

## **IT'S OFFICIAL: SEC APPROVES NASDAQ BOARD DIVERSITY PROPOSAL – COMPLY OR EXPLAIN WHY NOT**

Aug 06, 2021

The SEC today approved Nasdaq's board diversity proposal, which will require each Nasdaq-listed company to publicly disclose information on the voluntary self-identified gender and racial characteristics and LGBTQ+ status of the company's board of directors, subject to certain exceptions.

The information will be required to be presented in a Board Diversity Matrix, or a substantially similar format, on an aggregated basis by specified characteristics. Nasdaq has posted examples of acceptable and unacceptable matrices [here](#). If the company elects to provide such disclosure on its website, then it must publish the disclosure concurrently with its proxy statement. It must also submit a URL link to the disclosure through the Nasdaq Listing Center within one business day after such posting.

In addition, each Nasdaq-listed company, subject to certain exceptions, must have at least two members of its board of directors who are "diverse" (as defined), including at least one director who self-identifies as female and at least one director who self-identifies as an underrepresented minority or LGBTQ+. If a company does not have such diverse directors, it must provide an explanation for not doing so, which could include a description of a different approach.

Nasdaq-listed companies will have a transition period to meet the diversity objectives or explain their reasons for not doing so, and the timeframe is based on a company's listing tier:

- Nasdaq Global Select Market and Nasdaq Global Market companies will have, or explain why they do not have, one diverse director by the later of two years of the SEC's approval date (August 7, 2023), and two diverse directors within four years (August 6, 2025), or the date the company files its proxy or information statement (or, if the company does not file a proxy, in its Form 10-K or 20-F) for the company's annual shareholder meeting in that year.
- Nasdaq Capital Market companies will have, or explain why they do not have, one diverse director by the later of two years from the SEC's approval date (August 7, 2023), and two diverse directors within five years (August 6, 2026), or the date the company files its proxy or

information statement (or, if the company does not file a proxy, in its Form 10-K or 20-F) for the company's annual shareholder meeting in that year.

- Companies with boards of five or less directors, regardless of listing tier, will have, or explain why they do not have, one diverse director by the later of two years from the SEC's approval date (August 7, 2023) or the date the company files its proxy or information statement (or, if the company does not file a proxy, in its Form 10-K or 20-F) for the company's annual shareholder meeting in that year.

Nasdaq also will provide certain eligible Nasdaq-listed companies with one year of complimentary access for two users to a board recruiting service, which would provide access to a network of board-ready diverse candidates for companies to identify and evaluate.

Explaining its support for the proposal, the SEC release explained that the board diversity rules establish a disclosure-based framework that would make consistent and comparable statistics widely available to investors regarding the number of diverse directors serving on a Nasdaq-listed company's board. It would also provide increased transparency and require an explanation regarding why a Nasdaq-listed company does not meet the proposed board diversity objectives, for those companies that do not choose to meet such objectives.

If a company fails to comply with the new rules, Nasdaq's Listing Qualifications Department would notify the company, which would then have a specified period to regain compliance.

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