

NASDAQ'S PROPOSAL TO ADOPT LISTING REQUIREMENTS FOR BOARD DIVERSITY WHAT NASDAQ-LISTED COMPANIES SHOULD KNOW

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On December 11, 2020, the SEC published Nasdaq's Proposal to Adopt Listing Rules Related to Board Diversity for comment in the Federal Register. On January 8, 2021, Nasdaq publicly consented to a 45-day extension for the Commission to act on the Proposal. On February 26, Nasdaq filed an [Amendment](#) to propose modifications and clarifications to the Proposal based on comments submitted to the SEC.

The goal of the proposal is to provide stakeholders with a better understanding of a company's current board composition and enhance investor confidence that our listed companies are considering diversity in the context of selecting directors, either by meeting the proposed board diversity objectives or by explaining their reasons for not doing so, which can include describing an alternative approach.

The latest information regarding the proposal, including our response to the comments submitted by issuers and other stakeholders are summarized below. We will continue to update this document as our proposal makes its way through the SEC review and approval process.

Companies that have questions about the proposal may email us at drivingdiversity@nasdaq.com.

WHAT'S HAPPENING NOW

On February 26, 2021, Nasdaq submitted a [response to comments letter](#) to the Commission, which details our response to the more than 200 commenters who submitted letters thus far. Nasdaq also filed an [Amendment](#) to propose modifications and clarifications based on comments submitted to the SEC by Nasdaq-listed companies and other stakeholders. These revisions are designed to:

- Offer more flexibility to companies with small boards. Nasdaq is revising the Proposal to provide companies with boards of five or fewer directors the ability to achieve the diversity objective by having one diverse director, instead of two.
- Provide companies a one year grace period. Nasdaq is revising the Proposal to provide a one year grace period for a listed company that no longer meets the diversity objectives as a result of a vacancy on the board of directors, for example if a diverse director falls ill or resigns.
- Align listed companies' disclosure requirements with their annual meetings. Nasdaq is proposing that issuers make board diversity information publicly available in advance of annual shareholder meetings to align with the timing of other governance-related disclosures, such as those provided in the proxy.
- Provide companies that list on Nasdaq after the phase-in period additional time to add diverse directors. To ensure the timeline is reasonable for new companies, Nasdaq is proposing to provide all new companies listing after the phase-in period with two years to fully meet the diverse director objective.

FIVE THINGS NASDAQ LISTED COMPANIES SHOULD KNOW

1. **Companies would disclose board-level diversity statistics.**

Under the proposal, if approved, all operating companies listed on Nasdaq's U.S. exchange would publicly disclose consistent, transparent diversity statistics regarding their board of directors.

Companies would annually disclose board-level diversity data using the Board Diversity Matrix found [here](#), or a format substantially similar. As revised, companies would be required to 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.

If the company provides 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.

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

Under the proposal, if approved, most Nasdaq listed companies could meet, or explain why they do not meet, an objective of at least two diverse directors, including one who self-identifies as female and one who self-identifies as either an underrepresented minority or LGBTQ+.

As amended, companies with five or fewer directors could meet, or explain why they do not meet, an objective of at least one diverse director.

3. **Smaller Reporting Companies and Foreign Issuers would be provided additional flexibility to meet the diverse director objective.**

Both Smaller Reporting Companies and Foreign Issuers could meet the board diversity objective by having two female directors or explaining their reasons for not doing so. Smaller Reporting Companies could also meet the objective with one female director and one director who is female, an underrepresented minority, or LGBTQ+. Similarly, Foreign Issuers could meet the objective with one female director and one director who is female, or 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+.

4. **The amended proposal is also subject to SEC review and is open for public comment.**

The public, including investors, companies, and their representatives can comment on the amended proposal. You can submit comments to the SEC [here](#).

5. **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.

- **Board Composition Planning.** Nasdaq introduced an exclusive partnership with Equilar, the leading provider of corporate leadership data solutions, to aid Nasdaq listed companies with board composition planning objectives. Learn how your company can get free access to Equilar's BoardEdge platform [here](#).
- **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.