

REMINDER: INITIAL BOARD DIVERSITY MATRIX NOW REQUIRED FOR NASDAQ COMPANIES

Aug 11, 2022

All Nasdaq-listed companies must now disclose a board diversity matrix by the later of (1) August 8, 2022, or (2) the date the company files its proxy statement for the 2022 annual meeting of shareholders (or, if companies do not file proxy statements, in their annual report on Form 10-K or 20-F). Companies may provide the disclosure in their proxy statement (or if companies do not file a proxy, on Form 10-K or 20-F), or on the company's website. Nasdaq's website provides examples of acceptable and unacceptable disclosures.

As discussed in our August 6, 2021 client alert, beginning on August 7, 2023 listed companies will need to have, or explain why they don't have, at least one (and by later specified dates, two) diverse directors. Certain relief is provided for Smaller Reporting Companies and Foreign Issuers, as well as companies with five or fewer directors.

Companies that elect to provide the board diversity matrix disclosure on their websites must:

- Complete a board diversity matrix by using Nasdaq's fillable PDF for U.S. companies (or fillable PDF for Foreign Isusers) or creating their own templates so long as the format is substantially similar to the standardized template and is in searchable format.
- Clearly label the disclosure as the company's board diversity matrix on its website. Nasdaq recommends posting it on the company's investor relations webpage or other webpage where governance documents are housed.
- Complete Section 10 (Board Diversity Disclosure) of the Company Event Form (online through the Nasdaq Listing Center).

The board diversity matrix must disclose the total number of directors on the board, as well as:

- the number of directors based on gender identity (female, male, or non-binary) and the number of directors who did not disclose gender;
- the number of directors based on race and ethnicity (African American or Black, Alaskan Native or Native American, Asian, Hispanic or Latinx, Native Hawaiian or Pacific Islander,

White, or Two or More Races or Ethnicities), disaggregated by gender identity (or did not disclose gender);

- the number of directors who self-identify as LGBTQ+; and
- the number of directors who did not disclose a demographic background under the 2nd and 3rd bullets above.

Companies who filed 2022 proxy statements (or annual reports on Form 10-K or 20-F) before August 8, 2022, and did not include the matrix may disclose the matrix either (1) on the company's website or (2) in an amended annual report (such as on Form 10-K or 20-F).

RELATED PRACTICE AREAS

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MEET THE TEAM



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