

NASDAQ'S BOARD DIVERSITY RULE WHAT NASDAQ-LISTED COMPANIES SHOULD KNOW

LAST UPDATED OCTOBER 1, 2021

Nasdaq's Board Diversity Rule, which was approved by the SEC on August 6, 2021, is a disclosure standard designed to encourage a minimum board diversity objective for companies and provide stakeholders with consistent, comparable disclosures concerning a company's current board composition.

If you have questions about implementation of the rule or gaining access to complimentary resources to facilitate your board search, email us at drivingdiversity@nasdaq.com.

BOARD DIVERSITY RULE

Nasdaq's Board Diversity Rule requires companies listed on our U.S. exchange to:

- Publicly disclose board-level diversity statistics using a standardized template; and
- Have or explain why they do not have at least two diverse directors.

The rule also provides additional flexibility for Smaller Reporting Companies and Foreign Issuers, which can meet the diversity objective by including two female directors, and for all companies with five or fewer directors, which can meet the diversity objective by including one diverse director.

The following table summarizes the transition periods for companies listed on Nasdaq prior to August 6, 2021. Transition periods for companies listing on or after August 6, 2021 are detailed [here](#).

	Initial Board Matrix	One Diverse Director or Provide Explanation*	Two Diverse Directors or Provide Explanation*
Nasdaq Global Select or Global Markets	August 8, 2022 or the date the company files its 2022 proxy, whichever is later	August 7, 2023 (2 years)	August 6, 2025 (4 years)
Nasdaq Capital Market			August 6, 2026 (5 years)
Boards with 5 or fewer directors			N/A

* A company that files its proxy statement after these dates in each respective calendar year would have to explain why it meets, or does not meet, the objective at the time of its proxy filing (or, if the company does not file a proxy, in its Form 10-K or 20-F).

WHAT NASDAQ-LISTED COMPANIES SHOULD KNOW

1. Nasdaq will host several live webinars to help companies understand key elements of the Board Diversity Rule.

Nasdaq will host several live webinars to help companies understand key elements of the rule, how to gain access to a variety of free board recruiting services, and give participants an opportunity to ask questions. Webinars will also be available for replay for attendees.

2. Companies need to disclose board-level diversity data annually.

All operating companies listed on Nasdaq's U.S. exchange will need to use the Board Diversity Matrix found [here](#), or a format substantially similar, to annually disclose board-level diversity data. Companies will provide this disclosure in the company's proxy statement or its information statement (or if the company does not file a proxy, its Form 10-K or 20-F), or on the company's website. Examples of acceptable (i.e., same or substantially similar) and unacceptable (i.e., substantially different) disclosures are provided [here](#).

As noted in the chart above, companies must disclose the initial matrix in 2022.

- If a company files its 2022 proxy BEFORE August 8, 2022 and DOES NOT include the Matrix, then the company has until August 8, 2022 to provide the Matrix in its Form 10-K or on its website.
- If a company files its 2022 proxy ON or AFTER August 8, 2022, then it must either include the Matrix in its proxy or post the Matrix on its website.
- If a company does not intend to file a 2022 proxy, then the company has until August 8, 2022 to provide the Matrix on its website.

Companies that elect to provide the Matrix on their website must also complete a short form through the Listing Center that includes the URL link to the disclosure.

3. Companies need to meet a board diversity objective or explain their reasons for not doing so, and the explanation could include describing a different approach.

Nasdaq-listed companies that 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+, can provide an explanation for not doing so, and their explanation could include a description of a different approach. Nasdaq will verify that the company has provided an explanation, but will not assess the merits of the explanation.

This rule is not a mandate. If a company chooses to explain why it does not meet the diversity objectives, it can provide its explanation in its proxy statement, information statement for its annual shareholder meeting, or on the company's website.

4. There is a transition period for companies to meet the diversity objectives, or explain why they do not.

As noted in the chart above, companies have a transition period to meet the diversity objectives or explain their reasons for not doing so.

5. **Smaller Reporting Companies, Foreign Issuers, and companies with five or fewer directors have additional flexibility to meet the diversity objectives.**

Smaller Reporting Companies have additional flexibility and can meet the diversity objective with two female directors, or with one female director and one director who is an underrepresented minority or LGBTQ+. Similarly, Foreign Issuers can meet the diversity objective with two female directors, or with one female director and one director who is an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the country of the company's principal executive offices, or LGBTQ+. Companies with five or fewer directors can meet the diversity objective by having at least one diverse director.

As with other Nasdaq-listed companies, if a company chooses to explain why it does not meet the diversity objectives, it can provide its explanation in its proxy statement, information statement for its annual shareholder meeting, or on the company's website.

6. **Non-operating companies, including SPACs until they complete their business combinations, are exempt from the Board Diversity Rule.**

SPACs listed under Nasdaq Rule IM-5101-2 are not required to provide the board diversity matrix or to meet, or explain why they do not meet, the board diversity objective until after their business combination.

In addition to SPACs, limited partnerships, closed end funds, management investment companies and issuers of exchanged traded products, among others, are exempt from the Board Diversity Rule. Refer to [FAQs 1762, 1763 and 1764](#) for more information regarding exemptions and how the Rule applies after a SPAC completes a business combination.

7. **Nasdaq-listed companies have access to a variety of free board recruiting services.**

Nasdaq is proud to have established partnerships with Equilar, Athena Alliance, Heidrick & Struggles and the Boardlist. We realize one size doesn't fit all, which is why we are building relationships with a growing number of collaborative partners. To learn more about these relationships and how your company can access these resources, please review our guide to [Advancing Boardroom Diversity](#). You can also email your Relationship Manager or Vanessa Mesics at Vanessa.Mesics@nasdaq.com.

8. **We are prepared to help.**

We maintain a toolkit of resources to help our listed companies and their advisors understand and achieve compliance with these new requirements.

- **FAQs.** A list of Frequently Asked Questions is available on Listing Center website [here](#).
- **Dedicated Mailbox for Questions.** Email your questions to drivingdiversity@nasdaq.com.