



Model Dodd-Frank Clawback Policy
May 2023

[COMPANY NAME]
Clawback Policy

The Board of Directors (the “**Board**”) of [Company Name] (the “**Company**”) believes that it is in the best interests of the Company and its shareholders to adopt this Clawback Policy (the “**Policy**”), which provides for the recovery of certain incentive compensation in the event of an Accounting Restatement (as defined below). This Policy is designed to comply with, and shall be interpreted to be consistent with, Section 10D of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), Rule 10D-1 promulgated under the Exchange Act (“**Rule 10D-1**”) and [Section 303A.14 of the New York Stock Exchange Listed Company Manual][Nasdaq Listing Rule 5608] (the “**Listing Standards**”).¹

1. Administration

Except as specifically set forth herein, this Policy shall be administered by the Board or, if so designated by the Board, a committee thereof (the Board or such committee charged with administration of this Policy, the “**Administrator**”).² The Administrator is authorized to interpret and construe this Policy and to make all determinations necessary, appropriate or advisable for the administration of this Policy. Any determinations made by the Administrator shall be final and binding on all affected individuals and need not be uniform with respect to each individual covered by the Policy. In the administration of this Policy, the Administrator is authorized and directed to consult with the full Board or such other committees of the Board, such as the [Audit Committee or the Compensation Committee], as may be necessary or appropriate as to matters within the scope of such other committee’s responsibility and authority. Subject to any limitation at applicable law, the Administrator may authorize and empower any officer or employee of the Company to take any and all actions necessary or appropriate to carry out the purpose and intent of this Policy (other than with respect to any recovery under this Policy involving such officer or employee).

¹ Note: This model clawback policy is drafted to meet the requirements of Section 954 of the Dodd-Frank Act, the SEC’s Rule 10D-1, and the proposed listing standards of the NYSE and Nasdaq. This model clawback policy does not include any requirements under Section 304 of the Sarbanes-Oxley Act of 2002, which applies only to a company’s CEO and CFO in cases involving misconduct resulting in a company’s material noncompliance with any financial reporting requirement under the securities laws.

² Note: This policy may be administered by the Board, the Compensation Committee, Audit Committee or a special committee comprised of members of the Compensation Committee and Audit Committee.

2. Definitions

As used in this Policy, the following definitions shall apply:

- **“Accounting Restatement”** means an accounting restatement of the Company’s financial statements due to the Company’s material noncompliance with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.
- **“Administrator”** has the meaning set forth in Section 1 hereof.
- **“Applicable Period”** means the three completed fiscal years immediately preceding the date on which the Company is required to prepare an Accounting Restatement, as well as any transition period (that results from a change in the Company’s fiscal year) within or immediately following those three completed fiscal years (except that a transition period that comprises a period of at least nine months shall count as a completed fiscal year). The **“date on which the Company is required to prepare an Accounting Restatement”** is the earlier to occur of (a) the date the [Board]³ concludes, or reasonably should have concluded, that the Company is required to prepare an Accounting Restatement or (b) the date a court, regulator or other legally authorized body directs the Company to prepare an Accounting Restatement, in each case regardless of if or when the restated financial statements are filed.
- **“Covered Executives”** means the Company’s current and former executive officers, as determined by the Administrator in accordance with the definition of executive officer set forth in Rule 10D-1 and the Listing Standards.⁴

³ Note: As required by the rule, this bracketed term should be the body that has authority to conclude an Accounting Restatement is required—i.e., the Board, a committee of the Board (e.g., Audit Committee), or the officer or officers of the Company authorized to take such action if Board action is not required.

