

What will companies be required to do if the proposed board diversity and disclosure rules are approved by the SEC?

Identification
Number 1745

If approved by the SEC, the new listing rules would require all companies listed on Nasdaq's U.S. exchange to publicly disclose consistent, transparent diversity statistics regarding their board of directors, using a standardized disclosure matrix template. Additionally, the rules would compel 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+. Foreign companies and smaller reporting companies would have additional flexibility in satisfying this requirement with two female directors.

A copy of the rule filing can be accessed [here](#). For more information, read [What Your Company Should Know about Nasdaq's Board Diversity Rule Proposal](#). View Nasdaq's disclosure matrix template [here](#).

Publication Date*: 11/25/2020

Identification Number: [1745](#)

When does Nasdaq expect the SEC to approve the board diversity and disclosure rule filing?

Identification
Number 1746

We do not know at this time. However, please note that on January 8, 2021 Nasdaq filed a [comment letter](#) with the Commission giving its consent to extend the time period for Commission action on the Board Diversity Proposal from January 4 to March 11. This will not only provide the SEC with more time to review the proposal, it also gives Nasdaq time to respond to the more than 150 comment letters received as of January 9 in a comprehensive manner. The extension also gives additional time to any commenter who wants to submit feedback to the Commission.

Publication Date*: 1/10/2021

Identification Number: [1746](#)

Why is Nasdaq proposing this listing rule regarding board diversity and disclosure?

Identification
Number 1747

The goal of the proposal is to provide stakeholders with a better understanding of a 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 standard.

Publication Date*: 11/30/2020

Identification Number: [1747](#)

If the SEC approves the proposed board diversity and disclosure rules, when will companies be required to comply with the new rules?

Identification
Number 1748

Under the proposal, all Nasdaq-listed companies will be required to publicly disclose board-level diversity statistics through Nasdaq's proposed disclosure framework within one year of the SEC's approval of the listing rule.

The timeframe to meet the minimum board composition expectations set forth in the proposal will be based on a company's listing tier. Specifically, companies listed on Nasdaq Global Select Market or Nasdaq Global Market will be expected to have one Diverse director within two years of the SEC's approval of the listing rule, and two Diverse directors within four years. Companies listed on the Nasdaq Capital Market will be expected to have one Diverse director within two years of the SEC's approval of the listing rule, and two Diverse directors within five years. For companies that are not in a position to meet the expected board composition objectives within the required timeframes, they will not be subject to delisting if they provide a public explanation of their reasons for not meeting the objectives.

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Identification Number: [1748](#)

Why didn't you just set a hard mandate like California, so there is some consistency in board diversity rules?

Identification
Number 1749

Nasdaq believes this proposal drives change in a manner that is sensitive to the realities and challenges faced by listed companies. Nasdaq's disclosure-based rule framework will drive progress and provide stakeholders with a better understanding of companies' current board compositions and philosophies regarding diversity, while at the same time offering companies flexibility and empowering them to maintain decision-making authority over their board's composition.

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Identification Number: [1749](#)

How will Nasdaq help companies comply with finding new Diverse directors?

Identification
Number 1750

Nasdaq is working to provide resources to help our listed companies and their advisors understand and achieve compliance with the proposed board diversity and disclosure requirements. Nasdaq has developed a board diversity tool kit and created a dedicated mailbox to pose questions related to the proposed board diversity listing rules. Email your questions to drivingdiversity@nasdaq.com.

Nasdaq recognizes that companies want to leverage their own network to create a candidate pipeline, while also tapping into a broader community of candidates outside their immediate network through a cost effective, transparent process. Therefore, Nasdaq has introduced a partnership with Equilar, a provider of corporate leadership data solutions, to aid Nasdaq-listed companies that have not yet met the propose diversity objectives with their board composition planning objectives. Learn more about services available through Equilar's BoardEdge platform [here](#).

Publication Date*: 11/30/2020

Identification Number: [1750](#)

Where can companies view Nasdaq's board diversity matrix template?

