

Return of the Clawback Rule

October 20, 2021

On October 14, 2021, the Securities and Exchange Commission (the “SEC”) issued a release reopening the comment period for the clawback rules initially proposed on July 14, 2015 to implement the provisions of Section 954 of the Dodd-Frank Act.¹ The 2015 proposed rules would direct the national securities exchanges to establish listing standards that would require listed issuers to adopt and comply with policies to recover, on a pre-tax basis, excess incentive-based compensation paid to executive officers in the event of financial statement errors, regardless of fault. In addition, listed issuers would be required to publicly disclose, among other things, the substance of their clawback policies and the details of their implementation and recovery efforts. Our prior Client Update on the proposed rules can be accessed [here](#).

While the SEC’s release was styled largely as questions for the investment community and their advisors to consider, the tenor of the questions suggests that the SEC is gearing up to offer an expansive view of clawback rules, with particular focus on the types of restatements that trigger applicability of the rules.

No current action is necessary. The SEC will consider all comments previously submitted in response to the proposed rule. The comment period ends 30 days following publication of the release in the Federal Register. Following promulgation of the final rule, listed companies will be required to either adopt new clawback policies or amend existing policies not already in compliance with the final rule.

¹ “Listing Standards for Recovery of Erroneously Awarded Compensation,” available at <https://www.sec.gov/rules/proposed/2021/33-10998.pdf>.



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