

VOLUME 14, ISSUE 5
MARCH 15, 2023

Meridian Client Alert

NYSE and Nasdaq Issue Proposed Listing Standards on Mandatory Clawback

The New York Stock Exchange and the Nasdaq Stock Market have issued proposed listing standards that would require listed companies to adopt and implement a mandatory compensation recoupment policy.

Big Picture

Pursuant to the Dodd-Frank Act of 2010, the SEC approved final rules that require public companies to adopt and implement a mandatory clawback policy. The final rules become effective once the securities exchanges amend their listing standards to require companies to adopt a mandatory recoupment policy, and the SEC approves such amendments. On February 22 the New York Stock Exchange and the Nasdaq Stock Market submitted to the SEC such proposed listing standards.

The proposed listing standards are not immediately effective; therefore, listed companies are *not* required to take any action at this time.

The final rules require the proposed listing standards become effective no later than November 28, 2023, subject to SEC approval. Companies will be required to adopt compliant compensation recoupment policies within 60 days from the effective date. This means companies may have until January 2024 to adopt compliant clawback policies.

The public may submit comments on the proposed listing standards to the SEC until **April 3, 2023**.

Overview of SEC Final Rule on Recoupment Policy

Listed companies will be required to recoup, reasonably promptly, the amount of “excess” incentive compensation awarded, if any, to an executive officer during a “look-back period” in the event of a financial restatement due to the ***material noncompliance*** of the company with any financial reporting requirement under the securities laws. No fault on the part of an executive officer is required for excess incentive compensation to be subject to recoupment. Further, a listed company may not indemnify an executive officer against the loss of excess incentive-based compensation that is recouped by the company.

Proposed NYSE and Nasdaq Listing Standards

Generally, the proposed listing standards of both exchanges follow the provisions of the final rules (see Meridian Client Update Volume 13, Issue 17 for details on the final rules [SEC Final Rule on Mandatory Clawbacks](#)). Subject to narrow exceptions, the proposed listing standards will apply to all listed companies, including foreign private issuers, smaller reporting companies, emerging growth companies and controlled companies. Importantly, the final rules bar the securities exchanges from exempting categories of listed companies from the proposed listing standard.

Implementation of Proposed Listing Standards

The proposed listing standard establishes a timeframe for companies to comply with the new listing standards. Specifically each listed company must:

- Adopt a compliant recovery policy no later than 60 days from the exchange's adoption of the proposed listing standard ("Effective Date"),
- Provide the required disclosures in the applicable SEC filings required on or after the Effective Date and
- Comply with its recovery policy for all "excess" incentive-based compensation received by executive officers on or after the Effective Date.

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The **Client Update** is prepared by Meridian Compensation Partners' Governance and Regulatory Team led by Donald Kalfen. Questions regarding this Client Update or executive compensation technical issues may be directed to Donald Kalfen at 847-235-3605 or dkalfen@meridiancp.com.

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