



Securities Law ADVISORY ■

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SEC Approves Nasdaq Board Diversity Rule

On August 6, 2021, the SEC approved Nasdaq's Board Diversity Rule, which is designed to provide stakeholders with insight into a company's current board composition and encourage board diversity for companies.

Board Diversity Objectives

Under the new rule, each Nasdaq-listed company, subject to certain exceptions, must publicly disclose information on the self-identified gender and racial characteristics and LGBTQ+ status of the company's board of directors. All companies listed on Nasdaq's U.S. exchange will need to use the Board Diversity Matrix found [here](#), or a format substantially similar, to annually disclose such data. Each company must also have, or explain why it does not have, at least two members of its board of directors who are diverse, meaning at least one director who self-identifies as female and at least one director who self-identifies as an underrepresented minority or LGBTQ+.

Exceptions

Smaller reporting companies and foreign issuers can meet the diversity objective by including two female directors, and companies with five or fewer directors can meet the diversity objective by including one diverse director. Special purpose acquisition companies (SPACs) are not required to provide such disclosure information or to have, or disclose that they do not have, any minimum number of diverse directors until a business combination has occurred.

Transition Periods

The transition period for Nasdaq-listed companies to meet the new diversity objectives or explain their reasons for not doing so is as follows:

- Companies have until the later of August 8, 2022 or the date the company files its proxy or information statement for the company's annual shareholder meeting during 2022 to disclose board-level diversity data.
- Nasdaq Global Select Market and Nasdaq Global Market companies are required to have, or explain why they do not have, one diverse director by August 7, 2023 and two diverse directors by August 6, 2025.
- Nasdaq Capital Market companies are required to have, or explain why they do not have, one diverse director by August 7, 2023 and two diverse directors by August 6, 2026.

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- Regardless of listing tier, companies with boards of five or fewer directors are required to have, or explain why they do not have, one diverse director by August 7, 2023.

Failure to Meet Diversity Objectives

While the new rule requires companies to disclose gender and racial characteristics and LGBTQ+ status of the company's board of directors annually, the rule does not mandate diverse composition of the board. A company will not be subject to delisting if it chooses to explain why it does not meet the new diversity objectives; however, it must provide an explanation in its proxy statement, in the information statement for its annual shareholder meeting, or on its website. Nasdaq will simply verify that the company has provided an explanation, but no further action will be taken.

Board Recruiting Services

In connection with the new rule, Nasdaq has partnered with Equilar, Athena Alliance, and the Boardlist to provide listed companies that do not have at least one director who self-identifies as female and at least one director who self-identifies as either an underrepresented minority or person of LGBTQ+ status with one year of access to board recruiting services. This will provide interested companies with access to a network of diverse candidates for companies to evaluate and help them meet the new diversity objectives if they so decide.

Board Diversity Disclosure Matrix

All Nasdaq-listed companies, except those that are exempt under Nasdaq Listing Rule 5605(f)(4), are required to disclose board-level diversity statistics using the format below or a format substantially similar.

Board Diversity Matrix (As of [DATE])				
Total Number of Directors	#			
	Female	Male	Non-Binary	Did Not Disclose Gender
Part I: Gender Identity				
Directors	#	#	#	#
Part II: Demographic Background				
African American or Black	#	#	#	#
Alaskan Native or Native American	#	#	#	#
Asian	#	#	#	#
Hispanic or Latinx	#	#	#	#
Native Hawaiian or Pacific Islander	#	#	#	#
White	#	#	#	#
Two or More Races or Ethnicities	#	#	#	#
LGBTQ+	#			
Did Not Disclose Demographic Background	#			

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