

## [Securities Regulation Daily Wrap Up, CLEARANCE AND SETTLEMENT—SEC proposes expanding governance standards for clearinghouses to guard against conflicts of interest, \(Aug. 8, 2022\)](#)

Securities Regulation Daily Wrap Up

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By Suzanne Cosgrove

The rule would impact the independent directors of a clearinghouse, the composition of its board of directors, its nominating committee and its risk management committee.

The SEC has proposed adding new governance requirements for registered clearing agencies to ward off possible conflicts of interest that could influence clearinghouses' board of directors or equivalent governing bodies. The proposed rule would require new clearinghouse policies and procedures regarding conflicts of interest, board obligations to oversee relationships with service providers for critical services, and a board obligation to consider stakeholders' viewpoints (Clearing Agency Governance and Conflicts of Interest, [Release No. 34-95431](#), August 8, 2022).

The [proposed rules](#) also are designed to identify the responsibilities of the board, increase transparency into board governance, and improve the alignment of incentives among owners and participants of a registered clearing agency, the SEC said.

"If adopted, it (the proposal) would enhance governance standards for all registered clearinghouses, particularly with regards to conflicts of interest," said SEC Chair Gary Gensler said in a statement. "I think these rules would help to build more transparent and reliable clearinghouses. This in turn would help ensure our markets are more resilient, protecting investors and building trust in our markets."

**Proposal embeds greater board oversight.** [Among the proposal's points](#) is the stipulation that the majority of a board—or 34 percent, if a majority of the voting rights are directly or indirectly held by participants—be independent directors. In addition, the plan requires policies and procedures that enable the board to oversee relationships with service providers for critical services. It also would require a clearinghouse to solicit, consider and document the views of its participants.

In a release, the SEC also said the proposed rule would advance the policy objectives of the Dodd-Frank Act as it relates to the clearing of security-based swaps by establishing new requirements for policies and procedures that require clearing agencies to identify, mitigate, or eliminate conflicts of interest and to document those actions.

**Prior governance rules withdrawn.** The Commission is withdrawing rules it had previously proposed, but did not adopt, regarding clearing agency governance. Those rules were contained in two separate releases between 2010 and 2011: proposed Regulation MC, proposed Rule 17Ad-25, and proposed Rule 17Ad-26. Since those rules were introduced, the SEC has made multiple changes in its regulatory framework for clearing agencies, the regulator said.

**Dissenting opinions.** [Commissioner Hester Peirce](#) weighed in against the new rules, issuing a statement that criticized it for an "overly prescriptive, regulator-knows-best approach to these matters that risks diluting the duties of directors to the clearing agency," adding that "an embrace of diffuse interests might distract the board from the dry but extremely important task of risk management."

Peirce also questioned how compliance with the proposal's requirement that risk management committees be able to provide risk-based, independent and informed opinions could be enforced. "A better way to facilitate

the formation of competent risk management committees would be to avoid constraining unnecessarily boards' ability to constitute their risk management committees.”

Adding his voice to the opposition, [Commissioner Mark Uyeda](#) stated he was concerned the proposal would limit competition and increase market concentration risks. “To the extent that the proposed rules, if implemented, deter new entrants, then the sole clearing agency handling a particular asset class will be required to take on additional risk as trading volumes grow and become enshrined as a ‘too big to fail’ institution,” Uyeda said.

Public comment period on the proposed release will remain open for 30 days following its publication in the *Federal Register*.

The release is [No. 34-95431](#).

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