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Public Company Advisory Group Quarterly – Fall 2024

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We are pleased to bring you our Fall 2024 edition of Public Company Advisory Group Quarterly, a concise summary of the latest developments of interest to public companies. In this edition, we cover recent Securities and Exchange Commission (SEC) enforcement actions, disclosure updates, and other public statements; stock exchange rulemaking updates; and other topics of interest to our public company clients.

SEC ENFORCEMENT UPDATES

SEC Charges DraftKings with Regulation FD Violations in Connection with Social Media Posts

As discussed in our Client Alert, on September 26, 2024, the SEC announced settled charges against DraftKings Inc., a sports betting company, for violations of Regulation Fair Disclosure (Regulation FD) because it failed to timely disseminate material nonpublic information that its third party public relations firm had posted on certain social media accounts associated with the DraftKings Chief Executive Officer (CEO).[1] According to the SEC order, the social media accounts had not been publicly identified by DraftKings as a Regulation FD-compliant distribution channel and the information was posted a week before DraftKings was scheduled to announce its financial results for the quarter ended June 30, 2023. The information included statements about the company's growth in its existing markets which "was not generally known or available to the public" at the time of the social media posting. The social media postings violated provisions in the DraftKings Social Media Policy and Regulation FD Policy, which prohibited use of social media networks to disclose confidential or material nonpublic information, as well as the "quiet period" provisions in the DraftKings Regulation FD Policy, which prohibited disclosure or discussion of DraftKings' financial results or performance during the period prior to an earnings release.

DraftKings recognized the error and took the posts down after half an hour but did not take any steps to promptly disclose the inadvertently disseminated information to the general public, instead waiting until its previously scheduled earnings release a week later to disclose the information.

DraftKings agreed to pay a $200,000 civil penalty to settle the charges, and included an undertaking requiring the company to provide training in Regulation FD and the company's Regulation FD policy to all of its employees responsible for corporate communications.

The charges serve as a reminder that an inadvertent disclosure of material nonpublic information in violation of Regulation FD can only be cured through broad dissemination of the inadvertently disclosed information; in the case of Internet posts it is not sufficient to take down material nonpublic information, even if the inadvertent disclosure is made for just a brief period of time (in this case, 30 minutes).

The charges also highlight the importance for companies to train internal and external parties on Regulation FD policies and Regulation FD-compliant disclosure practices, and to clearly identify and communicate recognized channels of distribution.[2]

SEC Enforcement Sweep Relating to Beneficial Ownership Reporting Failures

On September 25, 2024, the SEC announced that it had settled charges against 23 entities and individuals in a sweep of late beneficial ownership and insider transaction reports resulting in more than $3.8 million in penalties.[3] The charges arose out of recent SEC enforcement initiatives focused on beneficial ownership reports on (i) Form 13F under Section 13(f) of the Securities Exchange Act of 1934 (the Exchange Act), (ii) Schedules 13D and 13G under Section 13(d) and 13(g) of the Exchange Act, respectively, and (iii) Forms 3, 4, and 5 under Section 16(a) of the Exchange Act.

Form 13F	Schedule 13D/13G	Section 16(a) Reports
Required to be filed by investment managers with at least $100 million in U.S. publicly traded assets under management.	Required to be filed by beneficial owners of more than 5% of a covered class of securities.	Required to be filed by directors, officers, and beneficial owners of more than 10% of any class of issuer securities registered under Section 12 of the Exchange Act.

The SEC noted that it used data analytics to identify the late-filed reports.

