



SEC Approves New Nasdaq Board Diversity Requirements

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On August 6, 2021, the Securities and Exchange Commission (SEC) approved a Nasdaq proposal to amend its listing rules intended to increase diversity on corporate boards of directors. Under the approved new rules, Nasdaq-listed companies must publicly disclose information related to the voluntary, self-identified gender and racial characteristics and LGBTQ+ status for members of their boards of directors. Additionally, each listed company would be required, subject to certain exceptions (including for newly listed or smaller companies), “to have, or explain why it does not have, at least two members of its board of directors who are Diverse, including at least one director who self-identifies as female and at least one director who self-identifies as an Underrepresented Minority or LGBTQ+.” In 2020, Nasdaq estimated that more than 75% of its listed companies would not have satisfied the new listing requirements.

Nasdaq would not evaluate the veracity or substance of explanations provided by companies in their disclosures. In a letter to the SEC, John A. Zecca, the Chief Legal Officer and Chief Regulatory Officer at Nasdaq, stated that listed companies would be able to “choose to disclose as much, or as little, insight into the company’s circumstances or diversity philosophy as the company determines, and shareholders may request additional information directly from the company if they need additional information to make an informed voting or investment decision.”

SEC Chairman Gary Gensler commented that “[t]hese rules will allow investors to gain a better understanding of Nasdaq-listed companies’ approach to board diversity, while ensuring that those companies have the flexibility to make decisions that best serve their shareholders.” The new Nasdaq requirements would complement existing disclosure requirements, under Item 407(c)(2)(vi) of Regulation S-K, that companies disclose whether, and how, boards or board nominating committees consider diversity in nominating new directors.

Capital Markets & Securities Law Watch will continue to monitor developments in this area and will provide our readers with updates

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