⁴ Note: The definition of “executive officer” in the final rule is as follows: the issuer’s president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Executive officers of the issuer’s parent(s) or subsidiaries are deemed executive officers of the issuer if they perform such policy-making functions for the issuer. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an executive officer for

- “**Erroneously Awarded Compensation**” has the meaning set forth in Section 5 of this Policy.
- A “**Financial Reporting Measure**” is any measure that is determined and presented in accordance with the accounting principles used in preparing the Company’s financial statements, and any measure that is derived wholly or in part from such measure. Financial Reporting Measures include but are not limited to the following (and any measures derived from the following): Company stock price; total shareholder return (“**TSR**”); revenues; net income; operating income; profitability of one or more reportable segments; financial ratios (e.g., accounts receivable turnover and inventory turnover rates); earnings before interest, taxes, depreciation and amortization (“**EBITDA**”); funds from operations and adjusted funds from operations; liquidity measures (e.g., working capital, operating cash flow); return measures (e.g., return on invested capital, return on assets); earnings measures (e.g., earnings per share); sales per square foot or same store sales, where sales is subject to an Accounting Restatement; revenue per user, or average revenue per user, where revenue is subject to an Accounting Restatement; cost per employee, where cost is subject to an Accounting Restatement; any of such financial reporting measures relative to a peer group, where the Company’s financial reporting measure is subject to an Accounting Restatement; and tax basis income. A Financial Reporting Measure need not be presented within the Company’s financial statements or included in a filing with the Securities Exchange Commission.
- “**Incentive-Based Compensation**” means any compensation that is granted, earned or vested based wholly or in part upon the attainment of a Financial Reporting Measure. Incentive-Based Compensation is “**received**” for purposes of this Policy in the Company’s fiscal period during which the Financial Reporting Measure specified in the Incentive-Based Compensation award is attained, even if the payment or grant of such Incentive-Based Compensation occurs after the end of that period.

3. Covered Executives; Incentive-Based Compensation

This Policy applies to Incentive-Based Compensation received by a Covered Executive (a) after beginning services as a Covered Executive; (b) if that person served as a Covered Executive at any time during the performance period for such Incentive-Based Compensation; and (c) while the Company had a listed class of securities on a national securities exchange.⁵

purposes of this section would include at a minimum executive officers identified pursuant to 17 CFR 229.401(b).

⁵ Note: Recovery of compensation is not required (1) with respect to any compensation received while an individual was serving in a non-executive capacity prior to becoming an

4. Required Recoupment of Erroneously Awarded Compensation in the Event of an Accounting Restatement

In the event the Company is required to prepare an Accounting Restatement, the Company shall promptly recoup the amount of any Erroneously Awarded Compensation received by any Covered Executive, as calculated pursuant to Section 5 hereof, during the Applicable Period.

5. Erroneously Awarded Compensation: Amount Subject to Recovery

The amount of “**Erroneously Awarded Compensation**” subject to recovery under the Policy, as determined by the Administrator, is the amount of Incentive-Based Compensation received by the Covered Executive that exceeds the amount of Incentive-Based Compensation that would have been received by the Covered Executive had it been determined based on the restated amounts.

Erroneously Awarded Compensation shall be computed by the Administrator without regard to any taxes paid by the Covered Executive in respect of the Erroneously Awarded Compensation.

By way of example, with respect to any compensation plans or programs that take into account Incentive-Based Compensation, the amount of Erroneously Awarded Compensation subject to recovery hereunder includes, but is not limited to, the amount contributed to any notional account based on Erroneously Awarded Compensation and any earnings accrued to date on that notional amount.⁶

For Incentive-Based Compensation based on stock price or TSR: (a) the Administrator shall determine the amount of Erroneously Awarded Compensation based on a reasonable estimate of the effect of the Accounting Restatement on the stock price or TSR upon which the Incentive-Based Compensation was received; and (b) the Company shall maintain documentation of the determination of that reasonable estimate and provide such documentation to [the New York Stock Exchange (“NYSE”)] [The Nasdaq Stock Market (“Nasdaq”)].

executive officer or (2) from any individual who is an executive officer on the date on which the Company is required to prepare an Accounting Restatement but who was not an executive officer at any time during the performance period for which the incentive-based compensation is received. For example, if an individual serving as an executive officer at the date that the Company is required to prepare a restatement was not an executive officer at any time during a performance period that ended during the Applicable Period, amounts of incentive compensation received by that individual for that specific performance period are not required to be recovered.

⁶ Note: See C&DI Question 121H.04 published on January 27, 2023.

