

DATE: [Insert Date]

TO: Board of Directors / Compensation Committee

FROM: [Name of Legal Counsel/Firm]

RE: Legal Risk Advisory: Executive Compensation Clawback Provisions

1. PURPOSE

This advisory letter outlines the legal requirements and potential liability risks associated with executive compensation clawback policies under current regulatory frameworks, including the Dodd-Frank Wall Street Reform and Consumer Protection Act and relevant stock exchange listing standards (NYSE/Nasdaq).

2. MANDATORY COMPLIANCE REQUIREMENTS

Current regulations require publicly traded companies to implement policies for the recovery of incentive-based compensation from current and former executive officers in the event of:

- Accounting restatements due to material noncompliance with financial reporting requirements.
- Errors that would result in a material misstatement if corrected in the current period.

3. IDENTIFIED LEGAL RISKS

- **No-Fault Liability:** Clawbacks are generally triggered regardless of executive misconduct. Failure to enforce recovery may result in exchange delisting or shareholder derivative litigation.
- **Enforceability Conflicts:** Potential conflicts between federal mandates and local labor laws or existing employment agreements.
- **Indemnification Prohibitions:** Companies are prohibited from indemnifying executives against the loss of recouped compensation.
- **Tax Implications:** Risks associated with Section 409A compliance and the recovery of "net-of-tax" versus "gross" compensation.

4. RECOMMENDED ACTIONS

- Review and update existing Compensation Committee Charters.
- Amend executive employment contracts to include explicit acknowledgment of clawback obligations.
- Establish a formal protocol for calculating recoverable amounts following a restatement.
- Ensure disclosure compliance in annual proxy statements.

5. CONCLUSION

Rigorous adherence to clawback provisions is a fiduciary obligation. Failure to implement or exercise these provisions poses significant regulatory and reputational risk to the organization.

Sincerely,

[Signature]

[Name of Lead Counsel]

[Law Firm Name]