

The SEC's New Clawback Rules: Things to Know as the Deadline to Adopt Compliant Policies Approaches

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For more information on the New York Stock Exchange (NYSE) and NASDAQ's policies as part of their first annual report filed on or after Dec. 31, 2023, visit [this page](#).

- ## 1. Nearly all listed issuers are subject to the new clawback rules.

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- 2. Misconduct or knowledge is not required for the clawback rules to apply.**

The SFG Glueback Rules requires to report of the court analysis with a worst case time during Glueback period. If the polys did not serve as an officer at any

- 3. Companies cannot indemnify or insure officers against required clawbacks.**

The SEC Clayback Rule prohibits a listed company from framing indemnifying or reimbursing on those policies, not directly or indirectly reimburse them for from

- 4. Both “Big R” and “little r” restatements will trigger a clawback.**

Compliance play back policies with no triggered by both a "Big B" restate reports not require filing a Form 8-K filed in the current period and generally does not

- 5. There are new disclosure requirements for when a clawback is triggered.**

[illegible]

- ## 6. The new rules will likely impact internal investigations related to

accounting restatements.

As the result of certain internal control deficiencies, a company may be required to restate its financial statements. If an accounting error occurred, or a restatement should not be issued, at no

7. There are exceptions to the clawback requirements, but they are limited.

The SEC's Clawback Rule provides only limited exceptions that permit recovery if impractical and one of the following conditions are met: would be detrimental if

- the direct costs of recovery would exceed the amount of recovery (*and only if the company has made and documented reasonable attempts to recover the compensation and provided that documentation to the exchange*);
- recovery would violate home country law where that law was adopted prior to Nov. 28, 2022 (*and only if the company has obtained an opinion of home country counsel acceptable to the applicable exchange that recovery would result in such a violation and provided that opinion to the exchange*); or,
- recovery would likely cause an otherwise tax-qualified retirement plan to fail the requirements of the Internal Revenue Code.

8. The compensation could be deemed “received” and subject to clawback even before payment.

Under the SEC's Clawback Rule, the intent to receive compensation is a key factor in determining whether compensation is received, even if the actual payment will not occur until after that fiscal period ends.

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