

COMMONLY MISSED PROXY DISCLOSURE REQUIREMENTS

Be sure not to overlook these key factors that can impact compliance with SEC rules during proxy season.

By Bob Romanchek and Ed Hauder

HERE ARE SIX KEY compensation disclosure “wa-tchouts” for 2025, impacting proxy statements and annual reports. Asking the following questions will help ensure the disclosures are properly addressed:

- Does the proxy statement include all of the required individual executives?
- Has the company plane use perquisite been valued/calculated correctly?
- If the company granted stock options or stock appreciation rights [SARs], did the company detail grant practices in the required tabular format and provide a related narrative disclosure?
- Has the company disclosed and discussed any insider trading policy, or the fact that it did not adopt such a policy?
- Do the quarterly and annual reports include the proper disclosure regarding Rule 10b5-1 stock trading plans for outside directors and officers?
- Has a “reconciliation” been provided, from the adjusted financial measures used for incentive compensation purposes, back to the required “General Accepted Accounting Principals” [GAAP] financial statements [most commonly reported in the income statement]?

Named Executive Officers

The proxy disclosure rules for companies that are not smaller reporting companies require the following executives to be included in the compensation tables and their pay to be discussed in the Compensation Discussion and Analysis [CD&A] section of the proxy [Named Executive Officers or NEOs]:

- Anyone who served as CEO during the year.
- Anyone who served as CFO during the year.
- The three top highest-paid executive officers employed as of the last day of the fiscal year other than the CEO and CFO, who were in broad policy-making functions for the company [e.g., not sales employees].
- Up to two additional executives who were not employed at fiscal year-end but whose compensation would have placed them among the top three highest-paid executives as of fiscal year-end, and who were in broad policy-making functions [in these cases, you may have more than five “NEOs”].

When reviewing the executives included in the draft 2025 proxy, it is important to ask whether

any executives left the company during the past year and, if so, whether they need to be included as well. Also, if a director served as an interim CEO, the director’s pay would likely need to be disclosed as a former CEO.

Personal Use of Company Plane

The U.S. Securities and Exchange Commission has reviewed executives’ personal use of company plane disclosures. In some cases, companies have had to pay fines and/or revise their proxy disclosures because they used an incorrect method to calculate the personal use disclosed. Companies should ensure that any personal use disclosed is valued in a manner consistent with SEC requirements to avoid issues.

Meridian studied S&P 500 companies’ personal plane use disclosures in 2024 proxy statements and found that about 54 percent of companies disclosed some personal plane use by NEOs. For those companies disclosing personal plane use, the median values were \$146,076 for CEOs and \$39,638 for non-CEOs.

Stock Option/SAR Grant Practices

Starting with 2025 proxy statements, companies must provide narrative and tabular disclosures regarding the timing of any awards of stock options or SARs granted in proximity to disclosures of material non-public information [MNPI]. If during the last completed fiscal year any stock option or SAR was awarded to an NEO starting four business days before and ending one business day after the filing of a 10-K, 10-Q or 8-K that discloses MNPI, specific tabular disclosures regarding such awards must be provided, which includes the name of the NEO, the grant date, the number of securities, the per-share exercise price, the grant date fair value and the percentage change in the price of company stock between the closing price on the trading day before and the trading day beginning immediately following the disclosure of MNPI.

Insider Trading Policy

For 2025 annual reports, companies must disclose whether they adopted insider-trading policies related to the purchase, sale or other disposition of company securities by directors, officers or

employees, or by the company, and, if so, include a description of such policies. If a company has not adopted any insider trading policies, it must disclose that fact and explain why. This disclosure can be incorporated by reference from a proxy statement into the annual report.

Rule 10b5-1 Trading Plans

2025 will be the second year companies will be required to disclose in their quarterly or annual reports whether, during the most recent quarter, any director or officer adopted or terminated a Rule 10b5-1 trading plan and the material terms of such plans.

Reconciliation of Incentive Compensation Measures

If non-GAAP financial members are presented in the CD&A [very common] or in any other part of the proxy for any purpose other than to disclose target levels, then those non-GAAP financial measures are subject to the requirements of Regulation G and Item 10[e] of Regulation S-K. These rules generally require presenting a reconciliation of the non-GAAP financial figure[s] to the company’s GAAP figures in its financial statements.

Conclusion

Ensuring these disclosures are correctly presented in your company’s 2025 proxy statement and annual report will help ensure compliance with SEC rules and lessen the likelihood of issues that must be dealt with later.



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