



CLIENT ALERT
Navigating Compensation
Governance in Uncertain Times

NYSE/Nasdaq Propose Delaying Effective Date for Implementation of Mandatory Clawback Policy

Companies listed on the NYSE or Nasdaq would have until December 1, 2023, to adopt and implement a Dodd-Frank compliant mandatory clawback policy, if the SEC approves their recently amended listing standards.

Earlier this month, both the NYSE and Nasdaq changed the effective date of their proposed listing standards to **October 2, 2023**, which will require listed companies to adopt mandatory clawback policies. If the SEC approves this change, listed companies will have until December 1, 2023, to adopt compliant clawback policies.

If the SEC approves the proposed change in the effective date, key considerations include:

- **Impact of Revised Effective Date.** Dodd-Frank compliant mandatory clawback policies will apply to incentive-based compensation “received” by executive officers on or after October 2, 2023.
- **Disclosure Requirements.** Listed companies will be required to file a copy of their mandatory clawback policy as an exhibit to their annual report on Form 10-K (or Form 20-F or 40-F in the case of foreign private issuers) filed on or after October 2, 2023. For calendar year companies, the initial disclosure requirement will apply to Form 10-Ks filed in early 2024.
- **Implications of Failure to Comply with the New Listing Standard.** Under both NYSE and Nasdaq rules, a listed company will face delisting if it fails to adopt a compliant mandatory clawback policy on a timely basis.

If the SEC approves the exchanges’ proposal to push back the effective date of the new listing standards, listed companies will have additional time to develop and implement a Dodd-Frank compliant clawback policy. Companies could seek approval of a compliant clawback policy at their regularly scheduled August to November board or compensation committee meetings, if desired, instead of rushing to obtain approval of the policy by early August.

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