

Preparing for the 2025 Reporting Season

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Securities and Capital Markets

In this alert, we summarize new Securities and Exchange Commission (“SEC”) disclosure requirements for public companies in 2025. We also briefly recap key disclosure requirements that became effective in 2024 and discuss other recent reporting developments that companies may wish to consider in preparing for the 2025 reporting season.

I. Summary of Key Changes for 2025

The table below summarizes key new requirements for Forms 10-K and proxy statements filed in 2025.

<u>Topic and Source</u>	<u>New Disclosure Required</u> ¹	<u>SRCs, FPIs and XBRL</u>
Form 10-Ks Filed in 2025		
File insider trading policy Item 601(b)(19) of Regulation S-K Exhibit to Form 10-K	Companies will need to file their insider trading policies and procedures as exhibits to their Form 10-Ks. See <i>Covington’s client alert addressing this topic here</i> .	SRCs: Same rule FPIs: Same rule for FPIs filing annual reports on Form 20-F XBRL: Not required
Insider trading policy discussion Item 408(b) of Regulation S-K Item 7(b) of Form 10-K	Companies will need to disclose annually whether they have adopted insider trading policies and procedures relating to the purchase, sale or other disposition of the company’s securities by directors, officers or employees, or by the company and, if so, a description of these policies and procedures. A company that has not adopted insider trading policies or procedures will be required to provide an explanation of why it has not done so. Although this disclosure is required by Form 10-K, it may be incorporated by reference from a proxy or information statement	SRCs: Same rule FPIs: Same rule for FPIs filing annual reports on Form 20-F (Item 16J) XBRL: Required

¹ The second column of this table describes disclosure requirements applicable to an issuer that has a calendar end fiscal year, is not a smaller reporting company (an “SRC”) and is not a foreign private issuer (an “FPI”). The third column of the table summarizes the applicable requirements for SRCs and FPIs, as well as whether the applicable disclosure requirement must be tagged in Inline XBRL.

<u>Topic and Source</u>	<u>New Disclosure Required</u>	<u>SRCs, FPIs and XBRL</u>
	<p>involving the election of directors, if filed within 120 days of the end of the fiscal year covered by the Form 10-K.</p> <p><i>See Covington's client alert addressing this topic here.</i></p>	
2025 Proxy Statements		
<p>Timing of equity awards table and discussion</p> <p>Item 402(x) of Regulation S-K</p> <p>Item 8 of Schedule 14A</p>	<p>Companies will need to provide both narrative and tabular disclosures regarding the timing of any awards of stock options, stock appreciation rights ("SARs") and similar option-like instruments issued in proximity to disclosures of material non-public information ("MNPI").</p> <p>The narrative disclosure must discuss the company's policies and practices regarding the timing of awards of stock options, SARs and similar option-like instruments in relation to the disclosure of MNPI, including how the board determines when to grant these awards. In addition, a company must disclose whether the board or compensation committee takes MNPI into account when determining the timing and terms of such awards, and, if so, how, and whether the company has timed the disclosure of MNPI for the purpose of affecting the value of executive compensation.</p> <p>Additionally, if during the last completed fiscal year any stock options, SARs or similar option-like instruments were awarded to an NEO within a period starting four business days before and ending one business day after the filing of a 10-K or 10-Q, or an 8-K that discloses MNPI, the company must provide the following information for each award in a table:</p> <ol style="list-style-type: none"> 1. the name of the NEO; 2. the grant date of the award; 3. the number of securities underlying the award; 4. the per-share exercise price; 5. the grant date fair value of the award computed using the same methodology as used for the company's financial statements; and 6. the percentage change in the price of the underlying securities between the closing price of the security one trading day prior to and the trading day beginning immediately following the disclosure of MNPI. <p><i>See Covington's client alert addressing this topic here.</i></p>	<p>SRCs: Same rule</p> <p>FPIs: Not applicable</p> <p>XBRL: Required</p>

II. Recap of Key Changes From 2024 Reporting Season

Public companies saw several key new disclosure requirements become effective in 2024, and these are summarized in the following table.

