Nasdaq

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

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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. A copy of the approval order is here.

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.

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. Companies can register here for the first webinar, which is scheduled for August 17.

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

Companies have until the later of August 8, 2022, or the date the company files its proxy or information statement for the company's annual shareholder meeting during 2022. 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.

If the company elects to provide such disclosure on its website, then the company must publish this disclosure concurrently with its proxy statement or its information statement (or if the company does not file a proxy, its Form 10-K or 20-F). It must also submit a URL link to the disclosure through the Nasdaq Listing Center within one business day after such posting.

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+, would provide an explanation for not doing so, and their explanation could include a description of a different approach.

This rule is not a mandate and does not set a hard target that companies must adhere to regardless of their circumstances. If a company chooses to explain why it does not meet the diversity objectives, it would provide its explanation in its proxy statement, information statement for its annual shareholder meeting, or on the company's website. Nasdaq will verify that the company has provided an explanation, but will not assess the merits of the explanation. There is no right or wrong reason that a company may give for not having at least two directors.

4. **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 would provide its explanation in its proxy statement, information statement for its annual shareholder meeting, or on the company's website.

5. S**PACs are exempt from the Board Diversity Rule.**

SPACs listed under IM-5101-2 are not required to provide disclosure information or to have, or disclose that they do not have, any minimum number of diverse directors until their business combination. Following the business combination, such companies must meet, or explain why they do not meet, the applicable diversity objectives by the later of two years from the date of listing or the date the company files its proxy statement or its information statement (or, if the company does not file a proxy, in its Form 10-K or 20-F) for the company's second annual meeting of shareholders subsequent to the company's listing.

6. **There is a transition period for Nasdaq-listed companies to meet the diversity objectives, or explain why they do not.**

Nasdaq-listed companies will have a transition period to meet the diversity objectives or explain their reasons for not doing so, and the timeframe is based on a company's listing tier:

- Nasdaq Global Select Market or Nasdaq Global Market companies are required to have, or explain why they do not have, one diverse director by August 7, 2023, and two diverse directors by August 6, 2025.

- Nasdaq Capital Market companies are required to have, or explain why they do not have, one diverse director by August 7, 2023 and two diverse directors by August 6, 2026.

- Companies with boards that have five or fewer directors, regardless of listing tier, are required to have, or explain why they do not have, one diverse director by August 7, 2023.

If a company files its proxy statement or its information statement (or, if the company does not file a proxy, in its Form 10-K or 20-F) for the company's annual shareholders meeting after the anniversary of the Effective Date in the calendar year for each respective year noted above, then the company will have until the date it makes such filing to meet, or explain why it does not meet, the applicable diversity objectives.

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, and the Boardlist to aid Nasdaq-listed companies in their search for highly-qualified, diverse, board-ready candidates. We realize one size doesn't fit all which is why we are building relationships with a growing number of collaborative partners. Here's how your company can gain free access to Equilar's BoardEdge Platform and Equilar Diversity Network, Athena Alliance's community of women leaders, and theBoardlist's premium talent marketplace.

8. 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.

- ***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.