Although most of the entities charged in the sweep were investment firms, the sweep also included three public companies:

- **Alphabet, Inc.** was ordered to pay a $750,000 civil penalty for failures relating to beneficial ownership reporting of securities it owned in other companies, including failing to file a Form 13F for seven consecutive years, and failing to timely file Forms 3 and 4 relating to beneficial ownership of and transactions in securities of two newly public companies.[4]

- **Legacy Housing Corporation (Legacy) and Celsius Holdings, Inc. (Celsius)** were each ordered to pay a $200,000 civil penalty for negligent performance of their agreed-upon obligations to assist directors and officers in the preparation and filing of Section 16(a) beneficial ownership reports.[5] Company insiders for Legacy and Celsius were found to have filed hundreds of untimely Forms 4 over a multi-year period[6] despite the companies having received timely notification of or otherwise possessing the necessary information for timely filings. Both companies also failed to make the required disclosure in their proxy statements or annual reports regarding delinquent Section 16(a) reports.[7]

Two directors and officers of Legacy were also charged in the sweep and ordered to each pay a $30,000 civil penalty for their own failures to timely file beneficial ownership reports on Form 4 and Schedule 13G.[8] According to the SEC orders, even though the insiders represented that their delinquent filings "resulted from the failure of senior Legacy personnel to make timely filings on [their] behalf," they remained legally responsible for complying with filing requirements. This includes taking adequate steps "to monitor whether timely and accurate filings were made on [their] behalf…."[9]

This is not the first such sweep, as the SEC has conducted similar initiatives for more than a decade. The sweep reflects the SEC's continued focus on timely beneficial ownership and insider transaction reporting obligations and underscores the importance of closely monitoring compliance with these requirements.

SEC Charges Independent Director and Ex-CEO of Public Company with Concealing Close Friendship with Company Executive

On September 30, 2024 the SEC announced that it had settled charges against public company Church & Dwight & Co. Inc.'s former CEO James R. Craigie for violating proxy disclosure rules by misrepresenting his status as an independent director.[10] The charges stem from a close personal friendship that had developed between Craigie, who served as Church & Dwight's CEO from 2004 until 2015 (and non-independent director from 2004 until 2019), and a high-ranking executive at the company.

According to the SEC's complaint, Craigie had a mentoring relationship with the executive starting in 2017 that by 2020 had turned into a close personal friendship. Notwithstanding the relationship, Craigie, who by that time had been appointed by the board as an independent director, did not disclose the relationship in his annual D&O Questionnaires. Specifically, in 2021, 2022, and 2023 he answered "no" to a question about whether he had a "material relationship" with the company or "any other relationship" with the company or its management.[11]

In 2021 and 2022, based on Craigie's responses to the D&O Questionnaire, the board affirmatively determined that Craigie met the criteria for independence and included in the company's 2021 and 2022 proxy statements a statement representing that Craigie was an independent director and met all independence requirements. The company became aware of the relationship and determined that Craigie was no longer considered an independent director before the 2023 proxy statement was published.

The SEC provided the following evidence to show the existence of a close personal relationship between Craigie and the executive:

- Craigie often paid travel expenses (more than $100,000 between 2020 and 2023) for Craigie, the executive, and their spouses to vacation together. Craigie extended this courtesy to other friends, but not to any other company executives.[12]
- Craigie wanted to help the executive become the company's CEO and provided the executive with confidential information relating to an internal board process to consider CEO candidates. When the board began considering external candidates, Craigie and the executive solicited a mutual friend to serve as CEO on a short-term basis to allow the executive time to gain experience and later fill the role. Craigie did not disclose to the board his or the executive's relationship with the external CEO candidate.

The SEC also described how Craigie and the executive coordinated to hide their relationship from the board and other executives, including lying to hide their shared vacations.

According to the SEC complaint, due to Craigie's concealment of his relationship with the executive, the company's 2021 and 2022 proxy statements, which represented that Craigie was an independent director, contained misstatements of material fact. The SEC found Craigie directly liable for these misstatements "by failing to disclose information relevant to the independence determination and then permitting his name to be used in connection with Church & Dwight's proxy solicitation."[13] In addition, Craigie was found to have benefitted personally from the misleading proxy statement disclosure because his status as an independent director allowed him to participate in the CEO succession process even though his friend, the executive, was a candidate for the role.

