Cooley

SEC Executive Compensation Disclosure Proposal: Changes Public Companies May Overlook

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What happened: On November 13, 2026, the Securities and Exchange Commission (SEC) proposed executive and director compensation disclosure reforms that would reduce burdens for most public companies but expand certain requirements.

The bottom line: Public company legal, finance and compensation teams should assess proposed changes to non-GAAP financial disclosures – metrics that are not calculated in accordance with generally accepted accounting principles (GAAP) – as well as changes to equity award reporting and perquisite valuation and potential new obligations for emerging growth companies (EGCs) and smaller reporting companies (SRCs).

Cooley's November 16 alert summarizes the headline changes in the proposal, with key nuances and practical implications including:

- New disclosure requirements with respect to non-GAAP performance metrics.
- Extension of more detailed performance target disclosure requirements to EGCs and SRCs.
- Changes in the methodology used to determine tabular equity award values and the timing of equity award disclosure.
- A change in the treatment of dividends paid on outstanding equity awards.
- Extension of quantitative pension disclosure to EGCs and SRCs.
- A change to the perquisite valuation methodology.

Key nuances and practical implications

1. **Proposed expansion of non-GAAP disclosure requirements**

Existing requirement: The existing instructions to Item 402(b) of Regulation S-K (Compensation Discussion and Analysis) exempt companies using non-GAAP performance targets in their executive compensation programs from Regulation G with respect to their disclosure of those targets; instead, companies are required to provide disclosure as to how the non-GAAP measures used are calculated from the audited financial statements.

Proposed requirement: While the proposed amendments continue to exempt non-GAAP performance targets from Regulation G, proposed Instruction 2 to Item 402 provides that any non-GAAP target level or company-selected financial performance measure based on historical financial results (including performance, financial position or cash flows) must be accompanied by a quantitative reconciliation of the differences between the non-GAAP financial measure and the most directly comparable GAAP financial measure. Although the reconciliation may be provided by cross-reference from another filing, companies may not find that accommodation helpful in practice because non-GAAP measures used in executive compensation often include additional adjustments to publicly disclosed non-GAAP financial measures.

Disclosure of target levels that are non-GAAP financial measures based on projections (i.e., not based on historic financial results) will continue to require only a narrative description of how the non-GAAP financial measure is calculated from the company's audited financial statements. For both historical and projected non-GAAP targets, however, companies would be required to disclose why they believe the non-GAAP financial measure is more appropriate than a GAAP financial measure for determining executive compensation, in the case of targets, or showing the relationship between executive compensation and registrant performance, in the case of a company-selected financial performance measure disclosed as part of a company's pay-versus-performance disclosure. While companies required to provide a Compensation Discussion and Analysis are currently required to disclose the reasons for their selection of applicable performance metrics, this represents a more significant expansion of the narrative disclosure requirements applicable to EGCs and SRCs.

2. **Would EGCs and SRCs need to disclose performance targets?**

Existing requirement: The instruction to Item 402 permitting companies to not disclose specific quantitative or qualitative information, including performance targets, if such disclosure would result in competitive harm to the company (the competitive harm instruction), applies to Items 402(b) (Compensation Discussion and Analysis) and 402(e) (Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards Table), but is not included in the sections of Item 402 applicable to EGCs and SRCs. This fact forms the basis of the widely accepted interpretation that requirements applicable to EGCs and SRCs are not intended to include the disclosure of specific performance targets.

Proposed requirement: The proposed rules would apply the competitive harm instruction to all of Item 402. That, combined with the proposed requirement to disclose any material information necessary to an understanding of the information disclosed in the Earned Compensation Table, Granted Compensation Table and Status of Equity Awards Table, would appear to apply the same disclosure requirement with respect to performance targets to all filers. This shift represents a significant change for companies currently providing scaled disclosure pursuant to the requirements applicable to EGCs and SRCs.

3. **Proposed granted equity value – performance-based equity awards**

Existing requirement: Under existing Items 402(c) (Summary Compensation Table) and 402(d) (Grants of Plan-Based Awards Table) and the related instructions, the amounts reported with respect to performance-based equity awards represent the amounts computed in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 718 (Topic 718) based on the probable outcome of the performance conditions, which is consistent with the estimate of aggregate compensation cost to be recognized over the service period determined as of the grant date under Topic 718, excluding the effect of estimated forfeitures.

Proposed requirement: For purposes of the proposed Granted Compensation Table, fair value would continue to be computed generally in accordance with Topic 718, except that the aggregate grant date fair value reported would be based on the **target** outcome of performance conditions, rather than the **probable** outcome of the performance conditions. The target outcome for equity awards with multiple potential outcomes (e.g., minimum, target and maximum) would be the achievement of the target outlined in the award at the 100% level and, for equity awards that have a binary outcome (i.e., awards that are either fully earned or not earned at all), the target outcome would be that the award criteria are met, and the award is fully earned. If adopted as proposed, equity award values presented in the Granted Compensation Table with respect to performance-based awards may differ from the grant date estimate of compensation cost to be recognized over the service period pursuant to Topic 718.

