

Corporate & Financial Weekly Digest

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CFTC Issues Proposal Regarding Conflicts of Interest and Governance Requirements for DCOs, DCMs and SEFs

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The Commodity Futures Trading Commission has issued a notice of proposed rulemaking to further implement the Conflict of Interest Core Principles for derivatives clearing organizations (DCOs), designated contract markets (DCMs) and swap execution facilities (SEFs) by addressing, among other things, reporting requirements, obligations of transparency in decision-making and limitations on the use or disclosure of non-public information.

Reporting: Under the proposed rule, an SEF or DCM would be required to report to the CFTC when its board rejects a recommendation from, or supersedes an action of, the regulatory oversight committee or the membership or participation committee. A DCO would be required to report to the CFTC when its board rejects a recommendation from, or supersedes an action of, the risk management committee, or when the risk management committee rejects a recommendation, or supersedes an action of, its subcommittee. Further, the regulatory oversight committee of each SEF or DCM would be required to prepare an annual report assessing the regulatory program of such entity.

Governance Fitness Standards: The proposed rules would require DCMs and DCOs to establish and enforce appropriate fitness standards for their members or directors, members of any disciplinary panel or disciplinary committee and certain affiliates, and to collect and verify data evidencing compliance with these standards. Each DCO would also be required to establish transparent governance arrangements in order to permit, among other things, the consideration of the views of owners and participants.

Risk Management Committee: The proposals would require the risk management committee of a DCO to be composed of at least 35% public directors and at least 10% customer representatives.

Diversity of Board of Directors: Each DCM that is publicly listed on a domestic exchange must endeavor, under the proposed rules, to recruit individuals to serve on its board of directors and other decision-making bodies from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

Composition of Governing Boards: The proposed rules would establish a requirement that each DCM design and institute a process for considering the range of opinions held by market participants regarding the function of existing markets and new rules or rule amendments. Each DCO would need to ensure that the composition of its governing board or committee includes market participants, and that its board of directors is comprised of at least 10% representatives of customers.

Regulatory Program: Under the proposed rules, each DCO, DCM and SEF would have to implement a regulatory program to identify, on an ongoing basis, existing and potential conflicts of interest, as well as a method for making fair and non-biased decisions in the event of such a conflict.

Limitations on Use or Disclosure of Non-Public Information: Under the proposals, each DCO, DCM and SEF would be required to establish and maintain written policies and procedures that limit the use or disclosure of non-public information by owners, members of the board, members of any committee, officers or other employees.

Transparency of Governance Arrangements: Each DCO, DCM and SEF would need to make certain information on governance arrangements available to the public and relevant authorities, including summaries of significant decisions.

Comments regarding the notice of proposed rulemaking must be submitted by March 7. The *Federal Register* release can be found [here](#).

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