Without admitting or denying the allegations, Craigie agreed to (i) be permanently enjoined from further violations of the proxy provisions of the Exchange Act, (ii) pay a civil penalty of $175,000, and (iii) observe a five-year officer-and-director bar.[14]

This case is the latest reminder of the importance of considering relationships beyond only those with the listed company in assessing a director's independence under stock exchange listing rules, including relationships between the director and executive officers of the company. Companies should give consideration to the types of relationships that could undermine director independence under these listing rules, including what might be considered a "close personal friendship."

SEC DISCLOSURE UPDATES

SEC Approves Amendments to Regulation S-T and Technical Changes to Enhance Security of EDGAR

As discussed in our Client Alert, on September 27, 2024, the SEC approved amendments to Rule 10 and Rule 11 of Regulation S-T,[15] Form ID (the application for EDGAR access), and the EDGAR Filer Manual to reflect updated login, password, and other account access protocols for filers and other registrants using the SEC's EDGAR system.[16] The amendments are related to technical changes intended to enhance the security of EDGAR, collectively referred to as EDGAR Next.

Under the legacy EDGAR system, registrants had one login per company. EDGAR Next will require filers to authorize specific individuals (each with their own account credentials) to manage their EDGAR accounts. Individuals can obtain individual account credentials for EDGAR Next by logging into Login.gov at any time.

EDGAR Next features a new EDGAR Filer Management dashboard (the Dashboard) which will allow a filer's designated account administrators to take certain actions with respect to the filer's EDGAR account. Account administrators may delegate additional account administrators, users (who can make submissions on behalf of the filer), and technical administrators (required if the filer connects to the optional APIs), and may also delegate filing authority to an unlimited number of EDGAR accounts (Delegated Entities), which can include "law firms, financial services companies, . . . and other entities engaged in the business of submitting EDGAR filings on behalf of their clients."[17]

Section 16 filers (and other individual filers) may, instead of obtaining individual account credentials, authorize filing agents or other third party to enroll them in EDGAR Next and authorize one or more individuals to act as their account administrators. The Dashboard will include "bulk delegation functionality" to assist Section 16 filers who have filing obligations with respect to multiple companies.

A filer's account administrators are required to confirm on an annual basis through the Dashboard that all of the filer's users, account and technical administrators, and/or Delegated Entities, remain authorized by the filer to act on its behalf, and that all information related to the filer on the Dashboard is accurate. Failure to complete this annual confirmation on a timely basis will result in deactivation of a filer's EDGAR access.

EDGAR Next will also make available optional application programming interfaces (APIs) to allow filers to, among other things, manage their EDGAR accounts with minimal manual interaction with EDGAR.

The EDGAR Next Dashboard will go live on March 24, 2025 (the EDGAR Next Launch Date). During this period before the EDGAR Next Launch Date, filers should determine whom to authorize as account administrators at time of enrollment in EDGAR Next, and, if relevant, whom to add as users and/or Delegated Entities.

SEC STATEMENTS

SEC Chair Cautions Companies Against "AI Washing" in Office Hours Video

On September 4, 2024, SEC Chair Gary Gensler, speaking in a brief SEC-hosted "Office Hours" video, reminded companies that they must comply with securities laws in connection with disclosures around artificial intelligence (AI).

As a threshold matter, Gensler noted that a company that discusses AI in its earnings calls or in board meetings should consider whether such discussions indicate that AI is "potentially material to [the company's] business and to investors," in which case public disclosure would be required.

Gensler reminded registrants that they may need to define for investors what they mean when they refer to AI. Specifically, companies should be prepared to explain (i) how and where AI is being used within the company and (ii) whether it is being developed internally or supplied by third parties.