6. Method of Recoupment

The Administrator shall determine, in its sole discretion, the timing and method for promptly recouping Erroneously Awarded Compensation hereunder, which may include without limitation (a) seeking reimbursement of all or part of any cash or equity-based award, (b) cancelling prior cash or equity-based awards, whether vested or unvested or paid or unpaid, (c) cancelling or offsetting against any planned future cash or equity-based awards, (d) forfeiture of deferred compensation, subject to compliance with Section 409A of the Internal Revenue Code and the regulations promulgated thereunder and (e) any other method authorized by applicable law or contract. Subject to compliance with any applicable law, the Administrator may affect recovery under this Policy from any amount otherwise payable to the Covered Executive, including amounts payable to such individual under any otherwise applicable Company plan or program, including base salary, bonuses or commissions and compensation previously deferred by the Covered Executive.⁷

The Company is authorized and directed pursuant to this Policy to recoup Erroneously Awarded Compensation in compliance with this Policy unless the [Compensation Committee of the Board]⁸ has determined that recovery would be impracticable solely for the following limited reasons, and subject to the following procedural and disclosure requirements:

- The direct expense paid to a third party to assist in enforcing the Policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of Erroneously Awarded Compensation based on expense of enforcement, the Administrator must make a reasonable attempt to recover such erroneously awarded compensation, document such reasonable attempt(s) to recover and provide that documentation to [NYSE][Nasdaq];
- Recovery would violate home country law of the issuer where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of Erroneously Awarded Compensation based on violation of

⁷ Note: Consider whether the policy should include any provisions regarding enforcement of the policy if the Covered Executive fails to pay amounts when due—e.g., venue clause, arbitration provision and/or a requirement that the Covered Executive reimburse the Company for expenses and legal fees. If these provisions are included, the attached agreement and acknowledgment to the policy is recommended (see note 12).

⁸ Note: Under Rule 10D-1, the determination that recovery would be impracticable under the rule must be made by “the issuer’s committee of independent directors responsible for executive compensation decisions, or in the absence of such a committee, a majority of the independent directors serving on the board”, so this reference is to the Compensation Committee rather than the Administrator. If the Administrator is the Compensation Committee, the term Administrator can be used here.

home country law of the issuer, the Administrator must satisfy the applicable opinion and disclosure requirements of Rule 10D-1 and the Listing Standards; or

- Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

7. No Indemnification of Covered Executives

Notwithstanding the terms of any indemnification or insurance policy or any contractual arrangement with any Covered Executive that may be interpreted to the contrary, the Company shall not indemnify any Covered Executives against the loss of any Erroneously Awarded Compensation, including any payment or reimbursement for the cost of third-party insurance purchased by any Covered Executives to fund potential clawback obligations under this Policy.

8. Administrator Indemnification

Any members of the Administrator, and any other members of the Board who assist in the administration of this Policy, shall not be personally liable for any action, determination or interpretation made with respect to this Policy and shall be fully indemnified by the Company to the fullest extent under applicable law and Company policy with respect to any such action, determination or interpretation. The foregoing sentence shall not limit any other rights to indemnification of the members of the Board under applicable law or Company policy.

9. Effective Date; Retroactive Application

This Policy shall be effective as of [the effective date of the Listing Standards]⁹ (the “Effective Date”). The terms of this Policy shall apply to any Incentive-Based Compensation that is received by Covered Executives on or after the Effective Date, even if such Incentive-Based Compensation was approved, awarded, granted or paid to Covered Executives prior to the Effective Date. Without limiting the generality of Section 6 hereof, and subject to applicable law, the Administrator may affect recovery under this Policy from any amount of compensation approved, awarded, granted, payable or paid to the Covered Executive prior to, on or after the Effective Date.

10. Amendment; Termination

The Board may amend, modify, supplement, rescind or replace all or any portion of this Policy at any time and from time to time in its discretion, and shall amend this Policy as

⁹ Note: To be filled in with the effective date of the listing standards.

it deems necessary to comply with applicable law or any rules or standards adopted by a national securities exchange on which the Company's securities are listed.

