

INSIGHTS

SEC Approves Nasdaq Board Diversity Requirements

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The U.S. Securities and Exchange Commission has approved a Nasdaq proposal regarding new listing rules on board diversity, as described in a previous Client Alert, which can be found [here](#). The new rules will require most Nasdaq-listed companies to have at least two diverse directors, including one director who self-identifies as a female and one director who self-identifies as an underrepresented minority or as LGBTQ+, or to explain why the company does not have at least two directors on its board that self-identify in such a way. These new rules also will require subject companies to disclose diversity statistics about their boards on an annual basis in a prescribed matrix format related to each director's self-identified gender, race, and self-identification as LGBTQ+.

The new rules are subject to a phase-in, with most Nasdaq-listed companies being required to comply with the requirements with respect to one diverse director by the later of (1) the date the company files its proxy statement during the 2023 calendar year, or (2) August 6, 2023.

The board diversity matrix disclosure rules are effective beginning August 6, 2022.

Nasdaq filed a proposal for the new rules with the SEC last December, and then amended the proposal in February to, among other things, provide accommodations for smaller boards and newly listed companies. Companies with five or fewer directors will be required to have, or explain the absence of, one diverse director rather than two, and newly listed companies will be given more time to comply with the rules. The final rules as [approved by the SEC](#) are the same as the amended rules proposed by Nasdaq.

Relatedly, the SEC also approved the implementation of a system to provide certain Nasdaq-listed companies with one year of access to board recruiting services that will allow these companies to access diverse candidates outside of their go-to networks.