

Memorandum

Nasdaq Proposes to Eliminate Stepchildren and Domestic Employees From Family Member Definition

June 14, 2019

Nasdaq is proposing to modify the definition of a “Family Member” for purposes of its director independence standards to exclude stepchildren and domestic employees who share a director’s home. This change would eliminate inconsistencies between the current Nasdaq and NYSE definitions of family members in the context of director independence determinations.

Nasdaq stated that stepchildren were included in the current definition inadvertently when Nasdaq paraphrased the then-existing definition, and their inclusion is not warranted. Nasdaq also stated that the definition should not include a domestic employee who shares a director’s home because this definition is intended to capture familial, not commercial, relationships.

Notwithstanding these changes, a stepchild that shares a director’s home would still be considered a “Family Member.” In addition, Nasdaq notes that a company’s board must still affirmatively determine that no relationship exists that would interfere with the exercise of independent judgment in carrying out the director’s responsibilities. Accordingly, Nasdaq believes that it is appropriate for the board to review a potential relationship between a director and a domestic employee or a child of the director’s spouse under such facts and circumstances test.

The SEC is soliciting comments on these proposed amendments, which are due 21 days from publication of the proposal in the Federal Register, which is expected shortly.

If you have any questions or would like additional information, please do not hesitate to contact **Bradley P. Goldberg** at +1-212-455-2064 or bgoldberg@stblaw.com, **Shari A. Ness** at +1-212-455-2383 or shari.ness@stblaw.com, or any other member of the Firm’s Public Company Advisory Practice.



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