Identification
Number 1751

A template of the board diversity matrix can be found [here](#).

Publication Date*: 11/30/2020

Identification Number: [1751](#)

If the board diversity and disclosure rule filing is approved, how will companies be required to disclose board diversity statistics?

Identification
Number 1752

Companies would annually disclose board-level diversity data using this [Board Diversity Matrix](#) or a format substantially similar. Companies would be required to provide this disclosure annually in the Company's proxy statement or information statement for its annual meeting for shareholders, or on the Company's website. If the Company elects to disclose the information on its website, the Company must also submit such disclosure and a URL link to such disclosure through the Nasdaq Listing Center within 15 calendar days of the Company's annual shareholders meeting.

Publication Date*: 11/30/2020

Identification Number: [1752](#)

How many years' worth of board diversity statistics would companies need to disclose under the proposed board diversity and disclosure rules?

Identification
Number 1753

For the first year a company is required to disclose board diversity statistics, the company would be required to publish board diversity statistics for the current year only. Each subsequent year, the company will be required to publish its data for the last two years.

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Identification Number: [1753](#)

How did Nasdaq decide on diversity definitions for these rules?

Identification
Number 1754

Nasdaq considered a number of factors before deciding on its terminology and definition of a Diverse director. These included the board diversity laws in affect or being proposed by various states, definitions and terminology used in the EEO-1 Report and discussions with numerous business leaders as well as social justice and governance organizations.

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Identification Number: [1754](#)

Would a company need to give Nasdaq a copy of its board diversity disclosure matrix under the proposed board diversity and disclosure rules?

Identification
Number 1755

Companies that choose to disclose the board diversity matrix only on their website must also submit such disclosure to Nasdaq along with a URL link to the information on the company's website. This information must be provided to Nasdaq through the Nasdaq Listing Center within 15 calendar days of the Company's annual shareholders meeting.

Companies that choose to include the board diversity disclosure matrix in their proxy statement or information statement for their annual shareholders meeting do not need to provide a copy to Nasdaq.

Publication Date*: 11/30/2020

Identification Number: [1755](#)

How does Nasdaq define "Underrepresented Minority" for companies incorporated in the U.S.?

Identification
Number 1756

For companies incorporated in the U.S., "underrepresented minority" means an individual who self-identifies as one or more of the following: 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.

Publication Date*: 11/30/2020

Identification Number: [1756](#)

Who qualifies as an "Underrepresented Individual in Home Country Jurisdiction" for a Foreign Issuer, for purposes of the proposed board diversity and disclosure rule?

Identification
Number 1757

For a Foreign Issuer, an "Underrepresented Individual in Home Country Jurisdiction" is defined as a person who self-identifies as an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the Company's home country jurisdiction.

Publication Date*: 11/30/2020

Identification Number: [1757](#)

How does Nasdaq define "Smaller Reporting Companies" for purposes of the proposed board diversity and disclosure rule?

Identification
Number 1758

For purposes of the proposed board diversity and disclosure rule, "Smaller Reporting Company" has the definition set forth in Rule 12b-2 under the Act. Under 12b-2 of the Act, a Smaller Reporting Company "means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101 of this chapter), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that: (1) Had a public float of less than \$250 million; or (2) Had annual revenues of less than \$100 million and either: (i) No public float; or (ii) A public float of less than \$700 million."

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Identification Number: [1758](#)

What flexibility is Nasdaq providing for Smaller Reporting Companies in connection with the proposed board diversity and disclosure rules?

Identification
Number 1759

Smaller Reporting Companies would have additional flexibility in satisfying the diversity objective in the proposed board diversity and disclosure rules with two Female directors. In addition, all companies listed on our Nasdaq Capital Market will receive an additional year to meet the diversity objective (i.e., these companies must have one director within two years after SEC approval of the rule and two within five years of SEC approval).

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Identification Number: [1759](#)

How does Nasdaq define "Foreign Issuer" for purposes of the proposed board diversity and disclosure rule?