11. Other Recoupment Rights; Company Claims

The Board intends that this Policy shall be applied to the fullest extent of the law. Any right of recoupment under this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company under applicable law or pursuant to the terms of any similar policy in any employment agreement, equity award agreement, or similar agreement and any other legal remedies available to the Company.¹⁰

Nothing contained in this Policy, and no recoupment or recovery as contemplated by this Policy, shall limit any claims, damages or other legal remedies the Company or any

¹⁰ A Note on Fraud or Misconduct Clawbacks: The Company may want to adopt, or continue to maintain, a clawback applicable for fraud or other misconduct as a separate section of this policy or a separate policy. A fraud/misconduct clawback could have a longer or shorter lookback, expand the class of covered individuals (and subject only those at fault to the policy), expand the types of compensation subject to recovery (e.g., to include time-based equity awards or discretionary bonuses) and/or provide greater committee discretion in application of amounts subject to recovery and whether to pursue recovery under the policy. To note:

- The DOJ has implemented a new [Compensation Incentives and Clawbacks Pilot program](#) under which companies may seek additional fine reductions where they successfully claw back (or even attempt to claw back) compensation from individual wrongdoers, including from culpable employees and others who had supervisory authority over the employees or business area engaged in the misconduct and/or knew of, or were willfully blind to, the misconduct.
- Under [ISS's equity plan score card](#) approach to evaluating equity compensation plans ("EPSC"), ISS will award full points for a policy that authorizes recovery upon a restatement and covers *all or most equity-based compensation* for all NEOs. A clawback policy, such as this model, that adheres to the minimum requirements of Rule 10D-1 will not receive any EPSC points because the policy generally exempts time-vesting equity from the definition of incentive-based compensation.
- A clawback policy in compliance with Rule 10D-1 should meet the minimum standards of Glass Lewis set forth in their [policy guidelines](#). These guidelines provide that prior to the effective date of listing standards, Glass Lewis will continue to raise concerns regarding clawback policies that only satisfy Section 304 of the Sarbanes-Oxley Act; however, proxy disclosure noting the board's proactive effort to ensure compliance with Rule 10D-1 may mitigate any concerns. With respect to misconduct policies, Glass Lewis notes that "these may inform our overall view of the compensation program in future especially as market practice continues to evolve around expanded clawback authority."

Separate Policy v. Combined Policy: If a fraud or misconduct clawback is a separate policy, it would not be required to be filed as an exhibit, but all agreements and plans that refer to a recoupment policy would have to capture several applicable policies.

of its affiliates may have against a Covered Executive arising out of or resulting from any actions or omissions by the Covered Executive.

12. Successors

This Policy shall be binding and enforceable against all Covered Executives and their beneficiaries, heirs, executors, administrators or other legal representatives.

13. Exhibit Filing Requirement

A copy of this Policy and any amendments thereto shall be posted on the Company's website and filed as an exhibit to the Company's annual report on Form 10-K.¹¹

¹¹ Note: This policy does not include any other disclosure requirements under the final clawback rule. See Rule 10D-1 and the listing standards for additional information regarding required disclosures.

[TO BE SIGNED BY THE COMPANY'S EXECUTIVE OFFICERS:]¹²

Clawback Policy Acknowledgment

I, the undersigned, agree and acknowledge that I am fully bound by, and subject to, all of the terms and conditions of the [Company Name]'s Clawback Policy (as may be amended, restated, supplemented or otherwise modified from time to time, the "Policy"). In the event of any inconsistency between the Policy and the terms of any employment agreement to which I am a party, or the terms of any compensation plan, program or agreement under which any compensation has been granted, awarded, earned or paid, the terms of the Policy shall govern. In the event it is determined by the Administrator that any amounts granted, awarded, earned or paid to me must be forfeited or reimbursed to the Company, I will promptly take any action necessary to effectuate such forfeiture and/or reimbursement. Any capitalized terms used in this Acknowledgment without definition shall have the meaning set forth in the Policy.

By: _____ Date _____
[Name]
[Title]

¹² Note: The acknowledgment is optional and not required by law. The acknowledgment serves to put the executives on notice of the new Dodd-Frank clawback requirements and may aid the company in its efforts to enforce the clawback policy and recoup amounts already paid, particularly from former employees.

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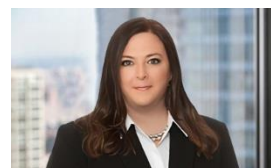
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