

REMINDER: 2022 Nasdaq Board Diversity Disclosure and D&O Questionnaires

Written by Ryan M. Rourke Reed

November 17, 2021

As issuers prepare for the end of the 2021 calendar year and the beginning of the 2022 proxy season, many will soon begin circulating director and officer questionnaires. Nasdaq-listed issuers should consider including new questions regarding the diversity of their directors now. To assist listed issuers, Nasdaq has provided [sample questions](#) for inclusion in director and officer questionnaires. Beginning in 2022, pursuant to recently adopted Nasdaq Listing Rule 5606, Nasdaq-listed companies will be required to publicly disclose on their websites, in their annual reports or proxy statements, board-level diversity statistics.

Nasdaq-listed companies should be proactive in communicating these disclosure requirements to their directors. Companies that were listed on Nasdaq prior to August 6, 2021 will be required to disclose their diversity statistics by the later of August 8, 2022 or the date on which the company files its 2022 proxy statement. Companies listed on or after August 6, 2021 will be required to disclose their diversity statistics within one year from the date of listing. In either case, companies are required to present their diversity statistics using the Board Diversity Matrix included in Rule 5606 or a substantially similar format. The Board Diversity Matrices set forth in Rule 5606 for domestic and foreign issuers are reproduced below for reference.

Domestic Issuers (with principal executive offices in the U.S.)

Board Diversity Matrix (As of [DATE])				
Total Number of Directors	#			
	Female	Male	Non-Binary	Did Not Disclose Gender
Part I: Gender Identity				
Directors	#	#	#	#
Part II: Demographic Background				
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	#			

Board Diversity Matrix (As of [DATE])				
To be completed by Foreign Issuers (with principal executive offices outside of the U.S.) and Foreign Private Issuers				
Country of Principal Executive Offices:	[Insert Country Name]			
Foreign Private Issuer	Yes/No			
Disclosure Prohibited Under Home Country Law	Yes/No			
Total Number of Directors	#			
	Female	Male	Non-Binary	Did Not Disclose Gender
Part I: Gender Identity				
Directors	#	#	#	#
Part II: Demographic Background				
Underrepresented Individual in Home Country Jurisdiction	#			
LGBTQ+	#			
Did Not Disclose Demographic Background	#			

Companies are not permitted to include additional categories within the Board Diversity Matrix, but are permitted to supplement their disclosure by providing additional information related to their directors below the matrix, in a narrative that accompanies the matrix or in a separate graphic. If a listed company provides the Board Diversity Matrix disclosure on its website, the Company must provide such disclosure concurrently with the filing of its proxy statement or annual report and submit a URL link to the disclosure through the Nasdaq Listing Center within one business day after such posting. Any publication of the information in the Board Diversity Matrix must be included in a searchable format. Following the first year of disclosure, all companies must include the current year and immediately prior year diversity statistics in their disclosures. More information regarding the Board Diversity Matrix can be found [here](#) and [here](#).

In addition to the diversity disclosure requirements of Rule 5606, pursuant to Nasdaq Listing Rule 5065(f), listed companies will be required to have or to explain why they do not have at least two (or one in the case of a company with five or fewer directors) diverse directors (as defined in Rule 5605(f)(1)). This requirement will phase-in in two steps, the timing of which will depend on the issuer's Nasdaq listing tier and the earliest initial deadline for which will be the later of August 7, 2023 or the date the Company files its proxy statement (or annual report on Form 10-K or 20-F for companies that do not file a proxy) for the company's 2023 annual meeting. Please see our August blog [post](#) for additional information. Our team is ready to assist you with any questions that you may have regarding these new Nasdaq listing requirements.

RELATED INDUSTRIES

- [Technology](#)
- [Life Sciences](#)
- [Healthcare](#)
- [Energy & Climate](#)
- [Professional Services](#)

RELATED PRACTICES

- [Capital Markets](#)
- [Public Companies](#)
- [Environmental, Social and Governance \(ESG\)](#)

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2017 Foley Hoag LLP. All rights reserved.