Identification
Number 1760

Nasdaq defines a Foreign Issuer as (a) a Foreign Private Issuer (as defined in Rule 5005(a)(19)) or (b) a company that (i) is considered a "foreign issuer" under Rule 3b-4(b) under the Act and (ii) has its principal executive offices located outside of the United States. This includes all Foreign Private Issuers and any foreign issuers that are not Foreign Private Issuers so long as they are also headquartered outside of the United States.

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Identification Number: [1760](#)

What flexibility is Nasdaq providing to foreign companies in connection with the proposed board diversity and disclosure rule?

Identification
Number 1761

Nasdaq proposes to provide Foreign Issuers with additional flexibility with regard to the second Diverse director. Foreign Issuers could satisfy the second director objective by including another Female director, or an individual who self-identifies as LGBTQ+ or an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the company's home country jurisdiction. Foreign Issuers may also elect to satisfy the board composition disclosure requirement through an [alternative disclosure matrix template](#).

Publication Date*: 11/30/2020

Identification Number: [1761](#)

How is the proposed board diversity and disclosure rule applied to SPACs?

Identification
Number 1762

SPACs listed under IM-5101-2 would be exempt from the proposed board diversity and disclosure rules. They do not have to provide the disclosure information or to have, or disclose that they do not have, any minimum number of diverse directors until one year following the completion of its business combination.

Publication Date*: 12/3/2020

Identification Number: [1762](#)

Are any companies exempt from Nasdaq's proposed board diversity and disclosure rules?

Identification
Number 1763

Yes. The proposed rules currently exempt non-operating companies from proposed rule. Consistent with Nasdaq's corporate governance rules the following types of companies are exempt:

- acquisition companies listed under IM-5101-2;
- asset-backed issuers and other passive issuers (as set forth in Rule 5615(a)(1));
- cooperatives (as set forth in Rule 5615(a)(2));
- limited partnerships (as set forth in Rule 5615(a)(4));
- management investment companies (as set forth in Rule 5615(a)(5));
- issuers of non-voting preferred securities, debt securities and Derivative Securities (as set forth in Rule 5615(a)(6)); and
- issuers of securities listed under the Rule 5700 Series.

Publication Date*: 12/7/2020

Identification Number: [1763](#)

If a company ceases to be an Exempt Company under the proposed board diversity and disclosure rules, would the company have to have two Diverse directors when it ceases to be exempt?

Identification
Number 1764

Any company that ceases to be an Exempt Company will have one year from the date that it ceases to be exempt to comply with the proposed board diversity and disclosure rules.

Publication Date*: 11/30/2020

Identification Number: [1764](#)

What happens if a company can't find Diverse directors by the applicable deadline set forth in the proposed board diversity rule?

Identification
Number 1765

If a company has not been able to add two Diverse directors by the applicable deadlines, the company can comply with the proposed board diversity rule by explaining why it does not have two Diverse directors, following the specific disclosure instructions set forth in proposed Rule 5605(f)(3).

Note that in order to aid Nasdaq-listed companies that have not yet met the proposed diversity objectives with their board composition planning efforts, Nasdaq has introduced a partnership with Equilar, a provider of corporate leadership data solutions. Learn more about services available through Equilar's BoardEdge platform [here](#).

Publication Date*: 11/30/2020

Identification Number: [1765](#)

Can a company be de-listed for failing to add the minimum Diverse board members or for refusing to disclose board diversity metrics as required by the proposed board diversity and disclosure rules?

Identification
Number 1766

Yes, but not until the company has been given an opportunity to cure the deficiency.

