



Nasdaq Proposes to Add Board Diversity Disclosure to Listing Requirements

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On December 1, 2020, the Nasdaq Stock Market LLC (Nasdaq) filed a proposal with the Securities and Exchange Commission (SEC) to adopt new listing rules related to board diversity and disclosure.

If approved by the SEC, Nasdaq's proposals would require listed companies to (A) have at least one director who self-identifies as female and (B) have at least one director who self-identifies as Black or African-American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, two or more races or ethnicities, or as LGBTQ+, or (C) explain why they do not have at least two directors on their board who self-identify in the categories listed above.

Nasdaq seeks to influence the behavior of listed companies by imposing disclosure requirements; however, it should be noted that companies that are not in a position to meet the board composition requirements within the required timeframes will not be subject to delisting, provided they disclose their reasons for not meeting the objectives. According to *The Wall Street Journal*, Nasdaq estimates that, over the past six months, more than three-quarters of listed companies would have fallen short of the proposed requirements.

Foreign issuers, including foreign private issuers, and smaller reporting companies will have more flexibility and may satisfy the requirements under this proposed rule by having two female directors.

The requirements under this proposed rule will become effective following two calendar years from the date of SEC approval. That date is extended to four years for companies listed on Nasdaq Global Select or Global Market tiers and five years for companies listed on the Nasdaq Capital Markets tier.

Nasdaq's proposals would require listed companies to provide statistical information in a proposed uniform format on their boards of directors related to a director's self-identified gender, race, and self-identification as LGBTQ+. Each listed company will have one calendar year from the date the SEC approves the proposed listing requirements to comply with the requirements for statistical information regarding diversity.

It is possible that Nasdaq's proposal may encourage other regulators, such as the SEC, to adopt disclosure requirements applicable to all public companies, regardless of exchange listing.

Capital Markets & Securities Law Watch will monitor how Nasdaq-listed companies respond to these proposals.

Authors

Michael J. Blankenship

J. Eric Johnson

John P. Niedzwiecki

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Michael J. Blankenship



J. Eric Johnson



John P. Niedzwiecki

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