Quarterly Report on Form 10-Q, or (b) the filing or furnishing of a current report on Form 8-K that discloses material nonpublic information. Item 402(x) disclosure will be required in the first annual report/proxy statement filed for the first full reporting period *beginning* on or after April 1, 2023 (i.e., the 10-K/proxy statement filed in 2025 for reporting companies with a fiscal year ending December 31, 2024).

Due to the new tabular disclosure requirement, which is described below, issuers should consider adopting a policy, or revising current policies, to provide that grants of stock options (and similar rights) should not be made within four business days before, or within one business day after, the filing of a Form 10-K or 10-Q, or the filing of a Current Report on Form 8-K that discloses material nonpublic information (whether the 8-K is deemed filed or furnished).

Narrative Disclosure

Each annual report on Form 10-K– or the related proxy or information statement– will be required to include a description of the issuer’s policies and practices on the timing of stock option and SAR grants in relation to the release of material non-public information. The narrative must include (1) the process of determining when to grant such awards, (2) the level of consideration given to material non-public information when determining the timing and terms of an award, and (3) whether the issuer has timed a material non-public information disclosure for the purpose of affecting the value of executive compensation. This disclosure is not required for awards of restricted stock or restricted stock units. The narrative disclosure is required regardless of whether grants of stock options or stock appreciation rights (“SARs”) are made close in time to the release of material non-public information.

Tabular Disclosure

Tabular disclosure is only required if, during the last completed fiscal year (e.g., for the 2025 proxy statement, during calendar year 2024), a named executive officer (“NEO”) was awarded stock options, SARs, or similar option-like instruments within four business days before or one business day after the filing of a Form 10-Q, 10-K, or an 8-K that discloses material non-public information (including earnings information but excluding a Form 8-K disclosing only a material new option award grant).

If triggered, the issuer must provide, on an aggregated basis, the following:

- The name of the NEO;
- The grant date of the award;
- The number of securities underlying the award;
- The per share exercise price;
- The grant date fair value of each award computed using the same methodology as used for the issuer's financial statements; and
- The percentage change in the market price of the underlying securities between the closing market price of the security one trading day before and one trading day following the disclosure of material non-public information.

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