Katten

ARTICLE



New SEC Clawback Rules Create a 'Two-Policy' Corporate Conundrum

Published by *Bloomberg Tax*

December 26, 2023

New York partner Mitchel Pahl, Employee Benefits and Executive Compensation, authored an article for *Bloomberg Tax* assessing new clawback rules by the US Securities and Exchange Commission (SEC) and their impact on publicly traded companies. Effective December 1, public companies were required to enact policies complying with recent SEC guidance on clawing back incentive-based compensation "erroneously awarded" to executives.

Mitchel stated that the guidance formalizes rules enacted as part of the 2010 Dodd-Frank Act and requires companies to comply if any incentive-based compensation was awarded due to "material noncompliance with any financial reporting requirement," or put simply, due to accounting errors. Many companies have chosen to leave their existing clawback policies in place and adopt a second policy that will serve to meet these new requirements.

"Although an SEC-compliant clawback policy may have a different scope than a company's original policy—different groups of executives and employees who are subject to the policy or different enforcement mechanisms—two separate policies can be conformed to each other with careful drafting by including coordinating provisions in one or both of the documents," Mitchel explained. "For example, the SEC-compliant policy could include a provision to the effect that, if it applies to a given set of facts, its terms will override any other policy and will apply exclusively in those circumstances." He added that many of the pre-SEC guidance clawback policies have different goals, as well as different methods for achieving those goals, than policies that were adopted to comply with the new guidance.

"New SEC Clawback Rules Create a 'Two-Policy' Corporate Conundrum" **Bloomberg Tax*, December 7, 2023

**Subscription may be required for article access.*

Also see: See Katten's Model Clawback Policy as Mandatory Rules Take Effect

and SEC Adopts Mandatory Rules for Clawing Back Incentive-Based Compensation: Questions and Answers for Public Companies and Best Practices

CONTACTS

For more information, contact your Katten attorney or any of the following attorneys.



Mitchel C. Pahl
+1.212.940.6527
mitchel.pahl@katten.com

Attorney advertising. Published as a source of information only. The material contained herein is not to be construed as legal advice or opinion.

©2026 Katten Muchin Rosenman LLP.

All rights reserved. Katten refers to Katten Muchin Rosenman LLP and the affiliated partnership as explained at katten.com/disclaimer.