

Clearing Agency Governance and Conflicts of Interest



The Securities and Exchange Commission proposed to establish new governance requirements for all registered clearing agencies, including requirements:

- For independent directors and for the composition of the board of directors, its nominating committee, and its risk management committee;
- To identify, mitigate, or eliminate conflicts of interest involving directors or senior managers, and also to document such actions;
- For policies and procedures that obligate directors to report conflicts of interest;
- For policies and procedures for the board to oversee relationships with service providers for critical services; and
- For policies and procedures for the board to solicit, consider, and document the views of participants and other relevant stakeholders.

Why This Matters

The proposed rules would help improve the governance of clearing agencies registered with the Commission by reducing the likelihood that conflicts of interest influence the board of directors or equivalent governing body of a registered clearing agency. The proposed rules would identify certain responsibilities of the board, increase transparency into board governance, and, more generally, improve the alignment of incentives among owners and participants of a registered clearing agency.

How This Rule Applies

The proposed rules would help improve governance arrangements across all registered clearing agencies by increasing transparency into clearing agency decision-making, facilitating fair representation of owners and participants, and mitigating the potential effects of conflicts of interest between owners and participants, large and small participants, and direct and indirect participants.

What's Required

In support of these objectives, the proposed rules would:

- Define independence in the context of a director serving on the board of a registered clearing agency and require that a majority of the board—or 34 percent, if a majority of the voting rights are directly or indirectly held by participants—be independent directors;
- Establish independent director requirements for the composition of certain other board committees and identify circumstances that would preclude a director from being an independent director;
- Establish requirements for a nominating committee, including with respect to the composition of the nominating committee, fitness standards for serving on the board, and a documented process for evaluating board nominees;
- Establish requirements for a risk management committee, including with respect to its purpose, composition, and reconstitution;
- Require policies and procedures that identify, mitigate or eliminate, and document the identification, mitigation or elimination of conflicts of interest; require policies and procedures that obligate directors to report potential conflicts promptly;
- Require policies and procedures that enable the board to oversee relationships with service providers for critical services; and
- Require policies and procedures to solicit, consider, and document the registered clearing agency's consideration of the views of its participants and other relevant stakeholders regarding material developments in its governance and operations.

Additional Information:

The public comment period will remain open for 60 days following publication of the proposing release on the SEC's website or 30 days following publication of the proposing release in the Federal Register, whichever period is longer.