

SEC Adopts Dodd-Frank Executive Compensation Clawback Rules

In accordance with the 2010 Dodd-Frank Act, the Securities and Exchange Commission has adopted rules directing national securities exchanges to establish listing standards that require listed companies to:

- Adopt written policies for recovery from executive officers of incentive-based compensation, insofar as based on erroneous reported financial information, during the three completed fiscal years immediately preceding the date that the company is required to prepare an accounting restatement; and
- Disclose those compensation recovery policies, including any action taken to recover compensation.

The rule covers all executive officers, rather than being limited to those responsible for the erroneous financial reporting, and foreign private issuers, except insofar as recovery would violate home country law.

The rule applies to so-called, "little r" restatements needed to prevent current financial statements from being materially incorrect, as well as restatements that require Form 8-K disclosure. "Incentive-based compensation" includes in-kind compensation, such as stock or stock options; awards based on stock price are subject to the incentive compensation policies. A company's board must make a reasonable estimate of the amount to be recovered when the performance measure, such as stock price, is only indirectly related to accounting measures.

A company is required to make reasonable efforts to recover compensation subject to the policy, but is not required to expend more in payments to third parties, such as attorneys, than the amount to be recovered. Recovery may be effectuated by offsets against or cancellation of other compensation, as long as the statutory purpose is maintained.



Securities exchanges must adopt listing standards implementing the SEC rules within 90 days after their publication in the Federal Register, to become effective no later than a year thereafter, and listed companies must comply with the standards within 60 days of effectiveness.

Related Professional

David Fischer dfischer@loeb.com

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