

## LEGAL UPDATES AND NEWS

### Deadline Approaching for Nasdaq-Listed Companies to Disclose Board Diversity Statistics

The August 8, 2022 deadline for Nasdaq-listed companies to comply with the new requirement that they publicly disclose their board diversity statistics is fast approaching. Below is a refresher on what is required to comply with the new rule.

#### Disclosure of Board Diversity Statistics

A Nasdaq company that was listed prior to August 6, 2021 must either include the diversity matrix in its proxy statement for its 2022 annual meeting of shareholders or post the disclosure matrix on the company's website by the later of August 8, 2022 or the date the company files its annual meeting proxy statement. A company that newly listed on Nasdaq on or after August 6, 2021 has the same options for disclosing the matrix; however, the deadline for compliance will be the anniversary date of the company's listing on Nasdaq.

If a company chooses to disclose its board diversity matrix on its website, the disclosure must be clearly labeled as "Board Diversity Matrix" and should be posted on the company's investor relations page or other page where the company provides its governance documents. Within one business day of posting the matrix on its website, a company must file a Company Event Form with Nasdaq via the Nasdaq Listing Center website, providing the date it posted its diversity matrix and the URL where it can be found.

A company's board diversity matrix should be presented in substantially the following format:

#### Board Diversity Matrix for [Company Name] (As of [Date])

Total Number of Directors	#				
		Female	Male	Non-Binary	Did Not Disclose Gender
<b>Part I: Gender Identity</b>					
Directors	#	#	#	#	#
<b>Part II: Demographic Background</b>					
African American or Black	#	#	#	#	#
Alaskan Native or Native American	#	#	#	#	#
Asian	#	#	#	#	#
Hispanic or Latinx	#	#	#	#	#
Native Hawaiian or Pacific Islander	#	#	#	#	#
White	#	#	#	#	#
Two or More Races or Ethnicities	#	#	#	#	#
LGBTQ+				#	
Did Not Disclose Demographic Background				#	

In the diversity matrix, Nasdaq-listed companies must provide statistical information about each director's gender, race, and LGBTQ+ status. Information can be disclosed in an aggregated form and a company may designate any director who does not wish to disclose a particular gender, race or sexual orientation as "Did Not Disclose Gender" and/or "Did Not Disclose Demographic Background" in the matrix. Following the first year of disclosure, companies will be required to disclose the current year's and immediately prior year's diversity statistics.

**Minimum Board Diversity Requirement**

As described in our earlier [newsletter](#) on this topic, in conjunction with its new diversity matrix requirement, Nasdaq also adopted a rule that requires most Nasdaq-listed companies to have, or explain why they do not have, at least two diverse directors. Additional information regarding this minimum board diversity requirement can be found in our prior newsletter; however, we would note that Nasdaq-listed companies will not be required to comply with this second component of Nasdaq's board diversity rules this year. Generally speaking, partial compliance with this second component will not be required until the later of August 7, 2023, or the date a company files its proxy statement for its annual meeting in calendar year 2023.

**Next Steps**

Nasdaq-listed companies that have not yet publicly disclosed their board diversity statistics in their annual meeting proxy statement or on their website should be coordinating with their directors to obtain the information necessary to complete the diversity matrix. Looking ahead to the implementation of the minimum board diversity component of Nasdaq's new rules, companies should assess their board composition and director succession planning in light of the new rules. In addition, companies should consider the voting policies and guidelines of their significant shareholders and of the proxy advisory firms, which may reflect board diversity expectations that differ in scope or timing from the Nasdaq rules.

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Please contact any of our attorneys below if you have any questions regarding the information contained in this newsletter.

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