

# NYSE and Nasdaq Clawback Listing Standards Effective as of October 2, 2023

On June 9, 2023, the U.S. Securities and Exchange Commission (the “SEC”) approved amendments proposed by the New York Stock Exchange (“NYSE”) and the Nasdaq Stock Market (“Nasdaq”) to their listing standards (the “Adopted Amendments”) to implement the clawback requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The new listing standards, which we [previously summarized](#) when they were proposed in February 2023, require listed companies (including emerging growth companies, smaller reporting companies and foreign private issuers) to develop and implement policies providing for the recovery of erroneously awarded incentive-based compensation received by current or former executive officers where such compensation is based on erroneously reported financial information and an accounting restatement is required (a “clawback policy”).

The Adopted Amendments specify that the effective date of the listing standards is October 2, 2023, meaning that:

- If an accounting restatement is required, any erroneously awarded incentive-based compensation received on or after October 2, 2023 must be clawed back.
- Listed companies must adopt a compliant clawback policy no later than December 1, 2023.

The NYSE Adopted Amendments also include technical updates to the delisting process as compared to the February 2023 proposed listing standards, including the following:

- Non-compliance with the listing standards (not limited to failure to adopt a compliant clawback policy) may be subject to a cure period.
- NYSE’s requirement to initiate suspension and delisting procedures commences on the first anniversary after NYSE sends a delinquency

notice to such listed company, rather than the first anniversary of the compliance deadline.

The Nasdaq Adopted Amendments do not include any analogous technical updates.

## NEXT STEPS

Given the SEC’s approval of the Adopted Amendments, listed companies should commence work (if they have not done so already) to prepare new clawback policies or updates to existing clawback policies that comply with the listing standards, familiarize themselves and their executive officers with applicable requirements before the December 1, 2023 compliance deadline and consider whether any existing contracts or forms may need to be amended to address their clawback policies. Companies should also engage internally and/or with counsel to determine the most prudent manner in which to adopt the clawback policies, including determining whether summer or fall board of directors or committee meetings are the most appropriate times at which to adopt updated policies.

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