

Effective Date for New Compensation Recovery (“Clawback”) Policy Listing Standards to be Extended Until October

On June 5 and June 6, 2023, the New York Stock Exchange (the “NYSE”) and the Nasdaq Stock Market (“Nasdaq”), respectively, filed amendments to their initial filings proposing new listing standards to implement Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the provision which requires listed companies to adopt, disclose, and enforce a compensation recovery (“clawback”) policy that applies to incentive-based compensation provided to their current and former executive officers. The amendments provide that once the SEC has approved the new listing standards, they will become **effective on October 2, 2023**. Listed companies will then have 60 days (until December 1, 2023) to adopt a compliant clawback policy.

Since both the proposed NYSE and NASDAQ listing standards closely track the SEC rule, Exchange Act Rule 10D-1, directing the exchanges to adopt such a standard, it is possible that the SEC may approve the amended listing standards as early as this Friday, June 9th.

Background

The SEC adopted final rules to implement Section 954 of the Dodd-Frank Act in October 2022. (See our *Thoughtful Pay Alert, SEC Adopts Compensation Recovery (“Clawback”) Policy and Disclosure Rules (Nov. 8, 2022)*). In March 2023, the NYSE and Nasdaq submitted proposed listing standards requiring companies to adopt a clawback policy to maintain their listing status to the SEC for review and approval. In April, 2023, the SEC extended the deadline for its consideration of the proposed listing standards until June 9, 2023.

Implications

The amendments filed this week are largely identical to the original proposals submitted in March but change the effective date of the listing standards from the date of final Commission approval (which could have been this Friday) until October 2, 2023. (The NYSE amendment also revises its proposed delisting procedures to mirror its compliance process for late SEC filings and includes discretionary cure periods.) As provided in the final SEC rule, listed companies have 60 days following the effective date of the applicable listing standard to adopt a compliant clawback policy. That date is now December 1, 2023, rather than August 8, 2023, which was the anticipated compliance date prior to this week’s actions.

The required clawback policy must apply to any incentive-based compensation that is received by a current or former executive officer on or after October 2, 2023, even if the compensation was received pursuant to an award granted before adoption of the required clawback policy.

Need Assistance?

Compensia has extensive experience in helping companies understand how the compensation recovery (“clawback”) policies required under the Dodd-Frank Act and the new listing standards will need to be designed, administered, and disclosed in future SEC filings. If you would like assistance in understanding how this latest development will affect your adoption of a new clawback policy or the review and amendment of an existing policy, or if you have any questions on the subjects addressed in this Thoughtful Pay Alert, please feel free to contact Mark A. Borges or Hannah Orowitz.

Effective Date for New Compensation Recovery (“Clawback”) Policy Listing Standards to be Extended Until October (Continued)

About Compensia

Compensia, Inc. is a management consulting firm that provides executive compensation advisory services to Compensation Committees and senior management.

Offices

Silicon Valley
50 W San Fernando Street
Suite 1350
San Jose, California 95113
408.876.4025

San Francisco
One Embarcadero Center
Suite 2830
San Francisco, California 94111
415.462.2990

Principals

Tom Brown, Chairman
tbrown@compensia.com
408.876.4023

Jason Borrevik
jborrevik@compensia.com
408.876.4035

Lori Koenig
lkoenig@compensia.com
415.462.0231

Ralph Barry
rbarry@compensia.com
858.603.2288

Rachel Cohen
rcohen@compensia.com
669.263.9808

Tom Langle
tlangle@compensia.com
408.907.4309

Erik Beucler
ebeucler@compensia.com
408.907.4314

Jodie Dane
jdane@compensia.com
415.462.1985

Tom LaWer
tlawer@compensia.com
408.907.4309

Mark A. Borges
mborges@compensia.com
415.462.2995

Amanda Feyrabend
afeyrabend@compensia.com
415.462.2988

Greg Loehmann
gloehmann@compensia.com
408.907.4319

Aaron Johansen
ajohansen@compensia.com
408.907.4310

Hannah Orowitz
horowitz@compensia.com
332.867.0566