

SEC Proposes Dodd-Frank Clawback Rule

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On July 1, 2015, in a 3-2 vote, the SEC proposed a rule implementing Section 954 of the Dodd-Frank Act, which requires listed companies to implement clawback policies to recover incentive-based compensation received by current or former executive officers in the event of certain financial restatements.

Specifically, the proposed rule directs the stock exchanges to adopt listing standards that would require all listed issuers (including foreign private issuers, emerging growth companies, controlled companies and companies with only listed debt securities) to adopt and comply with a written clawback policy to recover any excess incentive-based compensation erroneously paid to any current or former executive officer because of material non-compliance with financial reporting requirements that resulted in a financial restatement.

In addition, the SEC is proposing to revise its disclosure rules to require that each listed company:

- file a copy of its written clawback policy as an exhibit to the issuer's annual report; and
- in the event of a restatement, disclose how much incentive-based compensation was subject to recovery, how much has remained outstanding for 180 days or longer, and, if the issuer decides not to recover excess compensation as permitted in limited cases, the names of the executive officers from whom the issuer did not seek recovery and the reasons for this decision.

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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