March 24, 2023

# Stock Exchanges Publish Clawback Proposals

As required by Securities Exchange Act Rule 10D-1, the New York Stock Exchange and Nasdaq have issued their respective proposed clawback listing standards. These proposals were published in the *Federal Register* on March 13, 2023, and will be open for comment until April 3, 2023. Under Rule 10D-1, these listing standards must be finalized and be effective by November 28, 2023. Listed companies will have up to 60 days thereafter to adopt clawback policies as required by the listing standards (which will be no later than January 27, 2024, but may be earlier if listing standards are effective prior to November 28, 2023).

The proposals are substantially identical to the requirements of Rule 10D-1 (for a copy of our memo regarding the SEC's adoption of the clawback requirements, please see here). Failure to comply with the listing requirements will subject listed companies on both exchanges to suspension of trading and delisting. In the case of non-compliance, as proposed, Nasdaq-listed issuers will be eligible to submit a plan of compliance to Nasdaq staff within 45 days and will have access to cure rights, in accordance with existing Nasdaq procedures. By contrast, the NYSE has proposed specific remediation provisions regarding its clawback rules. NYSE-listed issuers who have failed to adopt a policy within 60 days of the effectiveness of the listing standards would be required to issue a press release identifying their delinquency, the reasons for it, and, if known, the date by which they expect to be in compliance. NYSE-listed issuers who fail to recover erroneously awarded compensation reasonably promptly as required by their clawback policies (and fail to qualify for an exception from the clawback requirements) would be subject to an immediate suspension of trading and commencement of delisting procedures.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:


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