

Executive Sessions


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- [What is an "executive session"?](#)
 - [Why are executive sessions important?](#)
 - [How many boards hold executive sessions?](#)
 - [How often should directors meet in executive session?](#)
 - [Who can call for an executive session?](#)
 - [Who should lead executive sessions?](#)
 - [Who should set the agenda for executive sessions?](#)
 - [What types of business should be conducted in executive session?](#)
 - [What types of business do directors have authority to conduct in executive session?](#)
 - [Should committees hold executive sessions of their own?](#)
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What is an "executive session"?

Board - or committee - meetings attended solely by independent directors. [More @ executive sessions of committee meetings.](#)


Although this potential problem could be fixed by the time rules are adopted, the Nasdaq's proposed rules would require separate meetings of "independent directors" - but the NYSE's proposed rules would require separate meetings of "non-management" directors, which seems to include all outside directors regardless of whether they are independent.



Why are executive sessions important?


Executive sessions allow independent directors to freely discuss and react to management proposals without fear about how the CEO will react.

These sessions allow independent directors to independently reach consensus on matters and decide whether to challenge the CEO on a particular matter - resulting in a stronger leadership role for the board. [More @ leadership roles of the board.](#)



How many boards hold executive sessions?

According to the 2001 Current Board Practices Survey of the American Society of Corporate Secretaries, about one-third of the respondent companies.



How often should directors meet in executive session?

According to most experts, at least several times a year - ideally at scheduled regular times. [More @ who should lead the executive session.](#)

The NYSE will soon require regularly scheduled executive sessions. If the NYSE's proposed changes to its listing standards are adopted as proposed, each listed company would be required to disclose either the name of the presiding director at each session or the process by which the presiding director is chosen. This requirement will be effective six months after the date the SEC approves the proposed rule.

Normally, executive sessions are held just before - or after - a regular board meeting. Holding an executive session after a board meeting enables the independent directors to react to matters discussed at the board meeting. On the other hand, it may be preferable to hold executive sessions before board meetings as a way to prepare for the board meeting - and to address matters on the upcoming agenda and not be sidetracked by what transpires at the board meeting. Some boards may experiment with both methods and determine what works best for them. For example, Intel's board holds executive sessions in the middle of their board meetings.

Many corporate governance guidelines indicate either when these sessions are held - or who has the authority to call them. [More @ who can call executive sessions.](#)

However, it is surprising how often the topic is sparsely addressed in corporate governance guidelines. Most companies vaguely state that their boards might meet in executive session "periodically." Some guidelines state that the board can have executive sessions "anytime." By not clearly disclosing whether the board does indeed meet in executive session, investors are left to wonder if the independent directors really do meet by themselves.

Much better are provisions that state their boards hold executive sessions on a "regularly scheduled basis". Even better are when companies establish a minimum of how often they hold executive sessions, such as four times a year.

Some guidelines go as far as stating the board will meet in executive session as part of each regular board meeting - and some guidelines state the board will have an "opportunity" to meet in executive session at each regular meeting. These latter examples are ideal - and most experts believe should become the norm under the new listing standards.

Compare:

Core Principle III.A.2 of CalPERS' Corporate Governance Core Principles and Guidelines states "Independent directors meet periodically (at least once a year) alone, without the CEO or other non-independent directors.

Position C.4 of Council of Institutional Investors' Corporate Governance Policies states "The board should hold regularly scheduled executive sessions without the CEO or staff present. The independent directors should also hold regularly scheduled in-person executive sessions without non-independent directors and staff present."

TIAA-CREF's Policy Statement on Corporate Governance states "The board should hold periodic executive sessions at which management, including the CEO, is not present."

The Business Roundtables' Principles of Corporate Governance states "There should be an opportunity for the board to meet periodically, at least annually, outside the presence of the CEO and other inside directors. This may be a portion of a normally scheduled board meeting, and the CEO's annual performance evaluation is a good opportunity for such a meeting."

Guideline 14 of the General Motors Board Guidelines states "The independent Directors of the Board will meet in Executive Session two or three times each year."

Guideline 8 of the General Electric Board Guidelines states "The board will have at least three regularly scheduled meetings a year for the non-employee directors without management present. The directors have determined that the chairman of the management development and compensation committee will preside at such meetings, and will serve as the presiding director in performing such other functions as the board may direct, including advising on the selection of committee chairs and advising management on the agenda for board meetings. The non-employee directors may meet without management present at such other times as determined by the presiding director."

The NACD's Report from the Blue Ribbon Commission on Director Professionalism states "Regularly scheduled executive sessions set an expectation that private discussions among independent directors will be held as a matter of course, thus disarming concern over an action that may otherwise be perceived as unusual or

threatening. Boards should adopt a policy of holding periodic executive sessions at both the full board and committee levels on a preset schedule."