<u>Topic and Source</u>	<u>Disclosure Required</u>	<u>SRCs, FPIs and XBRL</u>
Form 10-Ks and 10-Qs		
Director and officer Rule 10b5-1 trading plans Item 408(a) of Regulation S-K Item 9B of Form 10-K Item 5(c) of Part II of Form 10-Q	Companies must disclose, on a quarterly basis on Forms 10-Q and 10-K (for the fourth quarter), whether, during the most recent quarter, any director or officer adopted or terminated a Rule 10b5-1 trading plan or non-Rule 10b5-1 trading arrangement, as well as the material terms of the trading plan. <i>See Covington's client alert addressing this topic here.</i>	SRCs: Same rule FPIs: Not applicable XBRL: Required
Form 10-Ks		
Checkbox to denote correction of errors in prior period financials Cover page of Form 10-K	A checkbox on the cover page of Form 10-K requires companies to indicate (i) whether the financial statements of the company included in the filing reflect correction of an error to previously issued financial statements and (ii) whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the company's executive officers during the relevant recovery period. <i>See Covington's client alert addressing this topic here.</i>	SRCs: Same rule FPIs: Same rule for FPIs filing annual reports on Form 20-F (on the cover pages of Forms 20-F and 40-F) XBRL: Required
File clawback policy Item 601(b)(97) of Regulation S-K Exhibit to Form 10-K	Companies with equity securities listed on a national securities exchange were required to adopt a compensation clawback policy by December 1, 2023, and this policy must be filed as an exhibit to the Form 10-K. <i>For a description of the substantive requirements for clawback policies, see Covington's client alert here.</i>	SRCs: Same rule FPIs: Same rule for FPIs filing annual reports on Form 20-F XBRL: Not required

<u>Topic and Source</u>	<u>Disclosure Required</u>	<u>SRCs, FPIs and XBRL</u>
Form 10-Ks		
<p>Cybersecurity risk management policies and procedures²</p> <p>Items 106(b) and (c) of Regulation S-K</p> <p>Item 1C of Form 10-K</p>	<p>Companies must include certain disclosures regarding their cybersecurity risk management policies and procedures, including:</p> <ol style="list-style-type: none"> processes for assessing, identifying and managing material risks from cybersecurity threats; whether any risks from cybersecurity threats, including as a result of any previous cybersecurity incidents, have materially affected or are reasonably likely to materially affect the company and, if so, how; the board's oversight of risks from cybersecurity threats, and, if applicable, any board committee or subcommittee responsible for such oversight and the processes by which the board or such committee is informed about these risks; and management's role in assessing and managing material risks from cybersecurity threats. <p><i>See Covington's client alert addressing this topic here.</i></p>	<p>SRCs: Same rule</p> <p>FPIs: Same rule for FPIs filing annual reports on Form 20-F (Item 16K)</p> <p>XBRL: Required</p>
Proxy Statements		
<p>Clawback recoveries and outstanding balances</p> <p>Item 402(w) of Regulation S-K</p> <p>Item 8 of Schedule 14A</p>	<p>If, during or after the last completed fiscal year, a company was required to prepare an accounting restatement that required a clawback or there was an outstanding balance of erroneously awarded compensation relating to a prior restatement, the company is required to disclose certain information regarding the triggering restatement, the erroneously awarded compensation, and other related information.</p> <p>Companies that prepared an accounting restatement during the prior fiscal year but concluded that recovery of erroneously awarded compensation was not required must disclose under Item 402(w) why application of the company's clawback policy resulted in this conclusion.</p> <p><i>See Covington's client alert on this topic here.</i></p>	<p>SRCs: Same rule</p> <p>FPIs: Same rule for FPIs filing annual reports on Form 20-F (Item 6.F and paragraph (18) of General Instruction B to Form 40-F)</p> <p>XBRL: Required</p>

² In addition to the cybersecurity-related periodic report disclosures, U.S. public companies and, in certain instances, FPIs must report their material cybersecurity incidents on Form 8-K and Form 6-K, as applicable. For a description of these real-time reporting requirements, see Covington's client alert [here](#).

III. Other Recent Reporting Developments

A. Guidance on Cybersecurity Incident Reporting on Form 8-K

The SEC Staff has published guidance to assist public companies when making disclosure determinations about their cybersecurity incident reporting obligations under Item 1.05 of Form 8-K. These include compliance and disclosure interpretations (“C&DIs”) and statements from the Director of the Corporation Finance Division, and are summarized below:

- C&DIs 104B.01 through 104B.09 of the Exchange Act - Form 8-K C&DIs address a number of aspects of Item 1.05’s requirements, including the circumstances in which a company may request the U.S. Attorney General to determine whether disclosure of a cybersecurity incident would pose substantial risk to national security or public safety. The C&DIs also discuss various scenarios involving ransomware payments and related materiality assessments under Item 1.05. The C&DIs also highlight the need for companies to evaluate the materiality of a series of related cybersecurity incidents in the aggregate, regardless of whether such related incidents were individually determined to be immaterial.
- May 21, 2024 Statement from Erik Gerding, Director of the SEC’s Division of Corporation Finance clarifies that the purpose of Item 1.05 of Form 8-K is to disclose cybersecurity incidents deemed to be material and that voluntary disclosures of incidents deemed immaterial (or for which materiality has yet to be determined) should instead be filed under Item 8.01 to avoid investor confusion. He also noted if a previously disclosed incident under Item 8.01 is subsequently determined to be material, such incident should be disclosed within four business days of such determination under Item 1.05.
- June 20, 2024 Statement from Erik Gerding, Director of the SEC’s Division of Corporation Finance discusses concerns about selective and private disclosure of cybersecurity incidents outside of a company’s Form 8-K and the potential Regulation FD implications. Director Gerding emphasized that there are several ways in which issuers can privately discuss cybersecurity incidents without triggering Regulation FD’s public disclosure requirements, e.g. sharing information with a person who owes a duty of trust or confidence to the issuer or the use of confidentiality agreements.

