

SEC Signs Off on NASDAQ Family Relationship Definition Changes

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On February 13, 2020, the SEC approved, on an accelerated basis, the Nasdaq's proposed rule change amending the definition of "family member" to exclude stepchildren who do not share a director's home and domestic employees who reside in a director's home for purposes of determining director independence under Nasdaq Rule 5065(a)(2).

Under the new Nasdaq rule, a "family member" will be defined to be a person's "spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who share such person's home." The Nasdaq's interpretation of the new rule would exclude stepchildren, unless they share the director's home, reflecting the reality that the old rule was often over-inclusive when determining a director's independence. These changes bring the Nasdaq's family definition in line with the NYSE's interpretation of a "family relationship" for purposes of determining a director's independence.

Boards of Directors should continue to ask questions about stepchild relationships in its D&O questionnaires, because companies will still need to make independence judgments based on the facts and circumstances of each unique director-stepchild relationship.

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