Gensler also advised companies to avoid using boilerplate AI risk factors and claims about AI prospects that lack a "reasonable basis." For risk factors, Gensler noted that companies should consider the various risks that AI could pose to companies, "including operational, legal, [and] competitive."

Chair Gensler's statement is a good reminder of the SEC's recent focus on AI-related disclosures by companies. The transcript of Gensler's Office Hours video is available here, and the video is available here.

Nasdaq Modifies Phase-In Schedules for Certain Corporate Governance Requirements for Newly Public Companies

On August 26, 2024, the SEC approved Nasdaq's proposal to amend the Nasdaq Listing Rules to, among other things, modify the phase-in schedules for independent director and committee requirements for companies following their listing in connection with an initial public offering (IPO) (the Governance Rule Update).[18] A mark-up showing the changes made to the Nasdaq Listing Rules pursuant to the Governance Rule Update is available here and certain key changes are summarized below.

Nasdaq Governance Rules Background

The Nasdaq Listing Rules require listed companies to maintain an independent audit committee comprised of at least three independent directors and an independent compensation committee comprised of at least two independent directors.[19] Companies undergoing certain corporate changes are provided a specified period of time (typically one year from a triggering event) to phase in compliance with these requirements. The Nasdaq Listing Rules also provide a cure period for companies to regain compliance under certain circumstances.[20]

Modified Compensation Committee Phase-in for Newly Public Companies

The Governance Rule Update gives newly public companies more time to appoint at least one independent director to their compensation and nominating committees.

Prior Rule	Governance Rule Update
Required at the company's listing date	Required by the earlier of the date the IPO closes or five business days from the listing date.

This change aligns the Nasdaq rules with common practice of newly public companies to appoint independent directors at a board meeting held between the listing date and the closing date of the IPO, and mirrors the approach taken by the New York Stock Exchange (NYSE).[21]

The remainder of the compensation and nominating committee independence phase-in requirements, as well as the audit committee independence phase-in requirements (which are governed by the Sarbanes-Oxley Act and Exchange Act Rule 10A-3 thereunder), remain unchanged.[22]

Modified Committee Size Phase-in for Newly Public Companies

The Governance Rule Update adds a new phase-in for compliance by newly public companies with the minimum committee size requirements, which was not addressed under the prior rules.

Timeframe for Compliance	Audit Committee[23]	Compensation Committee
On the listing date	At least one member	At least one member
Within 90 days of the listing date	At least two members	——
Within one year of the listing date	At least three members	At least two members

Other Phase-Ins

The Governance Rule Update makes similar changes to phase-in schedules for companies emerging from bankruptcy, companies transferring from other markets, companies listed in connection with a carve-out or spin-off transaction, companies ceasing to qualify as a foreign private issuer, and companies ceasing to be a controlled company.

Unavailability of Cure Periods

The Governance Rule Update codifies Nasdaq's current position that a company relying on any of the committee composition phase-in periods is not also eligible for the relevant cure period immediately following the expiration of the relevant phase-in period unless they came into compliance with the committee composition requirement during the phase-in period and subsequently fell out of compliance before the expiration of the phase-in period.

Nasdaq Limits Ability of Companies to Cure Bid Price Deficiencies by Taking an Action That Causes a New Deficiency

On October 7, 2024, the SEC approved Nasdaq's proposal to limit a company's ability to maintain compliance with Nasdaq's $1.00 minimum bid price requirement (the Minimum Bid Price Requirement) by taking an action that causes non-compliance with another listing requirement (the Bid Price Compliance Rule Update).[24]

The Bid Price Compliance Rule Update applies to situations where the reverse stock split necessary for a company to regain compliance with the Minimum Bid Price Requirement causes the company to fall out of compliance with another Nasdaq requirement, such as the requirements that a company maintain a minimum number of, or number of holders of, Publicly Held Shares (as defined in Nasdaq Listing Rule 5005(a)(35)).[25] Previously, a company could take advantage of successive compliance periods when the action taken to regain compliance with the Minimum Bid Price Requirement caused them to fall out of compliance with a separate listing requirement that had its own cure period.

