



Executive Compensation and Benefits Alert

If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the next page or call your regular Skadden contact.

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NYSE and Nasdaq Postpone Effective Date of Dodd-Frank Clawback Requirements

The New York Stock Exchange (NYSE) and the Nasdaq Stock Market (Nasdaq) have each postponed the effective date for proposed listing standards implementing the Dodd-Frank clawback rules until October 2, 2023. Listed companies will have 60 days following that date (*i.e.*, until December 1, 2023) to adopt Dodd-Frank-compliant clawback policies. Under those policies, listed companies must seek to recover erroneously awarded incentive-based compensation received by covered executives on or after October 2, 2023.

The proposed listing standards, originally released by both NYSE and Nasdaq on February 22, 2023, were designed to become effective immediately upon the date of Securities and Exchange Commission (SEC) approval of the listing standards, which was expected to occur on June 9, 2023. The stock exchanges have delayed effectiveness of the proposed listing standards until October 2, 2023, in order to align with the statement of the SEC staff in the October 2022 adopting release that listed companies would have “more than a year” from the date the final SEC rules were published in the federal register (*i.e.*, November 28, 2022) to comply with the Dodd-Frank clawback rules.

In addition, the NYSE amended its proposed listing standards to provide additional relief in the event of noncompliance with the clawback rules. The originally proposed NYSE listing standards established cure periods (up to one year with approved extensions) to be applied if a listed company failed to adopt a Dodd-Frank-compliant clawback policy within 60 days after the effective date of the NYSE listing standards. However, the original NYSE listing standards did not provide for cure periods following other incidents of noncompliance with the clawback rules. This amendment extends the same cure periods to all incidents of noncompliance.

Given these amendments, listed companies should prepare to have final Dodd-Frank compliant clawback policies ready for adoption by December 1, 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](#) (Section 121H).

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