

Nasdaq Board Diversity Matrix Disclosure Deadlines and FAQs

Most Nasdaq-listed companies are required by Nasdaq rules that became effective in August 2022 to disclose board-level diversity information annually in a tabular format that Nasdaq refers to as the Board Diversity Matrix. Nasdaq rules require operating companies that were listed before August 6, 2021 to disclose the Board Diversity Matrix by the later of August 8, 2022 or the date the company files its 2022 proxy or information statement, or if the company does not file a proxy or information statement, its Form 10-K or 20-F. The discussion below highlights the key Nasdaq requirements for the timing, manner and content of the Board Diversity Matrix. Note that the separate Nasdaq requirement that listed companies have one or more diverse directors or explain why they do not, which becomes applicable over a transition period that begins not earlier than August 7, 2023, depending on a number of factors such as the company's listing date, which Nasdaq market the company is listed on, and the size of the company's board, is not discussed here.

When Must a Nasdaq-Listed Company Disclose the Board Diversity Matrix?

The disclosure deadlines for the Board Diversity Matrix are:

- *Operating companies listed before August 6, 2021:* the later of August 8, 2022 or the date the company files its 2022 proxy statement.
- *Operating companies listed on or after August 6, 2021:* one year from the date of listing.

As described in the next section, companies can disclose the Board Diversity Matrix in several ways. In practical terms, the disclosure deadlines above result in the following requirements:

- If a company files its 2022 proxy or information statement (or its Form 10-K or Form 20-F annual report) *before* August 8, 2022 and does not include the Board Diversity Matrix, the company must disclose its Board Diversity Matrix on or before August 8, 2022.
- If a company files its 2022 proxy or information statement (or its Form 10-K or 20-F) *on or after* August 8, 2022, the company must disclose its Board Diversity Matrix in either of the following ways:
 - include the Board Diversity Matrix in its 2022 proxy or information statement (or Form 10-K or Form 20-F annual report) filed on or after August 8, 2022, or
 - post its Board Diversity Matrix on its website.

How Should Nasdaq-Listed Companies Disclose the Board Diversity Matrix?

Companies can disclose the Board Diversity Matrix in the company's proxy statement or its information statement. If the company does not file a proxy statement, the company can disclose the Diversity Matrix in its Form 10-K or 20-F annual report or on the company's website. Website disclosure is subject to additional requirements, which are described below.

How Often Should Nasdaq-listed Companies make this disclosure?

Nasdaq rules require operating companies to disclose the Board Diversity Matrix annually.

How Many Years Must the Board Diversity Matrix Include?

Initially, Nasdaq rules require companies to include only one year in the Board Diversity Matrix. After the first year of disclosure, Nasdaq rules require all companies to include both the current year and the immediately prior year in the Board Diversity Matrix.

What Additional Requirements Apply to Website Disclosure of the Board Diversity Matrix?

If a company chooses to disclose its Board Diversity Matrix on its website, it should observe the following additional requirements:

- Companies should clearly label the disclosure as Board Diversity Matrix on the company's website. Nasdaq recommends posting the Board Diversity Matrix on the company's Investor Relations web page or another webpage where the company posts its governance documents, although this is not required by Nasdaq rules.
- Companies that post the Board Diversity Matrix on the company's website need to complete Section 10 (Board Diversity Disclosure) of the Nasdaq Company Event Form. Nasdaq instructions provide that companies can do this by logging in to the Nasdaq Listing Center and completing Section 10 of the form. This will require the company to provide the disclosure date and URL location of its Board Diversity Matrix.
- Nasdaq requires a company to submit the Company Event Form only if the company disclosed its Board Diversity Matrix on its website, according to guidance received from Nasdaq by telephone. The purpose of this requirement is to facilitate confirmation by Nasdaq that the company has complied with the Board Diversity Matrix disclosure requirements if the company has chosen not to disclose its Board Diversity Matrix in its proxy statement or Form 10-K or Form 20-F annual report.

