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ASK THE EXPERT INTERVIEW | AUG 2023

Defining and Redefining Clawbacks

Steven Van Putten

SENIOR MANAGING DIRECTOR

Steve Van Putten was recently interviewed about the impacts of clawback policy requirements on executive compensation plans.

Q: Now that the SEC has finalized the Dodd-Frank clawback rules and December 1 of this year is the compliance date, how are you seeing companies comply?

Steve: Companies are now working with their advisors to finalize the policy document aligned with the SEC requirements, in anticipation of fall compensation committee meetings. That aspect is straightforward as there is little latitude in the requirements. What requires more work is how to address the impact on any existing clawback requirements. Most companies have existing clawback policies that allow the recoupment of compensation under certain situations. To the extent these pre-existing provisions cover items beyond a restatement, for example executive misconduct, or cover a broader population than Section 16 officers, we are seeing companies continue to maintain those policies separate from the Dodd-Frank clawback. Those are the basics, but we're also fielding questions as to whether companies should consider changes to executive compensation plans as a result of the new rules.

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Q: Interesting. As you stated, clawback policy requirements appear to be purely a compliance exercise that provides little flexibility. What is the connection to potential changes to executive compensation programs?

Steve: There are always unintended consequences as the result of any new regulation. Recognizing the new clawback rules, which are potentially quite punitive, only apply to erroneously awarded incentive compensation, companies are asking if they should reallocate compensation to forms that would not be subject to the clawback. For example, time-based stock options and restricted shares are not subject to the clawback, while performance-based shares are subject. Companies could also consider moving to a discretionary bonus program, which would not be subject to clawback, or allocating more dollars to base salary.

Q: Do you expect any will make these changes?

Steve: In the short term, no. Performance-based incentives are a well established compensation structure in corporate America and that is unlikely to change given the efficacy of aligning management incentives with financial value drivers and the expectations of shareholders and shareholder advisory firms.

About the Author

Steve Van Putten is a senior managing director with Pearl Meyer and leads the firm's efforts with respect to thought leadership and intellectual capital development. Steve's primary focus and expertise is on advising compensation committees and senior management on executive and director compensation matters. He has over 30 years of board-level experience consulting to Fortune 500 companies on executive pay.

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