

# Governance Update

## SEC Approves New Nasdaq Listing Rule to Advance Diversity

On August 6, 2021, the U.S. Securities and Exchange Commission (“SEC”) approved The Nasdaq Stock Market LLC’s (“Nasdaq”) board diversity listing rule. The new rule generally requires all companies listed on Nasdaq’s U.S. exchange to (i) publicly disclose diversity statistics regarding their boards of directors and (ii) have, or explain why they 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+” (the “board diversity objective”). Foreign companies and smaller reporting companies may satisfy the board diversity objective by including two female directors on their boards. Special Purpose Acquisition Companies (SPACs) are not subject to the rule and, following their business combination, such companies must meet, or explain why they do not meet, the board diversity objective by the later of two years from the date of listing, or the date that they file their proxy statements or information statements for their second annual meetings of shareholders subsequent to their listing. All companies with five or fewer directors may satisfy the board diversity objective by including one diverse director rather than two.

An “underrepresented minority” is defined in the final rule as an individual who self-identifies in one or more of the following groups: Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, or two or more races or ethnicities. “LGBTQ+” is defined as an individual who self-identifies as lesbian, gay, bisexual, transgender or a member of the queer community.

The final rule requires Nasdaq-listed companies to disclose board-level diversity statistics by the later of August 8, 2022, or the date that they file their proxy or information statements for their annual shareholder meetings during 2022. The required disclosure must follow a prescribed tabular format and be included in the company’s proxy statement or information statement for its annual meeting of shareholders, or on its website.

The final rule further requires all Nasdaq-listed companies to have at least one diverse director by August 7, 2023. Depending on a company’s listing tier, companies are required to have at least two diverse directors by August 6, 2025 or August 6, 2026. A company may elect to not comply

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with the board diversity objective and remain compliant with the final rule if it (i) specifies the provisions of the rule that are applicable and (ii) provides a public explanation of its reasons for not satisfying the board diversity objective. A company's explanation as to its election must be included in its proxy statement or information statement for its annual shareholder meeting, or on its website. Nasdaq will not evaluate the substance or merits of a company's explanation for not meeting the requirements.

In a press release announcing the approval, the SEC characterized the final rule as "a step forward for investors on board diversity." The full text of the SEC release approving the final rule is available [here](#).

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