

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 240, 249, and 274

[Release No. 33-11071; 34-95057; IC-34610; File No. S7-12-15]

RIN 3235-AK99

Reopening of Comment Period for Listing Standards for Recovery of Erroneously Awarded Compensation

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Securities and Exchange Commission (“Commission”) is reopening the comment period for its proposal for Listing Standards for Recovery of Erroneously Awarded Compensation, Exchange Act Release No. 34-75342 (July 1, 2015) (the “Proposing Release”). The proposed rules would direct the national securities exchanges and national securities associations to establish listing standards that would require each issuer to develop and implement a policy providing for the recovery, under certain circumstances, of incentive-based compensation based on financial information required to be reported under the securities laws that is received by current or former executive officers, and require disclosure of the policy. The Commission reopened the comment period for Proposing Release in the Reopening of Comment Period for Listing Standards for Recovery of Erroneously Awarded Compensation Release, Exchange Act Release No. Release No. 34-93311 (Oct. 14, 2021) (the “Reopening Release”). The Commission is re-opening the comment period to allow interested persons to analyze and comment on the additional analysis and data on compensation recovery policies and accounting restatements contained in a staff memorandum that was added to the public comment file on June 8, 2022.

DATES: The comment period for the proposed rule published July 14, 2015, at 80 FR 41144, which was initially reopened on October 21, 2021, at 86 FR 58232, is again reopened. Comments should be received on or before July 14, 2022.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission’s Internet comment form (<https://www.sec.gov/rules/submitcomments.htm>).

Paper comments:

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-12-15. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s website (<https://www.sec.gov/rules/proposed.shtml>). Comments also are available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549-1090 on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission’s public reference room. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the “Stay Connected” option at www.sec.gov to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Steven G. Hearne, Senior Special Counsel, in the Office of Rulemaking, at (202) 551-3430, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Section 954 of the Dodd-Frank Act added Section 10D to the Securities Exchange Act of 1934¹ (“Exchange Act”), which provides that the Commission require national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that does not develop and implement a policy providing for the recovery of erroneously awarded compensation and for disclosure of that policy. As described more fully in the Proposing Release,² under the proposed rules, an issuer would be subject to delisting if it does not adopt a compensation recovery policy that complies with the applicable listing standard, disclose the policy in accordance with Commission rules, and comply with the policy’s recovery provisions. The Commission previously reopened the comment period for the Proposing Release to allow interested persons further opportunity to analyze and comment upon the proposed rules in light of developments since the publication of the Proposing Release and our further consideration of the Section 954 mandate.³ The Reopening Release put forth additional requests for comment on potential revisions to the proposal and sought additional comment on the proposal. The Reopening Release was published for comment in the Federal Register on October 21, 2021, and the comment period closed on November 22, 2021.

¹ 15 U.S.C. 78a *et seq.*

² *See Listing Standards for Recovery of Erroneously Awarded Compensation*, Release No. 34-75342 (Jul. 1, 2015) [80 FR 41144 (Jul. 14, 2015)].

³ *See Reopening of Comment Period for Listing Standards for Recovery of Erroneously Awarded Compensation*, Release No. 34-93311 (Oct. 14, 2021) [86 FR 58232 (Oct. 21, 2021)] (“Re-opening Release”).

The staff of the Division of Economic and Risk Analysis has prepared a memorandum that provides additional analysis and data on compensation recovery policies and accounting restatements. Specifically, the staff memorandum (i) discusses the increase in voluntary adoption of compensation recovery policies by issuers; (ii) provides estimates of the number of additional restatements that would trigger a compensation recovery analysis if, as the Commission described in the Reopening Release, the rules were extended to include all required restatements made to correct an error in previously issued financial statements; and (iii) briefly discusses some potential implications for the costs and benefits of the proposed rules.

We believe that the information presented in the memorandum has the potential to be informative for evaluating the proposed rules. We are, therefore, reopening the comment period for an additional 30 days to permit interested parties to comment on the staff memorandum, which has been included in the comment file.

By the Commission.

Dated: June 8, 2022.

Vanessa A. Countryman,
Secretary.