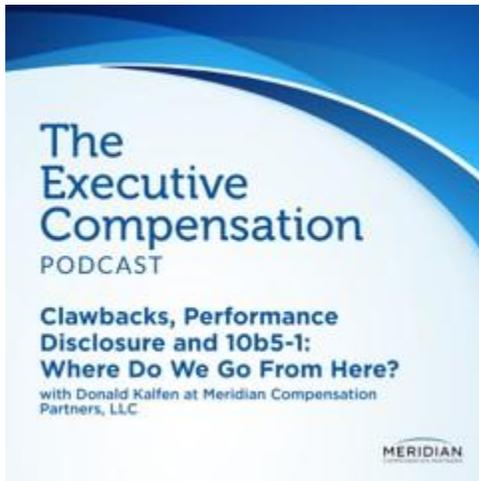


Clawbacks, Performance Disclosure and 10b5-1: Where Do We Go From Here?

By: Don Kalfen



We've witnessed a recent surge of new government regulations — most notably the SEC's new pay-versus-performance disclosures that affect multiple types of companies.

- There are some common trends around pay-versus-performance disclosures, and some best practices that companies are currently following.
- The SEC's 10b5-1 rules around trading and selling shares are also worth paying attention to, and companies should take steps to prepare for these.
- In the future, the regulatory landscape will continue to change, for example with new FTC regulations potentially on the horizon.

The last six months have seen a wave of new government regulations. Keeping pace with these new rules, understanding them, and ensuring compliance, is a constant challenge for businesses.

On this episode, we spoke to Donald Kalfen, Partner at Meridian Compensation Partners, LLC, about this regulatory landscape and what it means for companies.

We discuss the new pay-versus-performance disclosures and their implications for companies. These new rules were recently put in place by the SEC, as a consequence of the Dodd–Frank Wall Street Reform and Consumer Protection Act. What do the new disclosures involve and how can companies make sure they comply with the requirements?

We also talk about how to approach unusual outcomes such as large negative compensation amounts, which can happen when there is a sharp decline in share prices. Donald points out some common trends that he has seen around disclosures, like the tendency for companies to disclose less rather than more, and comply with the rules while minimizing volitional disclosures. Is the best approach to simply meet the minimum requirements, or should companies volunteer more information?

Donald explains the pay-versus-performance table and how companies should approach filling it out, along with what other companies are typically doing. We talk about how companies can ensure they comply with the SEC's clawback rules.

Next, we dig into the SEC's 10b5-1 rules around trading and selling shares, what the changes to the rules mean for companies and the best approaches here. These rules came about as a result of several companies facing enforcement actions due to claimed abuses in trading under 10b5-1 plans, resulting in the SEC announcing a number of conditions. We talk about these conditions — like the so-called cooling-off period — and how companies can make sure they comply.

Finally, Donald talks about some upcoming changes and what lies ahead for companies when it comes to regulations, such as the FTC planning to impose a ban on non-competes and their generally more aggressive behavior in terms of regulations. Will the ban go ahead? And if so, what can companies expect?

Watch the full episode for all this and more, with Donald's expert insight into some of the biggest regulatory questions facing companies today and in the near future.

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