Cooley

SEC Proposes Sea Change in Compensation Disclosure Rules for All but Largest Issuers

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On May 19, 2026, the Securities and Exchange Commission (SEC) proposed sweeping changes to its current filing status rules – arguably the most significant overhaul in decades. The proposal is lengthy and intricate, and a full discussion of its provisions is beyond the scope of this alert, but certain of the changes would dramatically affect executive and director compensation disclosure and practice and warrant immediate attention. A separate May 22 Cooley alert addresses those noncompensation matters.

SEC rules currently set forth five filer statuses that correspond to varying levels of disclosure and other requirements. The proposed rule essentially would provide for only two categories: large accelerated filers (LAFs) and nonaccelerated filers (NAFs), which would be defined simply as all filers that are not LAFs.

While the proposed LAF status determination is complex and beyond the scope of this alert, LAF status generally would be limited to those companies with at least $2 billion in public float, which would encompass a limited number of companies but, per the SEC, 93.5% of the current total market public float. According to the SEC, the percentage of LAFs would decrease from 35.4% of issuers to 19.2%.

From an executive and director compensation perspective, the most important feature of the proposal is that all NAFs (exclusive generally of asset-backed issuers and foreign private issuers) would become entitled to both:

- The scaled (i.e., reduced) compensation disclosure requirements presently applicable under Regulation S-K Item 402 to smaller reporting companies.
- The special exceptions from compensation disclosure and related requirements presently applicable to only emerging growth companies.

According to the SEC, the percentage of issuers entitled to scaled disclosure relief would increase from 44% to 81% of registrants. The ability to rely on the scaled compensation disclosure is a significant advantage. Among other things, there is no requirement for a Compensation Discussion & Analysis or CEO pay ratio disclosure, disclosure is generally required for only three executives (not five) and for only two years (not three) of historical compensation, and certain compensation tables (such as the grants of plan-based awards table, pension benefits, option exercises, and stock-vested and nonqualified deferred compensation tables) may be omitted. Perhaps more importantly, NAFs would be entitled to the compensation-related accommodations presently afforded to emerging growth companies. That relief would exempt NAFs from the requirement to hold shareholder advisory votes on executive compensation (“say on pay”), the frequency of say-on-pay votes, golden parachute compensation in connection with mergers and acquisitions, and the “pay versus performance” disclosure under Regulation S-K 402(v).

It is worth noting that this relief being proposed by the SEC aligns closely with comments offered by Cooley as part of the SEC’s ongoing review of executive compensation disclosure requirements initiated at its roundtable on June 26, 2025 – one of the few comment letters focused primarily on the reporting burdens shouldered by smaller companies.

A long road remains ahead before the SEC’s issuance of final rules (if any), and there is no certainty as to what any final rule will contain, or whether the final rules will be effective for the 2027 proxy season. We urge companies to voice their views on this SEC proposal and loudly support the long overdue simplification of the compensation disclosure requirements and an easing of the compliance burdens those requirements impose.

Any company that is not now (or will not remain) eligible for the relief afforded to emerging growth companies (exclusive of companies that will remain LAFs under the proposed rule) stands to benefit if the proposed rule is adopted. Moreover, there is now an opportunity to persuade the SEC to expand the proposed relief even further.

Comments on the proposed rule should be delivered to the SEC no later than July 20, 2026. Cooley's compensation and benefits group is available to assist with the preparation of comments and otherwise address any questions you may have about the SEC proposal and how it might affect your company's executive and director compensation obligations.

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