

Proposed Rules Requiring Companies to Adopt Clawback Policies on Incentive Compensation

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As required by Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the U.S. Securities and Exchange Commission (the "SEC") recently proposed rules directing national securities exchanges and associations to establish listing standards requiring companies to adopt clawback policies. Under the proposed rules, companies would be required to develop policies that, in the event of an accounting restatement, recoup from certain current and former executive officers incentive-based compensation they would not have received based on the restatement, regardless of fault (*i.e.*, no misconduct required). Such clawbacks would apply to excess incentive-based compensation that is tied to accounting-related metrics, stock price, or total shareholder return (with such excess determined based on an estimate of the effects on stock price or shareholder return if correct financial statements had been issued) and would apply to excess compensation received within a three-year look-back period. Companies would have discretion, however, not to recover excess compensation if the direct expense of enforcing recovery would exceed the amount recovered, or for foreign issuers, would violate home country laws. The proposed rules would also require disclosure of such clawback policies as an exhibit to a company's annual report, as well as disclosure of any actions taken under such policies. Failure to comply with the requirements could result in delisting of the non-compliant company. Comments to the proposed rules must be received by the SEC on or before the 60th day following publication in the Federal Register. The proposed rules can be found [here](#).