

## Preparing for the 2023 Annual Report and Proxy Statement Season

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A number of recent updates to SEC disclosure obligations are effective for the 2023 Form 10-K and proxy statement season. Below is a list of important updates that public companies should consider for this reporting cycle. Note that this list includes key SEC and stock exchange required updates, a potential amendment to Delaware certificates of incorporation due to the Delaware General Corporation Law and does not cover other updates that should be taken into consideration, such as voting guidelines of proxy advisory firms and institutional investors, which are beyond the scope of this alert.

### Pay Versus Performance

The SEC now requires certain detailed “pay-versus-performance” disclosures pursuant to Item 402(v) of Regulation S-K. These disclosures are designed to provide information reflecting the relationship between executive compensation “actually paid” by the company and the company’s performance. Public companies, including smaller reporting companies, must include the new disclosure in proxy and information statements. The new disclosure is not required in Annual Reports on Form 10-K or registration statements. Disclosure is required for fiscal years ending on or after December 16, 2022, which means that for calendar year-end companies, disclosure will be required in the first proxy statement or information statement filed in 2023.

Ultimately, all reporting companies, except for smaller reporting companies, will be required to provide pay-versus-performance disclosure for each of the company’s five most recently completed fiscal years. A phase-in period will allow the company to provide the information for three years in the first proxy or information statement in which it provides the disclosure, adding another year of disclosure in each of the two subsequent annual proxy or information statement filings. Smaller reporting companies are subject to scaled disclosure requirements. Most notably among these scaled disclosure requirements, for the first year, smaller reporting companies are required to provide only two years of pay-versus-performance disclosure and, following the first year of disclosure, are required to provide three years of pay-versus-performance disclosure.

Public companies should begin preparing for pay-versus-performance disclosures now and should involve their compensation committees early in the process, as calculating executive compensation “actually paid” may be time consuming and expensive.

[Read the full article here.](#)