Blogs
June 20, 2024

As we await the decision of the *en banc* Fifth Circuit about whether the Nasdaq's board diversity rule will survive, check out this recap of board diversity data in the first year that the board diversity objective of Nasdaq's rule applied per this **Bloomberg Law article**.

The article surveyed 314 proxy statements from 2023 and found that all of those companies identified at least one female director in their disclosure. The article mistakenly observes that 28% of the companies surveyed *do not comply* with the requirement to have at least one director who self-identifies as an Underrepresented Minority (as defined in the rule) or LGBTQ+.

While we don't note any issues with the study itself, the observation that this is a failure to comply with the rule is not quite correct. As a reminder, the full rule is not yet in effect for any Nasdaq listed companies. The effective dates are as follows:

- Companies on each market tier (Global Select, Global, and Capital) were required to have (or explain why they do not have) at least one diverse director by December 31, 2023.
- Companies listed on the Nasdaq Global Select Market or Nasdaq Global Market must have (or explain why they do not have) at least two diverse directors by December 31, 2025 (at least one must be female, and at least one must self-identify as an Underrepresented Minority or LGBTQ+).
- Companies listed on the Nasdaq Capital Market must have (or explain why they do not have) at least two diverse directors by December 31, 2026 (at least one must be female, and at least one must self-identify as an Underrepresented Minority or LGBTQ+).

One observation from the article is worth noting for both Nasdaq-listed companies and those listed on other exchanges: the format of the diversity disclosure really matters to the usefulness of the information. The authors note that companies that do not use the mandated format – which provides for numerical data points in different categories, without identifying which directors are included in which numbers – were excluded from the analysis. The reason given was that data tabulation was much more difficult with non-standard disclosures.

Authors

Allison C. Handy

Partner
AHandy@perkinscoie.com 206.359.3295

Explore more in

Corporate Law

Topics

Quick Alerts
Blog series

Public Chatter

Public Chatter provides practical guidance—and the latest developments—to those grappling with public company securities law and corporate governance issues, through content developed from an in-house perspective.

View the blog