

Public Company Option Grants in 2024?

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Public companies planning to grant stock options, SARs or similar option-like instruments to executive officers in 2024 should consider whether to avoid the windows in which a new disclosure requirement under SEC rules applies. See [SEC Release 33-11138](#). Companies may already consider whether they have material non-public information at the time of equity grants and avoid making those grants until that information has been disclosed, but now there is a disclosure requirement during specified windows related to SEC periodic and current report filings.

For calendar year companies, the 2025 annual meeting proxy statement will require disclosure about any grants (of stock options, SARs or similar option-like instruments) to named executive officers that occur in a window beginning four business days before and ending one business day after the filing of the company's annual report on Form 10-K, quarterly report on Form 10-Q or the filing or furnishing of material non-public information on Form 8-K (typically including each quarterly earnings release).

Under the new rule, Item 402(x) of Regulation S-K (which uses the term options from Item 402(a)(i)), the company is required to make specific tabular disclosures regarding such grants. That disclosure is required to include the percentage change in the company's stock price from before disclosure to after. Companies should consider the timing of those grants in relation to planned public disclosures – since the tabular disclosure requirement can be avoided if the grants are not made within this specified window.

Companies may decide not to avoid the specified windows before 10-Q filings, for example on the basis that all material information was disclosed in the related earnings release. It is also possible that, even with planning, a company may end up required to include the tabular disclosure if a material development occurs later on the day of grant.

Whether or not those grants are made during the specified window, all public companies will be required to provide narrative disclosure regarding their policies and practices on the timing of those grants in relation to the disclosure of material nonpublic information. Specifically, the narrative disclosure must include how the board or compensation committee takes material nonpublic information into account when determining the timing and terms of those grants and whether the company has timed the disclosure of material nonpublic information for the purpose of affecting the value of executive compensation.

If you have any questions about these changes, your regular Locke Lord contact or any of the authors can discuss these matters with you.

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