The Bid Price Compliance Rule Update modifies Nasdaq Listing Rule 5810(c)(3)(A) so that a company will not be considered to have regained compliance with the Minimum Bid Price Requirement if "the Company takes an action to achieve compliance and that action results in the Company's security falling below the numerical threshold for another listing requirement without regard to any compliance periods otherwise available for that other listing requirement." In these circumstances, in order to regain the compliance with the Minimum Bid Price Requirement, the company will have to both (i) cure the other deficiency and (ii) meet the bid price standard for a minimum of 10 consecutive business days.

CORPORATE GOVERNANCE

FW Cook Survey Shows Prevalence of Expanded Clawback Requirements Among Large-Cap Companies

According to a survey conducted by FW Cook,[26] eighty percent (80%) of large-cap companies indicated that they had in place clawback policies that went beyond those mandated by NYSE and Nasdaq listing rules[27] adopted pursuant to the SEC's clawback rules (the Clawback Rules).

The Clawback Rules, which are discussed in our prior Client Alert, required securities exchanges to adopt listing rules requiring listed issuers to adopt and comply with written clawback policies providing that the issuer will recover the amount of any erroneously awarded incentive-based compensation in the event the issuer is required to prepare an accounting restatement due to its material noncompliance with any financial reporting requirement under the securities laws.

According to the FW Cook survey, approximately two-thirds of survey participants reported clawback policies covering a broader population (66%), broader compensation (67%) and broader triggers for restatement (67%) than the minimum required by the Clawback Rules. Further, one-third of companies that reported having clawback policies meeting only the minimum SEC requirements indicated that they were considering adoption of an expanded policy.

Companies should periodically evaluate their clawback policies in light of their governance philosophy, shareholder expectations, and peer and market practices.

Panuwat Update: District Court Denies New Trial and Imposes Civil Penalties

As discussed in our Summer 2024 Quarterly Update, on April 9, 2024, a jury in the U.S. District Court for the Northern District of California found pharmaceutical company executive Matthew Panuwat guilty of insider trading in the first case brought under a novel application of the misappropriation theory of insider trading known as "shadow trading."

On September 9, 2024, the district court denied Panuwat's motion for a new trial and imposed the following penalties on Panuwat: (i) the maximum civil penalty proposed by the SEC (which amounted to three times Panuwat's trading profit, or $321,197.40); and (ii) a permanent injunction from future violations of securities laws. Notably, however, the district court did not impose a bar on Panuwat serving as an officer or director of a public company, stating that a bar of any length would be "extreme" in part due to the facts of this case being "different from other cases, and…less egregious than conduct in cases where other courts issued an officer and director bar."[28]

On November 8, 2024, Panuwat appealed his case to the Ninth Circuit Court of Appeals. Panuwat's appeal opening brief is due to the Ninth Circuit on January 31, 2025 and the SEC's appeal answering brief is due on March 3, 2025.

In light of the verdict and the subsequent developments, companies should review their insider trading polices and training to ensure that it properly addresses the risks of shadow trading.

OTHER UPDATES

California Climate Rule Updates

On September 27, 2024, California Governor Gavin Newsom signed into law SB 219, which amends certain provisions of two California laws imposing climate-related reporting requirements on companies operating in California that meet certain financial thresholds (together, the California Climate Disclosure Laws). The California Climate Disclosure Laws, which were adopted in 2023, are discussed in our prior Client Alert.

SB 253 (codified as Section 38532 of the California Health and Safety Code)	SB 261 (codified as Section 38533 of the California Health and Safety Code)
Imposes greenhouse gas emissions reporting obligations on public and private companies with annual revenues over $1 billion that operate in California.	Requires companies with annual revenues over $500 million that operate in California to publish biennial reports on climate-related financial risks.

