

## ISS Issues Off-Cycle US Executive Compensation FAQ on Meaning of ‘Robust’ Clawback Policy

October 21, 2024

On October 11, 2024, [Institutional Shareholder Services \(ISS\) released a new FAQ regarding clawback policies](#) as an update to its United States Executive Compensation Policies, which give insight into, among other things, ISS procedures for determining its say-on-pay (SOP) proposal recommendations. Note that companies without an SOP proxy proposal (e.g., emerging growth companies) should not be impacted by this new ISS guidance.

### Procedural significance

ISS FAQs are generally updated annually in November or December for the following year’s proxy season, so this off-cycle addition is noteworthy. This also is the first inclusion of clawback policies in the FAQs relating to the US Executive Compensation Policies.

In short, the new FAQ (which is excerpted in full below) specifies that a clawback policy will not be viewed as “robust” for purposes of ISS’ Executive Compensation Analysis unless it extends beyond Dodd-Frank requirements and applies to all time-vesting awards as well as performance-vesting awards. This is consistent with ISS’ existing position under its Equity Plan Scorecard, where an equity plan will not receive points under the clawback policy metric unless the policy applies to both time- and performance-based awards.

### Implications

Many companies do not go beyond the minimum Dodd-Frank requirements. Regardless, it appears that – going forward – a clawback policy that does not apply to time-based awards will be viewed negatively by ISS in determining its SOP vote recommendation, though it is not clear how much weight will be given to this factor. We continue to think that while companies should periodically revisit their clawback policies and take this new ISS position into account as another factor in the overall calculus, the guiding principle should be to ensure that the policy remains appropriate and best serves its purpose in the company’s particular circumstances.

### New FAQ 46

**What is needed in order for to [sic] ISS to consider a clawback policy “robust,” as displayed in the “Executive Compensation Analysis” section of the research report?**

In order to receive credit for a “robust” clawback policy in the “Executive Compensation Analysis” section of the research report, a company’s clawback policy must extend beyond minimum Dodd-Frank requirements and explicitly cover all time-vesting equity awards. A clawback policy that adheres only to minimum Dodd-Frank requirements will not be considered robust, because those requirements generally do not cover all time-vesting equity awards.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our [legal notices](#).

---

## Key Contacts

Alessandra Murata Palo Alto	amurata@cooley.com + 1 650 843 5696
Barbara Mirza Santa Monica	bmirza@cooley.com +1 310 883 6465
Michael Bergmann Washington, DC	mbergmann@cooley.com +1 202 728 7008
Janice Chan New York	jchan@cooley.com +1 212 479 6383

---

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.