

Clearing Agency Governance and Conflicts of Interest



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

- For independent directors and for the composition of a registered clearing agency's board of directors, nominating committee, and risk management committee;
- To identify, mitigate, or eliminate conflicts of interest involving directors or senior managers and to document such actions;
- For policies and procedures that obligate directors to report conflicts of interest;
- For policies and procedures for the management of risks from relationships with service providers for core 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 new rules will help improve the governance of clearing agencies registered with the Commission by reducing the likelihood that conflicts of interest may influence the board of directors or equivalent governing body of a registered clearing agency. The rules 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.

What's Required

In support of these objectives, the adopted rules:

- 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;

- Require a clearing agency to establish a nominating committee and a written evaluation process for evaluating board nominees and the independence of nominees and directors and specify requirements with respect to its composition, director fitness standards, and documentation of the outcome of the written evaluation process;
 - Require a clearing agency to establish a risk management committee (or committees), specify requirements with respect to the committee or committees' purpose and composition, and include an annual re-evaluation of such composition;
 - Require policies and procedures to 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 for the management of risks from relationships with service providers for core services that directly support the delivery of clearance or settlement functionality or any other purposes material to the business of the registered clearing agency, with delineated roles for senior management and the board; and
 - Require policies and procedures for the board to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders regarding material developments in the registered clearing agency's risk management and operations.
-

What's Next

The adopting release has been published on SEC.gov and will be published in the Federal Register. The compliance date is 12 months after publication in the Federal Register, except for the independence requirements for the board and board committees, for which the compliance date is 24 months after publication in the Federal Register.