



Securities Law ADVISORY ■

DECEMBER 8, 2020

Nasdaq Moves to Boost Listed Companies' Board Diversity

On December 1, 2020, Nasdaq filed a [proposal](#) with the SEC to adopt new listing rules related to board diversity and disclosure. The stated goal of the proposal is to provide stakeholders with a better understanding of Nasdaq-listed companies' current board composition and enhance investor confidence that diversity is being considered when selecting directors.

If approved, the new listing rules would require most Nasdaq-listed companies to have, or explain why they do not have, at least two diverse directors, including one who self-identifies as female and one who self-identifies as either an underrepresented minority or LGBTQ+.

Additionally, all companies subject to the new listing rules would be required to annually provide board-level diversity data, in a pre-approved matrix format, of each of their directors' self-identified gender, race, and LGBTQ+ status.

Timeline for Compliance

The timeframe to meet the requirements and expectations set forth in the proposed listing rules would be as follows:

- **All companies** will be required to annually report their board-level diversity data **one year** after the SEC's approval of the listing rule.
- **All companies** will be expected to have **one diverse director within two years** of the SEC's approval of the listing rule.
- Companies listed on the **Nasdaq Global Select Market and Nasdaq Global Market** will be expected to have **two diverse directors within four years** of the SEC's approval of the listing rule.
- Companies listed on the **Nasdaq Capital Market** will be expected to have **two diverse directors within five years** of the SEC's approval of the listing rule.

Failure to Comply

Companies that fail to meet the applicable board composition objectives within the required timeframes will not be subject to delisting if they disclose the reasons for not meeting the objectives in proxy statements or information statements for annual shareholder meetings or on company websites. If a company provides such disclosure on its website, the company must also notify Nasdaq of where the information is available by submitting the URL link through the Nasdaq Listing Center no later than 15 calendar days after the company's annual shareholder meeting.

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

Exceptions

Foreign issuers and smaller reporting companies without a director self-identifying as an underrepresented minority or LGBTQ+ would have additional flexibility in satisfying the proposed board composition requirement if they have two female directors. Additionally, in acknowledgement that the definition of underrepresented minority may not apply to foreign issuers, Nasdaq is proposing the option of a separate board diversity matrix format for foreign issuers.

Supportive Resources

Nasdaq will partner with a corporate leadership data solutions provider to aid companies with board composition planning challenges. Through the provider's platform, the partnership will enable companies that have not yet met the proposed diversity objectives to access a larger community of highly qualified, diverse, board-ready candidates to amplify director search efforts.

Additionally, Nasdaq has uploaded [FAQs](#) to assist companies in comprehending and complying with the proposed listing rules.

NYSE Board Advisory Council

In May 2019, the NYSE launched the [NYSE Board Advisory Council](#) to address the critical need for inclusive leadership by connecting diverse candidates with companies seeking new directors. The council, composed of 20 member CEOs, leverages personal networks to identify talented candidates interested in serving on boards. Through an exclusive online network and series of live events, the council introduces candidates to companies seeking to expand diversity on corporate boards.

At this time, the NYSE has not put forth a proposal for a rule change similar to Nasdaq.

Future Outlook

These recent actions by Nasdaq and the NYSE reflect the heightened scrutiny companies are under to internally promote and encourage diversity and inclusion, specifically at the board and executive levels. With a new incoming Administration and to-be-appointed commissioner expected to place a strong emphasis on environmental, social, and governance (ESG) standards, Nasdaq- and NYSE-listed companies will likely be subject to equal or greater governance and compliance requirements for the foreseeable future.

You can subscribe to future *Securities* advisories and other Alston & Bird publications by completing our [publications subscription form](#).

If you would like more information, please feel free to contact one of the attorneys in our [Securities Group](#).

ALSTON & BIRD

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2020

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86 10 8592 7500
BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
DALLAS: Chase Tower ■ 2200 Ross Avenue ■ Suite 2300 ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
FORT WORTH: 3700 Hulen Street ■ Building 3 ■ Suite 150 ■ Fort Worth, Texas, USA, 76107 ■ 214.922.3400 ■ Fax: 214.922.3899
LONDON: 5th Floor, Octagon Point, St. Paul's ■ 5 Cheapside ■ London, EC2V 6AA, UK ■ +44.0.20.3823.2225
LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, North Carolina, USA, 27601-3034 ■ 919.862.2200 ■ Fax: 919.862.2260
SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001
SILICON VALLEY: 1950 University Avenue ■ Suite 430 ■ East Palo Alto, California, USA 94303 ■ 650.838.2000 ■ Fax: 650.838.2001
WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333