Does Nasdaq Require Companies to Disclose the Board Diversity Matrix in a Specific Format?

Nasdaq rules require that companies use the specific format provided in the Nasdaq rules and on the Nasdaq website, or a substantially similar format.

- The Board Diversity Matrix must appear under the caption "Board Diversity Matrix."
- There are separate formats for U.S. companies and for Foreign Issuers (as defined under Rule 5605(f)(1)) and Foreign Private Issuers (as defined under SEC rules). Nasdaq has provided examples of acceptable and unacceptable disclosures on its website.
- Nasdaq encourages companies to provide the Board Diversity Matrix in a searchable format. If a company uses a graphic or image format (for example, tif, jpg, gif, png),

Nasdaq encourages the company to also include the same information as searchable text or in a searchable table. Nasdaq has indicated that a company could provide the searchable text information with the related graphic, or in an exhibit, for example.

Can a Company Include Additional Information about Directors in the Board Diversity Matrix?

As stated above, Nasdaq rules do not permit a company to substantially alter the Board Diversity Matrix. However, a company may supplement the required disclosure by providing additional information related to its directors within its Board Diversity Matrix. For example, a company may choose to provide the information on a director-by-director basis or may choose to include any skills, experiences, and attributes of each of its directors that are relevant to the company.

What is the Information in the Board Diversity Matrix Based On?

Nasdaq has clearly indicated that the information in the Board Diversity Matrix should be based solely on each director's self-identification provided to the company. Nasdaq rules do not require directors to provide any self-identification information to listed companies, and the Board Diversity Matrix contains places to indicate that one or more directors have not provided gender and/or demographic diversity information.

Nasdaq has suggested that listed companies could, for example, provide a section for director responses to the self-identification categories of the Board Diversity Matrix in the company's director and executive officer questionnaires, but Nasdaq rules do not require any specific method. As noted in the next section, companies should review potentially applicable privacy laws that may protect directors and directors' personal information before circulating any request for self-identification in any format.

Are Some Companies Exempt from the Board Diversity Matrix Disclosure Requirement?

Nasdaq rules provide accommodations for Foreign Issuers and Foreign Private Issuers. These accommodations are based in part on differences in privacy laws in non-U.S. jurisdictions, which may severely limit or prohibit companies from soliciting, possessing or disclosing personal information about individuals. *Domestic companies that have directors who may be protected by non-U.S. privacy laws – for example, because they are a citizen or resident of a foreign jurisdiction – and Foreign Issuers and Foreign Private Issuers should consider such laws before they solicit any personal information from directors.*

Nasdaq rules exempt companies that are not operating companies from the Board Diversity Matrix requirement. This includes a company that is a special purpose acquisition corporation (SPAC) listed under Nasdaq Rule IM-5101-2 until the SPAC completes its business combination transaction. Business Development Companies are "operating companies" under Nasdaq rules and are not exempt from the Nasdaq diversity requirements.

In addition to SPACs, Nasdaq rules exempt limited partnerships, closed end funds, management investment companies and issuers of exchanged-traded products, among others, from the Board Diversity Matrix requirement.

What is the Date of the Information in this Discussion?

This discussion is based on information publicly disclosed by Nasdaq through July 27, 2022. Nasdaq amends and supplements its guidance on compliance with the Board Diversity Matrix requirements from time to time. If used after that date, the user should confirm that there have been no changes in Nasdaq rules or interpretations.

Sources/for further reference:

[Nasdaq Rule 5605\(f\)](#)

[Nasdaq Proposal to Adopt Listing Rules Related to Diversity](#)

[SEC Order Approving Nasdaq Proposal](#)

[Nasdaq Listing Center Reference Library Advanced Search \(FAQs\)](#)

[Nasdaq's Board Diversity Rule: What Nasdaq-Listed Companies Should Know](#)

[Nasdaq's Board Diversity Rule: What New Companies Listing on Nasdaq Should Know](#)

[Board Diversity Matrix Instructions](#)