

New NASDAQ Board Diversity Disclosure Rules

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by Daniel M. Miller and Randal R. Jones

As discussed in more detail [here](#), on August 6, 2021, the United States Securities and Exchange Commission (the “SEC”) approved NASDAQ Rules 5605(f) and 5606, which require each NASDAQ listed company (subject to certain narrow exceptions) to (i) publicly disclose, to the extent permitted by applicable law, information on the voluntary self disclosed gender, racial characteristics and LGBTQ+ status of the issuer’s board members, and (ii) have at least two “diverse” board members or explain why it does not have two diverse members meeting the applicable requirements. Issuers with five or fewer board members are required only to have one “diverse” board member.

Canadian issuers that are NASDAQ listed are subject to the new rules. However, a Canadian issuer that is either (i) a “foreign private issuer” as defined under SEC rules or (ii) any other issuer that is incorporated under the laws of a jurisdiction other than the United States and has its principal executive office outside the United States, may satisfy the board composition requirements by having at least two female directors, or one female director and one director who is either (i) an underrepresented individual (based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the county in which the issuer’s principal executive office is located) or (ii) a member of the LGBTQ+ community.

The new rules are subject to a transition period, but will begin to take effect for all on the later of August 7, 2023, or the date the issuer files the proxy or information statement (or Form 10-K or 20-F) for the issuer’s annual shareholder meeting in 2023.

While the new rules affect only NASDAQ listed companies, the SEC’s rule making agenda indicates that it may also propose new values regarding board diversity disclosure, which suggests that similar rules may be applicable to a broader range of listed companies in the future.

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