

August 24, 2017



Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Joan C. Conley**  
Senior Vice President and  
Corporate Secretary  
805 King Farm Blvd, Suite 100  
Rockville, MD 20850 / USA

Re: Release No. 34-81187; File No. PCAOB-2017-01

Nasdaq.com

Dear Mr. Fields:

Nasdaq, Inc. (“Nasdaq”)<sup>1</sup> appreciates the opportunity to submit this letter in response to the Public Company Accounting Oversight Board’s (“PCAOB”) proposal entitled “The Auditor’s Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion and Related Amendments to PCAOB Standards” (the “Proposal”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) on July 19, 2017.<sup>2</sup> If approved by the SEC, the Proposal, among other things, would require auditors to identify in their audit reports “critical audit matters” (CAMs), that is, matters related to the audit that the auditor determines involved especially challenging, subjective, or complex judgment. The Proposal would also require the audit report to describe the principal considerations that led the auditor to its CAMs determinations and explain how CAMs were addressed in the audit.

Nasdaq applauds the PCAOB for its efforts to improve the auditor’s report and make it more informative for investors. However, we believe the Proposal does not fully reflect or account for a number of important complexities and negative consequences.<sup>3</sup> Many of these concerns are highlighted in a comment letter filed with the SEC by the U.S. Chamber of Commerce in response to the Proposal, which Nasdaq and many others also signed.<sup>4</sup>

Because we believe the Proposal, if approved, would have significant, potentially detrimental consequences for public companies, we are separately submitting this letter to emphasize several critical concerns and observations. Notably, the Proposal does not limit the required disclosure of CAMs to matters that are material to investors. As defined, required disclosure of CAMs extends beyond materiality, including matters the auditor communicated to the audit committee even if not required to do so. Thus, the Proposal may require auditors to disclose information

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<sup>1</sup> Nasdaq is a leading provider of trading, clearing, exchange technology, listing, information and public company services across six continents. Globally, Nasdaq is home to nearly 3,800 listed companies with a market value of approximately \$10.1 trillion. Among other things, we operate a variety of listing platforms around the world to provide multiple global capital raising and liquidity solutions. Our main listing markets are The Nasdaq Stock Market and the Nasdaq Nordic and Nasdaq Baltic exchanges. We also operate the Nasdaq Private Market, a marketplace providing equity management tools to private companies.

<sup>2</sup> See Securities Exchange Act Release No. 34-81187, File No. PCAOB-2017-01 81 FR 43130 (July 21, 2017), available at: <https://www.sec.gov/rules/pcaob/2017/34-81187.pdf>.

<sup>3</sup> See, e.g., Comment letters on PCAOB Docket 034: Auditing Standards on the Auditor's Report and the Auditor's Responsibilities Regarding Other Information and Related Amendments, available at: <https://pcaobus.org/Rulemaking/Pages/Docket034.aspx>.

<sup>4</sup> Comment letter submitted by the U.S. Chamber of Commerce, August 18, 2017, available at: <https://www.sec.gov/comments/pcaob-2017-01/pcaob201701-2228364-160809.pdf>.

about public companies that those companies themselves are not required to disclose or determined was not yet timely for disclosure. This would also make the auditor a source of original information, substituting the auditor's judgment on these matters for management's long-standing responsibility to determine what to publicly disclose and when.

In a recent speech, SEC Chairman Jay Clayton echoed these concerns, noting that regulators "have slowly but significantly expanded the scope of required disclosures beyond the core concept of materiality."<sup>5</sup> We agree and highlighted similar concerns in a previous comment letter to the Commission:

"Nasdaq believes that principles-based disclosure grounded in materiality allows reporting companies the degree of flexibility needed to provide investors with the proper amount and mix of information. ... Thus, investors are assured that unnecessary detail does not obscure important disclosure, while at the same time, all material information is disclosed."<sup>6</sup>

We are also concerned that the Proposal would chill communications and the frank exchange of views between the auditor and the audit committee, undercutting the candid dialogue critical to a healthy relationship between the auditor and audit committee. The CAMs disclosure requirement would overhang every communication between a company's audit committee and the audit firm. We believe this would lead the audit committee to limit or curtail communication with the auditors and, thereby, adversely impact appropriate exercise of the audit committee's oversight responsibilities.

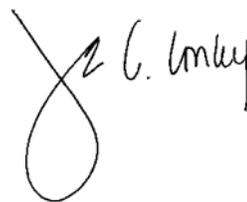
Lastly, the requirement to identify and disclose CAMs could potentially necessitate additional time and expense for auditors and issuers, increasing the cost and complexity of the audit process and potentially exposing issuers and their audit committees to litigation risks based on disclosures by the auditor.

To be clear, we applaud the PCAOB's efforts to improve the audit report. We believe, however, that the Proposal represents an unfortunate and potentially damaging shift away from principles-based disclosures grounded in materiality towards a prescriptive, rules-based approach that would increase cost, complexity and required immaterial disclosures without commensurate benefits to investors, public companies or the market.

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Thank you for your consideration of our comments. Please feel free to contact me with any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. G. Lomley". The signature is stylized, with a large loop at the bottom and a long, sweeping stroke that extends upwards and to the right.

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<sup>5</sup> Remarks at the Economic Club of New York, New York, N.Y. (July 12, 2017), available at: <https://www.sec.gov/news/speech/remarks-economic-club-new-york>

<sup>6</sup> Comments on the SEC's Concept Release, "Business and Financial Disclosure Required by Regulation S-K", Securities Exchange Act Release No. 34-77599 (April 13, 2016), 81 FR 23915 (April 22, 2016), available at: <https://www.sec.gov/comments/s7-06-16/s70616-368.pdf>.