

Nasdaq, the SEC, GOP Senators and Diversity Requirements

Nasdaq filed a proposal with the Securities and Exchange Commission on December 1, 2020 to modify its listing standards to embrace diversity. Specifically, the exchange proposed to require companies listed on Nasdaq Global Select Market and Nasdaq Global Market to have two diverse directors within four years of the time the Commission approves the proposed rule. Firms listed on Nasdaq Capital Market would be expected to have two diverse directors within five years of the approval by the agency.

The purpose of the proposed rule is to “champion inclusive growth and prosperity to power stronger economies,” according to Nasdaq CEO Adena Friedman. To facilitate the goals of the proposal Nasdaq has entered into a partnership with Equilar, a leading provider of corporate leadership; data solutions. The platform afforded by Equilar will “enable Nasdaq-listed companies that have not yet met the proposed diversity objectives to access a larger community of highly-qualified, diverse board-ready candidates to amplify director search efforts,” according to a release by the exchange.

With this proposal and others, Nasdaq is attempting to strengthen corporate governance. There are numerous studies demonstrating that greater diversity improves decision making and governance. As Nasdaq President Nelson Griggs stated “Corporate diversity, at all levels, opens up a clear path to innovation and growth. We are inspired by the support from our issuers and the financial community . . .”

Not everyone is pleased with the proposal by the exchange. The Republican members of the Senate Banking Committee urged the SEC in a February 12, 2021 letter to reject the “proposed rule from Nasdaq that requires publicly traded corporations adopt new racial and gender diversity standards for boards of directors,” according to a press release posted on the Committee website. In a letter directed to SEC Acting Chair Allison Herren Lee, the Senators detailed multiple concerns about the proposal, noting that it “interferes with a board’s duty to follow its legal obligations to govern in the best interest of the corporation and its shareholders.”

Related Capabilities

- Securities & Financial Services Litigation & Enforcement

Comment

The proposal of Nasdaq is not only consistent with the current initiatives of many companies, but is also supported by recent studies demonstrating that diversity improves decision making. The Senators' claim that mandating diversity interferes with the duty of the board while seemingly consistent with the idea that the board must act in the best interest of the enterprise is actually an out of step bromide that ignores current best practices in governance.