

Short Extension of Clawback Policy Deadline Suggests Listed Companies Will Need to Adopt Policies by early August

WRITTEN BY

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On April 24, 2023, the SEC extended, for a short time, the deadline for the effectiveness of stock exchange listing requirements under the Dodd Frank Act that will require listed companies to adopt clawback policies for erroneously awarded compensation (see our prior blog post [here](#)). The bottom line is that the prospect of an April effective date for the listing standards and a June deadline for issuers to adopt a compliant clawback policy has been postponed by 45 days. Unless stock exchanges amend their proposed rules, the deadline for issuers to adopt a clawback policy will likely be in early August.

The SEC's [adopting release](#) that approved final rules requiring exchanges to implement listing rules on clawback policies specified that exchanges should file proposed listing standards within 90 days of the release's publication in the Federal Register. It also stated that the listing standards must be effective no later than one year following that publication, and that listed companies will have 60 days from the effective date of the listing standards to adopt a compliant policy. The release was published on November 28, 2022, which implied an effective date for the listing standards no later than November 2023, and a deadline for listed companies to adopt their policies by January 2024.

The exchanges' proposed [listing requirements](#) were published in the Federal Register on March 13, 2023. These included a deadline for issuers to adopt a clawback policy no later than 60 days from the SEC's approval of the proposed listing standard – equating the SEC approval with the effective date. This raised a timing issue, since Section 19(b) of the Exchange Act requires that the SEC approve or disapprove a proposed stock exchange rule (or institute proceedings giving grounds for disapproval) no later than 45 days after the date of the proposed rule's publication. In other words, it created the prospect that the listing standards would become effective by April 27, 2023, requiring issuers to adopt a compliant clawback policy by June 26, 2023. Section 19(b) of the Exchange Act also permits the SEC to extend that 45-day period to 90 days if it determines that a longer period is appropriate.

The [recent notice](#) issued by the SEC states that the Commission finds it appropriate to provide a longer period to consider the rule, and that June 11, 2023 (90 days after the publication of the proposed exchange rules) is now the date by which the SEC will approve or disapprove the proposed changes to the listing requirements. This implies that August 10, 2023, will be the date by which issuers would be required to adopt a compliant clawback policy – still much earlier than most had anticipated in light of the November deadline in the statute.

It is possible that the exchanges may seek to amend their proposals in a way that extends the effective date of the listing requirements to a later date, but listed companies for now should be preparing to have their boards approve

a compliant clawback policy by early August.

If you have any questions about the new listing standards, please contact your regular Locke Lord contact or any of the authors.

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