For example, under the current rule, when a company has determined not to recognize any stock-based compensation expense for awards subject to a liquidity event performance condition because achievement of the performance condition was not deemed probable, no value would be shown in the Summary Compensation Table with respect to such awards. By contrast, the proposed rules would require such awards to be included in the Granted Compensation Table at their target value on the grant date. In addition, the proposed valuation methodology could result in the overvaluing (in the case of moonshot-type awards) or undervaluing (in the case where a company sets achievable stretch targets) of equity awards presented in the table and may influence the way companies structure performance awards.

4. **Proposed timing of equity award disclosure**

Existing requirement: Under existing Items 402(c) (Summary Compensation Table) and 402(d) (Grants of Plan-Based Awards Table), equity awards generally are required to be reported in the year of grant, regardless of whether the company considers the award to have been earned for performance in a prior year, although the SEC has permitted a small number of companies to diverge from “year of grant” reporting.

Proposed requirement: The SEC now proposes to extend to all companies the flexibility to elect to report an equity award in the Granted Compensation Table in the fiscal year immediately prior to the year of grant (rather than in the year of grant) if the company considers the award to be for performance in that prior year, and the award is granted in the first fiscal quarter of the grant year. A company making this election would be required to report equity awards on a consistent basis across all the fiscal years covered in the Granted Compensation Table, disclose its election to report awards in the prior fiscal year, and present information with respect to all equity awards in the Status of Equity Awards Table as of the end of the first quarter of the current fiscal year (or, if earlier, the latest practicable date).

Although the requirement to report awards in the year of grant regardless of the performance year to which they relate has been a pain point for many companies – in some cases resulting in the presentation of alternative Summary Compensation Table presentations – the practical significance of this accommodation may be more limited under the proposed framework. The principal issue under the existing rules has been the year in which the grant-date fair value of an award is reflected in the Summary Compensation Table; under the proposal, the Earned Compensation Table would instead reflect equity awards when they vest or are exercised. The proposed change would nevertheless better align the treatment of equity awards with other forms of compensation reported in the Granted Compensation Table, although permitting companies to elect different reporting years could reduce comparability across companies.

5. **Proposed treatment of dividends paid on outstanding equity awards**

Existing requirement: Under existing Item 402(c)(ix)(G), dividends or other earnings paid on stock or option awards are only disclosed in the "all other compensation" column of the Summary Compensation Table when those amounts were not factored into the grant date fair value required to be reported in the stock or option awards columns of the table. Further, under existing guidance (see Regulation S-K Corporation Finance Interpretation 219.02), if a company credits stock dividends on unvested restricted stock units, but does not actually pay them out until the restricted stock units vest, those dividends should be reported in the year credited, rather than the year vested (and actually paid).

Proposed requirement: The proposed amendments require the dollar value of dividends or other earnings on outstanding equity awards to be reported in the "miscellaneous compensation received" column of the Earned Compensation Table, even when such dividends were factored into the grant date fair values of the awards. The proposing release is not clear about when dividends would be required to be reported (in the year credited versus in the year vested – and actually paid), and the wording of the proposed rule is similarly unclear as to the intended timing (referring to the dollar value of dividends or other earnings **paid** on **outstanding** stock or option awards). If disclosure is required when dividends are credited to outstanding equity awards, which dividends may not ever be paid out if the underlying awards never vest, that would be in tension with the purpose of the table, which is to show amounts actually received by the named executive officers (NEOs).

6. **Changes to and expansion of quantitative pension disclosure to EGCs and SRCs**

Existing requirement: Under existing Item 402(n) of Regulation S-K, the Summary Compensation Table applicable to EGCs and SRCs does not require inclusion of amounts related to changes in pension value. Companies currently required to include changes in pension value must report the aggregate changes in the actuarial present value of the NEOs' accumulated benefit under defined benefit and actuarial pension plans.

Proposed requirement: The proposed amendments require reporting of amounts relating to pension plans in which the NEOs participate in the "miscellaneous compensation received" column of the proposed Earned Compensation Table. Under the proposed rules, companies would be required to report certain service costs and prior service costs for defined benefit retirement plans, which amounts would be calculated using the same methodology used for the company's financial statements under GAAP. The SEC anticipates that tracking the incremental pension benefit amount earned for the covered fiscal year (based on the executive's services, and any plan amendment or initiation, during the covered fiscal year), rather than fluctuations in the overall value of the pension (based on all years of service) will reduce volatility in reported compensation levels due to external factors not specific to the NEO or related to company compensation decisions.

Although pension plans have become uncommon, and the calculation of the amounts disclosed has been simplified, the requirement to include amounts relating to pension plans in the Earned Compensation Table with no accommodation for EGCs and SRCs would represent an expansion of the disclosure requirements applicable to those companies.

7. **Change to the perquisite valuation methodology**

Existing requirement: Under the existing instructions to Items 402(c)(2)(ix) and 402(n)(2)(ix), companies are required to value perquisites on the basis of the aggregate incremental cost to the company to provide the perquisite. In addition, under the existing instructions to Item 402(c)(2)(ix), with respect to perquisites for which footnote quantification is required, companies are required to describe their methodology for computing the aggregate incremental cost.

