

Nasdaq Proposes New Rules Regarding Board Diversity for Listed Companies

On December 1, 2020, the Nasdaq Stock Market filed a proposal with the U.S. Securities and Exchange Commission (SEC) to adopt new listing rules that relate to diversity of board composition, proposed Rule 5605(f), and disclosure of statistical information on board composition, proposed Rule 5606.

Under proposed Rule 5605(f), Nasdaq-listed companies other than investment companies (which are expressly carved out) would be required to either (i) have at least one director who self-identifies as female and at least one director who self-identifies as an underrepresented minority or LGBTQ+, or (ii) explain why the company does not have at least two directors on its board that self-identify in such categories. Underrepresented minorities include board members who identify as Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, or two or more races or ethnicities. Smaller reporting companies and foreign issuers (including foreign private issuers) may satisfy the requirements with two female directors as opposed to a female and an underrepresented minority or LGBTQ+. There are also other certain carve-outs and variations in the rule with respect to foreign issuers.

According to Nasdaq's news release regarding its proposed rule, the goal "is to provide stakeholders with a better understanding of the company's current board composition and enhance investor confidence that all listed companies are considering diversity in the context of selecting directors, either by including at least two diverse directors on their boards or by explaining their rationale for not meeting that objective."

Proposed Rule 5606 would also require Nasdaq-listed companies to provide statistical information on the company's board of directors and its members' self-identified gender, race, and self-identification as LGBTQ+. The Nasdaq proposal includes a board diversity matrix that companies could use to provide the statistical information called for by proposed Rule 5606.

In its proposal to the SEC, Nasdaq found, based on its review of dozens of empirical studies, that an extensive body of academic research demonstrates that diverse boards are positively associated with improved governance and financial results. Additionally, Nasdaq noted that with respect to gender diversity, U.S. company boards lag behind those in other jurisdictions where requirements related to board diversity have been imposed.

Under the proposal, all Nasdaq-listed companies would be required to disclose board diversity statistics within one year of the SEC's approval of the listing rule. Additionally, each company listed on the Nasdaq Global Select or Global Market tiers will have two years to appoint at least one diverse director and four years to appoint two directors pursuant to the proposed rule.

Companies listed on the Nasdaq Capital Market tier will have five years to comply with the requirement.

The proposed rule can be found [here](#).



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