

Nasdaq Simplifies Diversity Rule Compliance Deadlines

January 10, 2022

On December 12, 2022, The Nasdaq Stock Market LLC (Nasdaq) submitted to the United States Securities and Exchange Commission (SEC) a proposed rule change that is intended to simplify and streamline the relevant deadlines under Nasdaq's board diversity listing standards. Those listing standards, which were approved by the SEC in August 2021 (and which we wrote about [here](#)), require listed companies to satisfy certain diversity objectives (or to publish explanatory disclosures as to why the company has not satisfied such diversity objectives). As originally approved by the SEC, the listing standard included staggered phase-in times that were tied to the date on which the SEC approved such standard (the "Approval Date"); however, according to the SEC's order approving the requested change, Nasdaq concluded that the compliance deadlines are "confusing and unnecessarily complicated." Under the modified listing standard, which the SEC declared effective immediately (which approval can be found [here](#)), the deadlines were changed by eliminating references to the Approval Date and tying compliance instead to December 31 of the relevant year in which compliance is required. Specifically, the modified deadlines are now as follows:

- A Nasdaq-listed company must have, or explain why it does not have, at least one diverse director no later than December 31, 2023.
- Each company listed on The Nasdaq Global Select Market or The Nasdaq Global Market must have, or explain why it does not have, at least two diverse directors no later than December 31, 2025.
- Each company listed on The Nasdaq Capital Market must have, or explain why it does not have, at least two diverse directors no later than December 31, 2026.
- The annual compliance deadline applicable to the diversity matrix requirement in the listing standard, which already was effective, has been re-aligned to match the December 31 deadlines referenced above.

As a reminder, for purposes of this listing standard, "diverse" means a director who self-identifies as a female, an underrepresented minority (e.g., a director who is African American, Hispanic, Asian, Native American or two or more ethnicities) or LGBTQ+.

Contact Information

If you have any questions concerning this alert, please contact:

Kerry E. Berchem

Partner

kberchem@akingump.com

New York

+1 212.872.1095

Garrett A. DeVries

Partner

gdevries@akingump.com

Dallas

+1 214.969.2891

John Goodgame

Partner

jgoodgame@akingump.com

Houston

+1 713.220.8144

Rosa A. Testani

Partner

rtestani@akingump.com

New York

+1 212.872.8115

Leana N. Garipova

Counsel

lgaripova@akingump.com

Houston

+1 713.250.2228

Charles Edward Smith

Consultant

CESmith@akingump.com

New York

+1 214.969.4715

Finally, we note that Nasdaq's diversity listing standard has been challenged in federal court and remains *sub judice* before the United States Court of Appeals for the 5th Circuit. Please do not hesitate to reach out to us if you have any questions or require additional information.

akingump.com