

Clawback Policies Required by December 1

WRITTEN BY

David I. Meyers | James E. Earle | Sheri P. Adler | David M. Kaplan

The New York Stock Exchange (NYSE) and Nasdaq amended their previously proposed clawback listing standards on [June 5](#) and [June 6](#) respectively to give listed companies until December 1 to adopt required clawback policies. On June 9, the Securities and Exchange Commission (SEC) approved the [NYSE](#) and [Nasdaq](#)–amended clawback listing standards.

The clawback listing standards will become effective on October 2. Companies must adopt clawback policies that comply with specified requirements no later than 60 days following that date, or December 1, or be subject to delisting. The clawback policies must apply to compensation “received” (within the meaning of the rules) on or after October 2. The December 1 deadline is a welcome reprieve for companies that, up until last week, expected the implementation deadline to occur in early August.

A Brief History

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, directing the SEC to implement rules under which the NYSE and Nasdaq must require listed companies to adopt clawback policies. The SEC published proposed clawback rules in 2015 and adopted final clawback rules in 2022.

The NYSE and Nasdaq proposed listing standards implementing the SEC’s final clawback rules in February 2023. In early June 2023, both exchanges amended their proposed listing standards to extend the deadline for companies to adopt clawback policies. The NYSE amendment also sought to clarify the types of issuers bound by the new rules and the delisting procedures for companies that do not comply. On June 9, the SEC approved the amended exchange listing standards.

Clawback Policy Requirements in 50 Words or Less

Clawback policies must:

- Cover Section 16 officers.
- Provide for the recoupment of incentive-based compensation erroneously “received” in the three completed fiscal years to required accounting restatement.
- Apply on a no-fault basis (whether or not there was executive misconduct).

- Be publicly filed as an exhibit to the company's annual report.

Clawback Policy Requirements in 50 Words or More

For more information, we invite you to watch a recording of our May 30 CLE on “Clawback Policies: What to Do Now,” available [here](#). You can also view our prior alerts on the topic [here](#) and [here](#).

To discuss your company’s clawback policies, please reach out to any of the authors of this alert or your regular Troutman Pepper contacts.

RELATED INDUSTRIES + PRACTICES

- [Corporate](#)
- [Employee Benefits + Executive Compensation](#)
- [Securities Litigation](#)
- [Securities Investigations + Enforcement](#)