

Disclosure of Insider Trading Policies to Begin in 2025

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With the annual reporting season coming up for calendar-year companies, we wanted to remind you that companies subject to U.S. Securities and Exchange Commission (SEC) reporting requirements are now required to: (i) disclose if they have an insider trading policy, or explain why they do not have such a policy, and (ii) file a copy of their insider trading policies in their annual reports filed with the SEC. Please note that this requirement not only applies to companies reporting as U.S. domestic issuers, but also applies to companies reporting as foreign issuers filing annual reports on Form 20-F (but does not apply to Canadian issuers eligible to file annual reports on Form 40-F under the Multijurisdictional Disclosure System).

The requirement stems from a rule ([Regulation S-K Item 408\(b\)](#)) adopted in 2022 that became effective for the “first full fiscal period beginning on or after April 1, 2023.” Thus, for calendar-year-end companies, the first annual reports requiring such disclosures will be those for the fiscal year ended December 31, 2024.

Specifically, the rule requires companies to, “Disclose whether the registrant has adopted insider trading policies and procedures governing the purchase, sale, and/or other dispositions of the registrant’s securities by directors, officers and employees, or the registrant itself, that are reasonably designed to promote compliance with insider trading laws, rules and regulations, and any listing standards applicable to the registrant. If the registrant has not adopted such policies and procedures, explain why it has not done so.” The rule also requires the filing of any insider trading policies. The rule notes that if a company’s insider trading policies are included in its code of ethics and that code is filed as an exhibit, then the filing of that code would satisfy the disclosure requirement. If that is the case for a company, the exhibit index should include a statement, “Included in Exhibit 14,” or similar, under Exhibit 19 to make clear the policy is included there.

Given the new requirement, companies should assess their insider trading policies to make sure they are “disclosure ready”; that is, their form and content is appropriate for public disclosure and the policies accurately describe insider trading rules and follow best practices. We are available to assist with reviews of insider trading policies. If a company’s insider trading policy is part of another document, or if the policy contains information in addition to that which is required to be disclosed under the SEC’s rules, companies may want to consider extracting the insider trading portions or removing other information from the document to produce a policy that complies with the SEC requirements for public filing.

As noted above, the rule applies to companies reporting as U.S. domestic issuers and most companies reporting as foreign issuers. For companies reporting as U.S. domestic issuers, the requirement is contained in Item 10 of Form 10-K and the insider trading policy must be disclosed as an exhibit marked item 19 in the exhibit index. For companies reporting as foreign issuers, the requirement is contained in Item 16J of Form 20-F. Please note that for Canadian issuers eligible to file their annual reports on Form 40-F under the Multijurisdictional Disclosure

System, there is no analogous disclosure requirement nor a requirement to file an insider trading policy.

For more information on the rule's requirements, including additional disclosure requirements applicable only to companies reporting as U.S. domestic issuers, please see our prior client alert on this matter [here](#).

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