If a Company fails to have two Diverse directors by the applicable deadline and also fails to explain why through the disclosure required by proposed Rule 5605(f)(3), Nasdaq's Listing Qualifications Department would promptly notify the company that it has until the later of its next annual shareholders meeting or 180 days from the event that caused the deficiency to cure the deficiency. The company can cure the deficiency either by nominating additional directors so that it satisfies the Diversity requirement of proposed Rule 5605(f)(2) or by providing the disclosure required by proposed Rule 5605(f)(3). If a company does not regain compliance within the applicable cure period, the Listings Qualifications Department would issue a Staff Delisting Determination Letter. A company that receives a Staff Delisting Determination can appeal the determination to the Hearings Panel through the process set forth in Rule 5815.

If a company fails to disclose board diversity metrics as required by proposed Rule 5606, Nasdaq will notify the company that it is not in compliance with a listing requirement, and the company will be allowed 45 calendar days to submit a plan sufficient to satisfy Nasdaq staff that the company has adopted processes and procedures designed to identify and disclose the information required under Rule 5606 in the future. If the company does not do so, it would be issued a Staff Delisting Determination, which the company could appeal to a Hearings Panel pursuant to Rule 5815.

Publication Date*: 11/30/2020

Identification Number: [1766](#)

Do companies need to disclose board diversity metrics in their proxy statements or information statements under the proposed board diversity and disclosure rules?

Identification
Number 1767

No. Companies can instead disclose them on their websites. However, if a Company chooses to disclose on their websites, the Company must also submit such disclosure along with a URL link to the information through the Nasdaq Listing Center within 15 calendar days of the Company's annual meeting.

What if we have Diverse board members who don't want to be counted as Diverse (e.g., an LGBTQ+ community member who is not "out")? Would we have to add additional Diverse board members to comply with the proposed board diversity and disclosure rules?

Identification
Number 1768

Directors may choose to opt out rather than reveal their Diversity characteristics to the company. In that case, the company would identify these directors in the "undisclosed" category in the board diversity disclosure matrix. If a company has directors who do not wish to be identified or counted as Diverse, the company could explain that in order to satisfy the diversity requirement in the proposed board diversity and disclosure rules, or the company could add additional Diverse directors who consent to the disclosure of their Diversity characteristics.

Publication Date*: 11/30/2020

Identification Number: [1768](#)

Do companies have to replace current board members with Diverse board members or can companies bring on Diverse board members by expanding their boards in order to comply with the proposed board diversity and disclosure rules?

Identification
Number 1769

The proposed rules do not limit board size. A company can add a Diverse director by replacing a current director or by adding an additional board seat.

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Identification Number: [1769](#)

We have a Diverse member on our company's advisory board. Would that director count toward having "two Diverse directors" for purposes of complying with the proposed board diversity and disclosure rules?

Identification
Number 1770

No. Proposed Rule 5605(f) would exclude emeritus directors, retired directors and members of an advisory board. The diversity requirements of the proposed rule would only be satisfied by Diverse directors actually sitting on the board of directors of the company.

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Identification Number: [1770](#)

What reasons does Nasdaq deem acceptable when explaining why a company does not have the minimum number of Diverse board members under the proposed board diversity and disclosure rules?

Identification
Number 1771

Nasdaq will not assess the substance of the company's explanation, but will verify that the company has provided one. Nasdaq believes these disclosures will provide stakeholders with a better understanding of the company's current board composition and its philosophy regarding diversity.

The following are several examples of such disclosure included in the rule filing for the proposed board diversity and disclosure rules:

- If under Israeli law regarding board diversity, an Israeli company is required only to have a minimum of one woman on the board and such Israeli company chooses to comply with Israeli home country law in lieu of meeting the diversity objectives of Rule 5605(f)(2)(B), it may choose to disclose that "the Company is incorporated in Israel and required by Israeli law to have a minimum of one woman on the board, and satisfies home country requirements in lieu of Nasdaq Rule 5605(f)(2)(B), which requires each Foreign Issuer to have at least two Diverse directors."
- If a U.S. company had two Diverse directors but one resigned due to unforeseen circumstances, it could disclose, for example: "Due to the unexpected resignation of Ms. Smith this year, the Company does not have at least one director who self-identifies as Female and one director who self-identifies as an Underrepresented Minority or LGBTQ+. We intend to undertake reasonable efforts to meet the diversity objectives of Rule 5605(f)(2)(A) prior to our next annual meeting and have engaged a search firm to identify qualified Diverse candidates. However, due to unforeseen circumstances, we may not achieve this goal."
- Or a U.S. company may disclose that it chooses to define diversity more broadly than Nasdaq's definition by considering national origin, veteran status or individuals with disabilities when identifying nominees for director because it believes such diversity brings a wide range of perspectives and experiences to the board.

