

SEC Issues Circular and Guidance Note on Transmutation of Independent Non-executive Directors and Tenure of Directors

Overview

On 19th June 2025, the Securities and Exchange Commission (the Commission or SEC) issued a circular directed at public companies and Capital Market Operators (CMOs) classified as Significant Public Interest Entities (SPIEs). The circular focuses on two key areas of corporate governance:

1. The prohibition of the transmutation of Independent Non-Executive Directors (INEDs) into executive roles, and
2. The limitation of directors' tenure.

Following the circular, and in response to concerns raised by stakeholders, the SEC released a Guidance

Note on 1st July 2025 to clarify the scope and application of these rules, particularly for CMOs operating as Financial Market Infrastructures (FMIs) that have been designated as Significant Public Interest Entities and other affected entities.

According to the SEC, this regulatory intervention was prompted by the observed trend of converting INEDs into Executive Directors (EDs), including Chief Executive Officers (CEOs). The practice contravenes the principle of independent directorship outlined in the Nigerian Code of Corporate Governance (NCCG), 2018. Principle 7 of the NCCG provides that INEDs must bring objectivity to board

deliberations and act in the best interest of the company independently of management. They are expected to represent a strong independent voice on the Board, be independent in character and judgment, and be free from relationships or circumstances with the company, its management, or substantial shareholders that may, or appear to, impair their ability to make independent judgments.

Thus, transmuting an INED into an Executive Director role within the same company may blur the line between oversight and management and result in conflicts of interest, thereby eroding board independence and decision-making integrity.

Legal Basis for SEC's Rule

The SEC issued this directive pursuant to its authority under Section 355(r)(iv) of the Investments and Securities Act (ISA), 2025, which empowers the SEC to establish corporate governance standards for public companies and regulated entities.



Scope of Application

The SEC Guidance Note clarifies that its provisions primarily apply to CMOs that operate as Financial Market Infrastructures and have been designated by the Commission as Significant Public Interest Entities. These entities are considered systemically important, have significant investor exposure, or perform critical capital market infrastructure functions.

While the circular was also addressed to Public Liability Companies (PLCs), the Guidance Note states that only specific provisions of the circular and guidance note apply to PLCs. Such provisions are clearly indicated, such as those relating to the prohibition of transmutation of INEDs and expectations under the NCCG, 2018, regarding director tenure and board independence.

The circular and guidance note do not apply to private companies or CMOs that have not been designated as SPIEs by the SEC. However, other CMOs are encouraged to adopt the standards outlined as a matter of best practice, particularly where they are systemically relevant or aspire to a higher level of governance maturity and regulatory readiness.

Key Provisions of the Circular & Guidance Note

i. Prohibition of Transmutation of Independent Non-Executive Directors:

The circular prohibits the transmutation or conversion of INEDs into Executive Directors, including appointment as Chief Executive Officers, within the same company or its group structure. This restriction is aimed at

preserving the independence and objectivity of INEDs, who are appointed to provide oversight, challenge executive decisions, and protect stakeholder interests without being involved in daily management. The SEC emphasized that such conversions undermine the principle of independent directorship and create

conflicts of interest that weaken board accountability. This prohibition is mandatory for all Public Liability Companies and Capital Market Operators designated as Significant Public Interest Entities, particularly those operating as Financial Market Infrastructures. The directive is effective immediately.

ii. Tenure of Directors:

The SEC has introduced mandatory tenure limits for directors of FMI classified as SPIEs. Under the circular, directors may serve a maximum of ten (10) consecutive years in the same company. Where a director serves across a group structure, the combined allowable tenure is twelve (12) consecutive years. The Guidance Note clarifies that these limits are cumulative and include all previous years served prior to the circular's issuance. The purpose of this measure is to encourage board refreshment, reduce entrenchment, and promote governance renewal in critical capital market entities. While this

provision is binding on FMIs classified as SPIEs, PLCs are expected to comply with the tenure provisions of the NCCG, 2018.

iii. Cool-off Period for Appointment as Chairman:

The circular also establishes a cooling-off period for Executive Directors or CEOs who have completed their tenure in a company. Specifically, such individuals are not eligible to be appointed as Chairman of the same company until at least three (3) years have passed from the end of their executive tenure. Furthermore, if appointed as Chairman after the cooling-off period, their

tenure in that role must not exceed four (4) years. This provision aligns with Section 265(6) of the Companies and Allied Matters Act, 2020 and Principle 3 of the NCCG, which promote the separation of powers between the roles of the CEO and Chairman. It is mandatory for FMIs designated as SPIEs and applies to PLCs as part of their adherence to the NCCG's governance standards.

Next Steps for Affected Entities

The provisions of the circular and guidance note take immediate effect from the date of its issuance, making timely compliance critical for all affected entities. Accordingly, PLCs and FMIs designated as SPIEs should:

- Conduct a prompt review of their current board composition for alignment with the recent circular,
- Assess and revise succession plans and governance structures in line with the 10.12-year limits and cool-off periods,
- Align their company constitutions and board charters with the provisions of the circular, and
- Maintain appropriate records and notify the SEC of any planned or ongoing changes to governance structures.

Conclusion

The SEC's circular and subsequent guidance note introduce critical reforms aimed at enhancing corporate governance, board independence, and regulatory compliance within Nigeria's capital market. By prohibiting the transmutation of INEDs, limiting director tenure, and instituting a cooling-off period before former

executives can assume chairmanship roles, the Commission reinforces its commitment to sound governance and investor protection.

While these provisions are immediately binding on SPIE-classified FMs and apply to PLCs where specifically indicated, other capital market operators

are encouraged to adopt them as best practice. Entities are therefore advised to take deliberate steps toward implementation, seek legal or compliance advisory, and engage with the SEC for any clarification on applicability or expectations under the new regime.



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