B. Guidance on Universal Proxy Rules

In November 2023, the SEC Staff published several Proxy Rules and Schedules 14A/14C C&DIs regarding the universal proxy rule (Rule 14a-19 under the Securities Exchange Act of 1934), which are summarized below:

- C&DI 139.07 discusses the scenario in which a stockholder returns an overvoted proxy card (i.e., a proxy that is voted for more director nominees than the number of director seats up for election). Per the C&DI, the soliciting party of the proxy must disregard all votes represented by that overvoted proxy card with respect to the director election proposal. The shares represented by an overvoted proxy card can, however, be voted on other matters included on the universal proxy card for which there is no overvote and can be counted for purposes of determining a quorum. Proxy service providers are not prohibited from contacting stockholders to seek a correction of an overvoted proxy card before the meeting date.
- C&DI 139.08 discusses the scenario in which a stockholder returns an undervoted proxy card (i.e., a proxy that is voted for fewer director nominees than the number of director seats up for election). In the case of undervoting, the soliciting party is not allowed to use discretionary authority to vote the shares represented by undervoted proxy cards for the remaining director seats up for election in accordance with the soliciting party’s recommendation.

- C&DI 139.09 provides that if a stockholder has signed a proxy card but has not marked choices as to any of the director nominees up for election, a soliciting party may use discretionary authority to vote the shares represented by that signed but unmarked proxy card in accordance with that soliciting party's voting recommendations, so long as the form of proxy states in bold-faced type how the proxy holder will vote where no choice is specified.

C. Pay-Versus-Performance

- C&DIs 128D.01 through 128D.30 of the Regulation S-K C&DIs are a series of C&DIs published by the SEC staff throughout 2023 that address certain technical points regarding pay-versus-performance disclosure rules (Item 402(v) of Regulation S-K) adopted by the SEC in August 2022.

D. XBRL Tagging

Beginning July 21, 2025, companies will be required to structure filing fee-related information, including filing fee exhibits, in Inline XBRL. The Inline XBRL filing fee exhibit requirements apply to Forms S-1, S-3, S-4, S-8 and other Securities Act forms, and forms of prospectuses filed pursuant to Rule 424. They also apply to various forms and schedules under the Exchange Act, including Schedules 13E-3, 13E-4F, 14A, 14C, TO, and 14D-1F.

In addition, employee benefit plans filing annual reports pursuant to Section 15(d) of the Exchange Act on Form 11-K will be required to provide all financial statements and schedules in such reports using Inline XBRL beginning July 11, 2025. This compliance deadline will fall after the 2025 filing deadline for plans that have a December 31, 2024 fiscal year end.

On September 7, 2023, the SEC Staff published a sample comment letter to companies regarding their use of XBRL tagging, indicating that the Staff may place increased emphasis on XBRL compliance in their review of periodic filings. The sample letter, which may be accessed [here](#), focused generally on companies' compliance with the SEC's rules that require XBRL tagging, highlighting requirements with respect to periodic report cover pages, pay versus performance disclosure and financial statements.

For more information on the preparation of filing fee exhibits, the SEC's "How Do I..." guide on Inline XBRL can be accessed [here](#).

E. Climate Change Disclosure Rules

On April 4, 2024, less than a month after adopting landmark climate disclosure rules, the SEC issued an order staying the rules. The stay followed a number of petitions for review filed against the SEC.

In the form adopted, the rules would amend Regulations S-K and S-X to require significant new disclosures regarding climate-related risks and greenhouse gas emissions in registration statements and annual reports. As adopted, the climate disclosure rules require large accelerated filers to begin disclosing comprehensive new climate-related information in their annual reports covering fiscal years that begin in 2025.

Although the rules are on hold, the SEC vowed to "continue vigorously defending the Final Rules' validity in court." Companies may take this opportunity to review their current climate-related disclosures, familiarize themselves with disclosure requirements to which they and their industry peers may become subject, and implement or update relevant controls and procedures.

See Covington's client alerts addressing this topic [here](#) and [here](#).

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Securities and Capital Market practice:

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