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Identification Number: [1771](#)

Will newly listed companies have a phase-in period to satisfy the diversity objective set forth in the proposed board diversity and disclosure rules?

Identification
Number 1772

Yes. After the four or five year phase-in period expires, newly listed companies on Nasdaq, including IPOs, direct listings, or a company listing in connection with a business combination with a SPAC (a "de-SPAC" transaction), will receive one year from the date of listing to satisfy the diversity objective or explain why they have not. Companies listing before the expiration of the phase-in would have the remainder of phase-in period or one year from the date of listing, whichever is longer, to satisfy the requirement.

Publication Date*: 12/3/2020

Identification Number: [1772](#)

If a company isn't utilizing the Smaller Reporting Company designation on its SEC filings but technically qualifies, is it afforded the same flexibility provided to Smaller Reporting Companies with regards to satisfying the two Diverse director objective set forth in the proposed board diversity and disclosure rules? Identification Number 1773

No. However, a company in this situation who does not meet the applicable two Diverse director requirement could provide an explanation, such as the below example, as to why it does not comply:

“While the Company technically qualifies as a Smaller Reporting Company, it does not file its SEC reports utilizing the Smaller Reporting Company designation. However, the Company believes that it is similarly situated to other Smaller Reporting Companies in terms of its annual revenues and public float, and therefore has chosen to satisfy Rule 5605(f)(2)(C) in lieu of Rule 5605(f)(2)(A) and has satisfied this requirement by having at least two Diverse directors on the board who self-identify as Female.”

Publication Date*: 11/30/2020

Identification Number: [1773](#)

Would companies transferring from another exchange need to comply with the proposed board diversity and disclosure rules? Identification Number 1774

Yes, but there is a one year transition period after the phase-in period expires. If the newly listed company was not previously subject to a substantially similar requirement of another national securities exchange and lists after the phase-in period expires, it will be allowed one year from the date of listing to satisfy the requirement. If it lists before the phase-in period expires, it would have the remainder of the four or five year phase-in period or one year from the date of listing, whichever is longer.

Publication Date*: 11/30/2020

Identification Number: [1774](#)

Is the diversity disclosure requirement set forth in the proposed board diversity and disclosure rules limited to the board of directors, or would companies also need to disclose diversity metrics for management and staff? Identification Number 1775

The proposed diversity disclosure requirement is limited to the board of directors of the company.

Publication Date*: 11/30/2020

Identification Number: [1775](#)

How are biracial or multi-ethnic directors counted under the proposed board diversity and disclosure rules? Identification Number 1776

Directors who self-identify as biracial or multi-ethnic are counted as Diverse under Nasdaq's proposal.

Publication Date*: 11/30/2020

Identification Number: [1776](#)

How do Nasdaq's proposed board diversity and disclosure rules compare to California's Board Gender Diversity Mandate? Identification Number 1777

While Nasdaq's definition of a "Diverse" director substantially aligns with California's, there are some key differences. These are highlighted [here](#).

Publication Date*: 11/30/2020

Identification Number: [1777](#)

Can a director choose not to self-identify with respect to gender, race, ethnicity and/or LGBTQ+? Identification Number 1778

Yes. Disclosure by a director is voluntary and directors are not required to self-identify with respect to gender, race, ethnicity and/or LGBTQ+. The aggregate information that companies must provide Nasdaq allows for a company to indicate that information is undisclosed.

Publication Date*: 12/4/2020

Identification Number: [1778](#)