Reporting under the California Climate Disclosure Laws is required starting in 2026. SB 219 retained the reporting deadlines but amended certain other aspects of the California Climate Disclosure Laws as follows:

- Gives the California Air Resources Board (CARB) an additional six months for the promulgation of regulations (new deadline: July 1, 2025);
- Gives CARB flexibility to decide when companies should begin reporting Scope 3 emissions (still expected starting in 2027, but no longer required 180 days after Scope 1/Scope 2 disclosures);
- Allows CARB to perform certain responsibilities (e.g., preparing biennial report on climate-related financial risk disclosures) on its own rather than requiring CARB to delegate to a third-party climate reporting organization;
- Allows climate reporting to be consolidated at the parent-company level; and
- Amends the timeline for entities to pay filing fee when submitting disclosure reports (no longer required at time of filing).
- Meanwhile, constitutional challenges to the California Climate Disclosure Laws are pending in the U.S. District Court for the Central District of California in a case brought by the U.S. Chamber of Commerce and other parties.[29]

1. DraftKings Inc, Exchange Act Release No. 101,198 (Sept. 26, 2024), https://www.sec.gov/files/litigation/admin/2024/34-101198.pdf.
2. For SEC guidance on companies using Internet websites and social networking sites in a Regulation FD-compliant manner, see Commission Guidance on the Use of Company Web Sites, Exchange Act Release No. 58,288, Investment Company Act Release No. 28,351 (Aug. 7, 2008), https://www.sec.gov/files/rules/interp/2008/34-58288.pdf; Report of Investigation Pursuant to Section 21(a) of the Exchange Act: Netflix, Inc., and Reed Hastings, Exchange Act Release No. 69,279 (Apr. 2, 2013), https://www.sec.gov/files/litigation/investreport/34-69279.pdf.
3. Press Release, Sec. & Exch. Comm'n, SEC Levies More Than $3.8 Million in Penalties in Sweep of Late Beneficial Ownership and Insider Transaction Reports (Sept. 25, 2024), https://www.sec.gov/newsroom/press-releases/2024-148.
4. Alphabet Inc., Exchange Act Release No. 101,165 (Sept. 25, 2024), https://www.sec.gov/files/litigation/admin/2024/34-101165.pdf.
5. Celsius Holdings, Inc., Exchange Act Release No. 101,168 (Sept. 25, 2024), https://www.sec.gov/files/litigation/admin/2024/34-101168.pdf; Legacy Housing Corp., Exchange Act Release No. 101,172 (Sept. 25, 2024), https://www.sec.gov/files/litigation/admin/2024/34-101172.pdf.
6. Legacy insiders filed more than 200 untimely Form 4s between July 2019 and 2022, and Celsius insiders filed more than 100 untimely Form 4s between February 2018 and August 2023.
7. Item 405 of Regulation S-K generally requires companies to identify and disclose any Section 16(a) reports that were not reported on a timely basis by directors, officers or greater than 10% beneficial owners during the most recent fiscal year or prior fiscal years. See 17 CFR § 229.405.
8. Curtis Drew Hodgson, Exchange Act Release No. 101,170 (Sept. 25,2024), https://www.sec.gov/files/litigation/admin/2024/34-101170.pdf; Kenneth E. Shipley, Exchange Act Release No. 101,171 (Sept. 25, 2024), https://www.sec.gov/files/litigation/admin/2024/34-101171.pdf.
9. Hodgson, Exchange Act Release No. 101,170 at 9; Shipley, Exchange Act Release No. 101,171 at 6-7.