The American Bar Association's Corporate Director's Handbook states that many boards strengthen the role of nonmanagement directors by "having the nonmanagement directors meet privately with no members of management present, at least once a year, to review on a formal basis CEO and other senior management performance."

Who can call for an executive session?

Normally, the same person that leads the session - either the non-executive chair or lead director (and if neither of these positions exist, the chair of one of the primary committees - normally, the corporate governance or nominating committee). [More @ who should lead the executive session.](#)

Most experts believe, the board's corporate governance guidelines should set forth when these sessions normally are held - and who has the authority to call them.

As for committee executive sessions, they are normally called for by the committee chair - or are routinely held as part of each committee meeting. [More @ committee executive sessions.](#)

Who should lead executive sessions?

According to some experts, the nonexecutive chair or lead director - if neither of these positions exist, the chair of one of the primary committees (normally, the corporate governance or nominating committee). [More @ what responsibilities should a non-executive chair have - and what does a lead director do.](#)

These same persons should set the executive session agenda - and be responsible for sending out any materials in advance of the session. [More @ executive session agendas.](#)

About half of the companies that address executive sessions in their corporate governance guidelines identify which director presides over these sessions. In most cases, the non-executive chair or lead director is identified as the person that presides. The difficult situation is when a board does not have either of these two positions. Microsoft's guidelines solve this potential dilemma by identifying the chair of its Governance and Nominating committee as the presiding director. Similarly, General Motors taps the chair of its Committee on Director Affairs to preside.

Compare:

Appendix C of CalPERS' Corporate Governance Core Principles and Guidelines states when the CEO and Independent chair positions are held by separate people, the nonexecutive chair should "develop the agenda for and moderate executive sessions of the Board's independent directors [and] act as the principal liaison between independent directors and the CEO on sensitive issues."

Guideline 14 of the General Motor Board Guidelines states "Executive Sessions will be chaired by the Chairman of the Committee on director Affairs. The format of these meetings will include a discussion with the Chairman and the Chief Executive Officer on each occasion."

Guideline 8 of the General Electric Board Guidelines states "The directors have determined that the chairman of the management development and compensation committee will preside at such meetings, and will serve as the presiding director in performing such other functions as the board may direct, including advising on the selection of committee chairs and advising management on the agenda for board meetings."

Who should set the agenda for executive sessions?

According to some experts, the same person that leads the session - either the non-executive chair or lead director (and if neither of these positions exist, the chair of one of the primary committees - normally, the corporate governance or nominating committee). [More @ who should lead the executive session.](#)

It is not uncommon for executive sessions to not have materials prepared specifically for it - rather, the matters discussed at the executive sessions typically directly relate to the matters on the regular board meeting's agenda. As a result, the board materials also can serve as important materials for the executive session. [More @ board materials.](#)

What types of business should be conducted in executive session?

At a minimum, according to some experts, business that directly implicates the CEO and any other managers that serve as directors. [More @ what business do directors have authority to conduct in executive session.](#)

This includes discussions regarding CEO evaluations, CEO compensation and, to some extent, CEO succession planning. Of course, final reports on these matters should be conducted with the CEO present - and some of these matters should include the CEO's input along the way (particularly CEO succession planning). [More @ CEO succession planning.](#)

Compare:

The Business Roundtable's Principles on Corporate Governance states that "The performance of the CEO should generally be reviewed at least annually without the presence of the CEO and other inside directors. The board should have an understanding with the CEO with respect to the criteria on which he or she will be evaluated, and there should be a process for communicating the board's evaluation to the CEO."

The NACD's Report from the Blue Ribbon Commission on Director Professionalism states "Boards should ensure that independent directors create and control the methods and criteria for evaluating the CEO." In addition, the NACD recommended in its President's March 2002 Congressional testimony concerning reform efforts that "Boards should consider formally designating an independent director as chairman or lead director. If they do not make such a designation, they should designate, regardless of title, an independent member to lead the board in its most critical functions, including setting board agendas with the CEO, evaluating CEO and board performance, holding executive sessions, and anticipating and responding to corporate crises."

What types of business do directors have authority to conduct in executive session?

Typically, directors don't have authority to make any decisions while in executive session. Rather, the independent directors might reach a consensus in executive session that they then reveal at a formal board meeting - at which final decisions are made.

In comparison, committees normally have authority to make final committee decisions while in executive session. However, many final committee decisions are then presented to the full board for approval. [More @ committee executive sessions.](#)

Should committees hold executive sessions of their own?

According to most experts they should. In fact, a lot of committee business should occur in executive session - as most committees now are comprised of independent directors.

In addition, most experts believe these committee executive sessions are important because directors infrequently have opportunities to meet without the presence of senior management or their subordinates. Outside of board executive sessions, these meetings may be the only opportunity for independent directors to have open