Proposed requirement: The proposed amendments would permit companies to use any reasonable valuation

methodology to value perquisites.[1] In particular, the SEC notes that the proposed approach would eliminate the need to separately revalue a benefit for SEC disclosure purposes where the company already determines a value for federal income tax purposes. Accordingly, a company could potentially rely on the taxable fringe benefit value used for payroll or Form W-2 purposes rather than separately calculating aggregate incremental cost. As a result, tax and payroll personnel may need to become more involved in the executive compensation disclosure process, both to determine whether particular benefits qualify for the new de minimis exclusion and, where a company elects to use federal income tax values for SEC disclosure purposes, to determine the amounts reported. Using a tax-based valuation methodology rather than aggregate incremental cost could result in either a materially lower or a materially higher disclosed value, depending on the benefit.

For example, the taxable fringe benefit value of personal use of corporate aircraft is often determined using the IRS's Standard Industry Fare Level methodology, which is generally intended to approximate commercial air travel fares rather than the company's actual cost of operating the aircraft. As a result, the taxable fringe benefit value may be substantially lower than the company's aggregate incremental cost of providing the flight. Conversely, tax-based values could be materially higher than aggregate incremental cost for benefits such as personal use of a company-owned automobile or apartment, where the company's incremental cost of permitting the personal use may be relatively low but the taxable fringe benefit value may be based on the fair market value of the benefit or an applicable IRS valuation methodology. The same may be true where a family member or other guest accompanies an executive on a business flight, because the company may incur little or no incremental cost for the additional passenger while the executive may nevertheless have taxable income attributable to the guest's flight. A change in valuation methodology therefore could affect not only the amount disclosed for a particular perquisite, but also whether the proposed $150,000 aggregate disclosure threshold is exceeded.

Importantly, using a federal income tax value for SEC disclosure purposes – or concluding that required personal use of company aircraft is not a perquisite at all – would not eliminate the need to track personal aircraft use, because companies would generally continue to need flight-level information for tax reporting and other purposes. It could, however, reduce the incentive to use time-sharing arrangements under Part 91 pursuant to which executives reimburse the company for permitted personal aircraft costs in order to reduce the amount reported as a perquisite. If a company can instead report a lower tax-based value or exclude the aircraft use from perquisite disclosure altogether, reimbursement may have significantly less impact on the company's executive compensation disclosure.

The proposal does not currently require a company to disclose which valuation methodology it uses. Moreover, because the proposal does not prescribe a single valuation methodology or expressly require companies to apply the same methodology to all perquisites, companies also may have flexibility to use different reasonable methodologies for different types of benefits. That flexibility could further reduce comparability and create incentives to select, where reasonable, the methodology that produces the lower reported value for a particular type of perquisite.

8. **Proposed expansion of outstanding director equity award disclosure**

Existing requirement: Under existing Item 402(k)(2)(iv), companies are required to disclose in a footnote to the Director Compensation Table the aggregate number of outstanding stock and option awards held by each director at fiscal year-end, but not the grant dates or vesting or other terms of such awards.

Proposed requirement: The proposed amendments require companies to disclose with respect to each director not only the aggregate number of stock and option awards outstanding at fiscal year-end, but also, for each outstanding award, the grant date, vesting schedule and any other material terms of any performance, market and/or service conditions with respect to the award. The proposing release states that, as with the proposed Status of Equity Awards Table related to principal executive officer (PEO) and principal financial officer (PFO) disclosure, the proposed requirements related to director equity awards are intended to make it easier for investors to track director equity awards. While the proposing release emphasizes that companies can choose the format in which they provide this information, and that the SEC does not intend the proposed disclosure for director equity awards to be as detailed as the proposed tabular disclosure requirements for the PEO and PFO, having to provide award-level detail for outstanding equity awards held by all individuals who served as directors during the prior fiscal year would impose a not insignificant new burden on companies.

Next steps

Companies can help shape the final rules through the comment process. The SEC has requested comment on each of the proposed amendments discussed above. We urge you to carefully consider whether there are any changes or improvements that should be made as the rules move from proposal to adoption. The comment period for the proposed rules will remain open through January 19, 2027, and Cooley is happy to help craft submissions to the SEC.

Note

1. The proposal also would introduce a new de minimis tracking exclusion under which an individual benefit that qualifies as a de minimis fringe benefit under Section 132(a)(4) of the Internal Revenue Code could be excluded in determining whether the proposed $150,000 aggregate perquisite disclosure threshold has been exceeded.

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Key Contacts

Michael Bergmann Washington, DC	mbergmann@cooley.com +1 202 728 7008
Brad Goldberg New York	bgoldberg@cooley.com +1 212 479 6780
Alessandra Murata Palo Alto	amurata@cooley.com + 1 650 843 5696
Amanda Weiss New York	alweiss@cooley.com +1 212 479 6858

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