10. Press Release, Sec. & Exch. Comm'n, SEC Charges Independent Director and Ex-CEO of Church & Dwight with Concealing Close Friendship with Company Executive (Sept. 30, 2024), https://www.sec.gov/newsroom/press-releases/2024-161 (Craigie Press Release).
11. Complaint at 8-9, Sec. & Exch. Comm'n v. Craigie, No. 1:24-cv-07382 (S.D.N.Y. Sept. 30, 2024), https://www.sec.gov/files/litigation/complaints/2024/comp-pr2024-161.pdf.
12. Id. at 2.
13. Id. at 14.
14. Craigie Press Release; Final Judgment as to Defendant James R. Craigie, Sec. & Exch. Comm'n v. Craigie, No. 1:24-cv-07382 (S.D.N.Y. Oct. 1, 2024).
15. 17 CFR §232.10-11.
16. EDGAR Filer Access and Account Management, Securities Act Release No. 11,313, Exchange Act Release No. 101,209, Trust Indenture Act Release No. 2,557, Investment Company Act Release No. 35,343 (Sept. 27, 2024), https://www.sec.gov/files/rules/final/2024/33-11313.pdf (EDGAR Next Release).
17. EDGAR Next Release at 59 n.129.
18. Order Granting Approval of a Proposed Rule Change to Rules 5605, 5615 and 5810, Exchange Act Release No. 100,816 (Aug. 26, 2024), https://www.sec.gov/files/rules/sro/nasdaq/2024/34-100816.pdf.
19. Nasdaq Listing Rule 5605(c)(2) (audit committees); Nasdaq Listing Rule 5605(d)(2) (compensation committees). Listed companies are not required to have a nominating committee, but any such committee must be comprised solely of independent directors (Nasdaq Listing Rule 5605(e)(1)).
20. See Nasdaq Listing Rule 5605(b)(1)(A) (cure period for independent majority board requirement), 5605(c)(4) (cure period for audit committee composition requirement), 5605(d)(4) (cure period for compensation committee composition requirement),
21. See NYSE Listed Company Manual 303A.00 (Introduction), https://nyseguide.srorules.com/listed-company-manual/09013e2c85c00743?searchId=2455667267.
22. Compensation and nominating committees of newly public companies are required to be (i) majority independent within 90 days of the company's listing date; and (ii) 100% independent within one year of the company's listing date.
23. This aligns Nasdaq rules with the approach taken by the NYSE. See NYSE Listed Company Manual 303A.00 (Introduction), https://nyseguide.srorules.com/listed-company-manual/09013e2c85c00743?searchId=2455667267.
24. Order Granting Approval of Proposed Rule Change to Modify the Application of Bid Price Compliance Periods, Exchange Act Release No. 101,271 (Oct. 7, 2024), https://www.sec.gov/files/rules/sro/nasdaq/2024/34-101271.pdf
25. See Nasdaq Listing Rules 5550(a)(3) and 5550(a)(4) (Publicly Held Shares requirements for companies with securities listed on the Nasdaq Capital Market); see also Nasdaq Listing Rules 5450(a)(2), 5450(b)(1)(B), 5450(b)(2)(B), and 5450(b)(3)(B) (Publicly Held Shares requirements for companies with securities listed on the Nasdaq Global Market).
26. Hom, Stephen et al., Clawback Provisions that Go Beyond SEC Requirements are Prevalent Among Large-Cap Companies, FW Cook (July 11, 2024), https://www.fwcook.com/Blog/Clawback-Provisions-that-Go-Beyond-SEC-Requirements-are-Prevalent-Among-LargeCap-Companies/.
27. See NYSE Listed Company Manual Section 303A.14 of the Listed Company Manual (Recovery of Erroneously Awarded Compensation); Nasdaq Listing Rule 5608 (Recovery of Erroneously Awarded Compensation).
28. Order on Post-Trial and Remedies Motions, Sec. & Exch. Comm'n v. Panuwat, No. 3:21-cv-06322 (N.D. Cal. Sept. 9, 2024).
29. Complaint, Chamber of Com. of the U.S.A. v. Cal. Air Resources Bd., No. 2:24-cv-00801 (C.D. Cal. Jan. 30, 2024).

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