

## NASDAQ'S PROPOSAL TO ADOPT LISTING REQUIREMENTS FOR BOARD DIVERSITY WHAT NASDAQ-LISTED COMPANIES SHOULD KNOW

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On December 1, 2020, Nasdaq submitted a proposal to the SEC seeking approval of new listing requirements for board diversity. You can view a copy of the proposed listing rule [here](#) and submit comments to the SEC [here](#).

\*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.

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 our 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.

A summary of the top five things companies should know is available below. We will update this document as our proposal continues to make its way through the SEC review and approval process.

Nasdaq listed clients that have questions about the proposal may email us at [drivingdiversity@nasdaq.com](mailto:drivingdiversity@nasdaq.com).

### **FIVE THINGS NASDAQ LISTED COMPANIES SHOULD KNOW**

1. **Companies would be required to disclose board-level diversity statistics.**

The proposal, if approved, would require all operating companies listed on Nasdaq's U.S. exchange to publicly disclose consistent, transparent diversity statistics regarding their board of directors.

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

2. **Companies would be required to have, or explain why they do not have, at least two diverse directors.**

The proposal, if approved, would require most Nasdaq listed companies to have, or explain why their boards do not include at least two diverse directors, including one who self-identifies as female and one who self-identifies as either an underrepresented minority or LGBTQ+.

3. **Smaller Reporting Companies and Foreign Issuers would be provided additional flexibility to comply with the diverse director requirement.**

Both Smaller Reporting Companies and Foreign Issuers are required to have at least one director who is female. However, Smaller Reporting Companies would be able to satisfy the second diverse director requirement with a director who is female, an underrepresented minority, or LGBTQ+. Similarly, Foreign Issuers would be able to comply with the second diverse director requirement with a director who is female, or a minority based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the company's home country jurisdiction or LGBTQ+.

4. **The proposal is subject to SEC review and is open for public comment.**

The public, including investors, companies, and their representatives can comment on the proposal. 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. You can submit comments to the SEC [here](#).

5. **We are prepared to help.**

We are diligently working to provide a myriad of resources to help our listed companies and their advisors understand and achieve compliance with these new requirements.

- **Webinar for Listed Companies.** On December 9th, Nasdaq hosted a webinar to share more information about our proposal and answer client questions. You can listen to a replay of the webinar [here](#).
- **Board Composition Planning.** Nasdaq will introduce an exclusive partnership with Equilar, the leading provider of corporate leadership data solutions, to aid Nasdaq listed companies with board composition planning objectives. Learn more about services available through our Equilar partnership [here](#).
- **FAQs.** A list of Frequently Asked Questions is available on on Listing Center website [here](#).
- **Dedicated Mailbox for Questions.** Email your questions to [drivingdiversity@nasdaq.com](mailto:drivingdiversity@nasdaq.com).