



Executive Compensation and Benefits Alert

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One Manhattan West
New York, NY 10001
212.735.3000

525 University Avenue
Palo Alto, CA 94301
650.470.4500

Editor's note: This article reflects updated deadlines provided by the SEC in its informal guidance at a May 2023 bar association meeting

SEC Provides Update on Timing of Dodd-Frank Clawback Rules

Earlier this week, the U.S. Securities and Exchange Commission (SEC) updated the expected timeline for finalizing the New York Stock Exchange (NYSE) and Nasdaq listing standards requiring listed companies to adopt clawback policies under the Dodd-Frank Act.

By way of background, on October 26, 2022, the SEC adopted final rules directing the stock exchanges to establish listing standards requiring listed companies (including foreign private issuers, controlled companies, smaller reporting companies and emerging growth companies) to adopt clawback policies providing for the recovery of erroneously awarded incentive-based compensation received by current or former executive officers. On February 22, 2023, both the NYSE and Nasdaq published their proposed listing standards, which substantially conform to the SEC final rules. The proposed listing standards were published for comment in the Federal Register on March 13, 2023, and the comment period ended on April 3, 2023.

On April 24, 2023, the SEC stated that it is designating **June 11, 2023**, as the final date by which it will “either approve or disapprove, or institute proceedings to determine whether to disapprove” the proposed NYSE and Nasdaq listing standards, which the exchanges have provided will become immediately effective upon SEC approval. If the SEC takes the full 90-day period to act, and on June 9, 2023 (since June 11, 2023, is a Sunday), acts to approve the proposed listing standards, then listed companies will have 60 days (*i.e.*, by **August 8, 2023**) to adopt final Dodd-Frank compliant clawback policies. It is possible that the SEC will act to further extend this period, since the SEC’s final rules originally provided that the stock exchanges will have until November 28, 2023, to finalize their listing standards. However, the SEC likely intends for the listing standards to become effective sooner than the last possible date.

Given this recent guidance, listed companies should prepare to have final clawback policies ready for adoption by August 8, 2023.

For more information about the clawback rules and related disclosure requirements, see our November 2, 2022, client alert “[SEC Adopts Final Clawback Rules and Disclosure Requirements](#).” Also, recent [SEC guidance about the clawback rules](#) is available in the form of Compliance & Disclosure Interpretations (C&Dis).

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Contacts

Page W. Griffin

Partner / Palo Alto
650.470.4560
page.griffin@skadden.com

Shalom D. Huber

Partner / New York
212.735.2483
shalom.huber@skadden.com

Regina Olshan

Partner / New York
212.735.3963
regina.olshan@skadden.com

Joseph M. Penko

Partner / New York
212.735.2618
joseph.penko@skadden.com

Erica Schohn

Partner / New York
212.735.2823
erica.schohn@skadden.com

Joseph M. Yaffe

Partner / Palo Alto
650.470.4650
joseph.yaffe@skadden.com

Michael A. Wiseman

Counsel / New York
212.735.2662
michael.wiseman@skadden.com