

MARK YOUR CALENDAR: 2023 KEY COMPLIANCE DEADLINES FOR SEC'S FINAL COMPENSATION CLAWBACK RULES

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As discussed in our [recent blog post](#), the SEC recently adopted [final executive officer incentive compensation clawback rules](#) (the "Clawback Rules") pursuant to the requirements of the Dodd-Frank Act. The Clawback Rules, directing the NYSE, Nasdaq and other stock exchanges to adopt requirements for listed companies to develop and implement clawback, or recovery, policies, will become effective on Friday, January 27, 2023, which is 60 days following their November 28, 2022 publication in the Federal Register.

The new Clawback Rules apply broadly to most companies with securities listed on a national securities exchange, including smaller reporting companies, emerging growth companies, foreign private issuers, controlled companies and debt-only issuers. Issuers should consider the below dates when considering modification of existing clawback policies to conform to the rules, or in adopting initial clawback policies.

- January 27, 2023 (i.e., 60 days following Federal Register publication): Effective date of SEC's Clawback Rules.
- February 24, 2023 (i.e., the last business day before the 90th day post-Federal Register publication): Deadline for NYSE, Nasdaq and other national securities exchanges (the "Exchanges") to file with the SEC proposed listing standards that will require their listed companies to develop and implement compensation recovery policies that comply with the Clawback Rules.
- November 28, 2023 (i.e., one year following the Federal Register publication): Latest date by which the listing standards of an Exchange must become effective. Any incentive-based compensation that is granted, earned, or vested wholly or in part on or after such effective date must be subject to a compliant clawback policy. Moreover, the disclosure requirements under the Clawback Rules must appear in all of a company's proxy statements, information statements, and annual reports filed on or after the effective date.

- January 27, 2024 (i.e., 60 days following the latest date on which the Exchanges' listing standards may become effective): Latest possible date for a listed company to adopt a compliant clawback policy if the listing standards of the applicable Exchange were to become effective on the latest possible date (i.e., November 28, 2023); note that the deadline could be significantly earlier depending on exactly when the applicable listing standards become effective.

As discussed in our earlier post, we recommend companies, to the extent they have not already done so:

- Begin preparation of required clawback policies; consider whether the scope of any existing policy conforms to SEC requirements and/or whether to extend new or existing policies beyond covered employees and/or the mandated recovery period;
- Review existing employment and compensation agreements, awards and other arrangements with covered officers to determine if any amendments may be needed in view of the new Clawback Rules and company policies; and
- Evaluate the impact of the Clawback Rules and company policies and their effect on executive motivation; consider whether to adjust performance metrics or the mix of incentive and non-incentive based compensation.

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