

SEC says earliest deadline for companies to adopt a NYSE/Nasdaq clawback policy is August 2023

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The SEC extended the deadline for the effective date of the NYSE and Nasdaq listing standards on the clawback rule mandated by the Dodd-Frank Act to at least June 2023.

On April 24, 2023, the SEC stated that it is appropriate to designate a longer period within which to take action on the clawback rule, “so that it has sufficient time to consider the rule and the comments received,” and designated June 11, 2023, as the date by which the SEC will “either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule” (see [here](#) and [here](#)). The earliest date that the rule could have been effective had been April 27, 2023.

If the rule is effective on June 9, 2023 (which is the final business day of the current period for approval), then the deadline by which companies will need to adopt their clawback policies will be **August 8, 2023**, which will be 60 days following the effective date of the rule. The SEC might further extend the effective date and, therefore, the deadline by which companies will be required to adopt a clawback policy; however, it is not required to do so. Therefore, companies may want to adopt their final policies by August 8, 2023, in order to avoid the need to quickly convene board or compensation committee meetings during the summer months if the SEC does not extend the deadline any further.

By way of background, on February 22, 2023, the [New York Stock Exchange](#) and the [Nasdaq Stock Market](#) released their respective versions of a proposed rule that implements the [SEC's clawback rule](#) mandated by Section 954 of the Dodd-Frank Act. The SEC's final rule, which was adopted in October 2022 as Rule 10D-1 of the Securities Exchange Act of 1934, directed U.S. stock exchanges to adopt listing standards requiring all listed companies to adopt and comply with a written policy to claw back excess incentive compensation from executive officers if amounts were based on the company's material noncompliance with any financial reporting requirement, to disclose the policy and to file the policy as an exhibit to its annual report, as well as to include other disclosures in the event a clawback is triggered under the policy.

Additional resources

Our client update on the SEC's final clawback rule can be found [here](#).

Our client update on the rule proposals of the NYSE and Nasdaq, including a side-by-side comparison of the proposals, can be found [here](#).

Davis Polk led the submission of a multi-law-firm comment letter requesting that the SEC not approve the adoption and effectiveness of the NYSE's and Nasdaq's rules any earlier than November 28, 2023, which is the date by which the clawback rule must be in effect. The letter can be found [here](#).

Also related to clawbacks, the U.S. Department of Justice recently announced guidance on compensation clawbacks, including that companies facing a criminal resolution can secure credit for clawbacks against fines imposed by DOJ and will have additional compliance obligations related to clawbacks. See our client update [here](#).

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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