



EDWARD S. KNIGHT
EXECUTIVE VICE PRESIDENT,
GENERAL COUNSEL
& CHIEF REGULATORY OFFICER
805 KING FARM BLVD
ROCKVILLE, MD 20850
P: +1 [REDACTED]
F: +1 [REDACTED]
E: [REDACTED]

September 16, 2016

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

Re: File No. S7-06-16

Dear Mr. Fields:

Nasdaq, Inc. (“Nasdaq”)¹ appreciates the opportunity to comment on the Commission’s Concept Release entitled “Business and Financial Disclosure Required by Regulation S-K” (the “Concept Release”)² and commends the Commission for undertaking a comprehensive review of the Regulation S-K requirements. We believe the Commission has the opportunity to modernize certain disclosure requirements.

As a National Securities Exchange, Nasdaq currently lists 2,855 companies in the U.S. In fulfilling our responsibilities as a self-regulatory organization to protect investors and the public interest, Nasdaq Staff annually reviews between 40,000 and 50,000 periodic and current reports filed with the Commission by Nasdaq-listed companies. Our Nasdaq Corporate Solutions business makes it easier for companies to interact and communicate with investors while meeting corporate governance and disclosure requirements. In addition, as a public company, Nasdaq itself is subject to Regulation S-K requirements. Nasdaq’s comments reflect its experience in all of these roles.

Materiality

In its recent comment letter, Business Roundtable stated that materiality “remains the linchpin of public company disclosure because it sets an investor-focused standard for the appropriate

¹ Nasdaq is a leading provider of trading, clearing, exchange technology, listing, information and public company services across six continents. Through its diverse portfolio of solutions, Nasdaq enables customers to plan, optimize and execute their business vision with confidence, using proven technologies that provide transparency and insight for navigating today's global capital markets. As the creator of the world's first electronic stock market, its technology powers more than 70 marketplaces in 50 countries, and 1 in 10 of the world's securities transactions. Nasdaq is home to more than 3,700 listed companies with a market value of approximately \$9.3 trillion and over 18,000 corporate clients. To learn more, visit: nasdaq.com/ambition or business.nasdaq.com.

² Securities Exchange Act Release No. 34-77599 (April 13, 2016), 81 FR 23915 (April 22, 2016).

information to be shared, is customized to the particular characteristics and circumstances of each registrant and naturally addresses current issues as they emerge.”³ Nasdaq agrees. While rules-based disclosure may facilitate comparability of information provided by public companies, a forced template regime increases the cost and complexity of producing the reports. 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. The materiality construct directs companies to disclose only relevant information, for which “there is a substantial likelihood that a *reasonable shareholder* would consider the information important.”⁴ Thus, investors are assured that unnecessary detail does not obscure important disclosure, while at the same time, all material information is disclosed.

The materiality standard addresses another issue the Commission is trying to resolve: the proper audience for disclosure. The disclosure requirements grounded in materiality, by design, target a reasonable shareholder and do not require public companies to incur the expense associated with disclosure simply because one shareholder, or even one group of shareholders, may find it useful.

The materiality standard has served investors, companies and the public markets well, balancing the need to provide investors with the information they need to make informed decisions against overwhelming investors with too much information, without succumbing to a one-size-fits-all answer. We believe that the Commission must be guided by this standard as it assesses any changes to Regulation S-K.

Frequency of Disclosure

In the Concept Release, the Commission asked whether it should change the frequency of reporting either to follow the example of other jurisdictions (such as the United Kingdom) that eliminated mandatory quarterly reporting in favor of semi-annual reporting requirements or to increase the frequency of reporting.

Nasdaq believes that the Commission should not change the frequency that companies provide information to investors; however, the Commission could evaluate whether the content of quarterly reports is optimal. Nasdaq has observed that most public companies file current reports on Form 8-K reporting quarterly results in addition to filing a periodic report on Form 10-Q. Most investor reaction comes upon the reporting of the results, with little impact to a security typically seen when the Form 10-Q is filed (usually weeks later). Nasdaq recommends that the Commission institute a pilot program where public companies are allowed, in lieu of filing quarterly reports on Form 10-Q, to file only current periodic reports on Form 8-K containing quarterly financial information, specifically a balance sheet and income statement as of the end

³ Letter from John Hayes, Chair, Corporate Governance Committee, Business Roundtable dated July 21, 2016.

⁴ *Basic v. Levinson*, 485 U.S. 224, 231 (1988) (Quoting *TSC Industries*, 426 U.S. at 449)(emphasis added).

of the quarter, and disclose any material changes in the company's business.⁵ The Commission could then study the effects of this pilot program on the information provided, the impact on investors, and whether there is a meaningful cost saving for the companies. This pilot program could also evaluate whether disclosure based on materiality will meaningfully jeopardize the comparability of disclosure among different companies.

Number of Record Holders

The SEC currently requires issuers to disclose the approximate number of holders of common equity.⁶ The SEC asked whether this disclosure requirement should be retained or eliminated.

When the SEC adopted this requirement in 1938 most securities were registered in the name of a specific investor. Now, the vast majority of investors own their securities through a securities intermediary (such as a broker-dealer) resulting in the reported number of record holders being significantly lower than the number of beneficial holders. As such, Nasdaq is unsure of any value this disclosure provides and believes that the Commission should eliminate the current requirement as obsolete and immaterial.

Alternatively, if the Commission determines to maintain a requirement to disclose the number of holders, the requirement should be modified so that it becomes a useful measure of the security's liquidity. Specifically, to make this disclosure useful, Nasdaq suggests that instead of reporting the approximate number of record holders, companies could be required to report an approximate number of beneficial holders of their securities. This would benefit investors and National Securities Exchanges because the exchanges continue to rely on the number of shareholders as a listing requirement tied to liquidity. However, Nasdaq also acknowledges that the usefulness of the number of shareholders as a liquidity measure diminishes at some level, and therefore also suggests that companies should not be required to report the specific number of shareholders when that number is in excess of 2,500, but rather the company should be allowed to indicate that they have in excess of 2,500 shareholders. Further, to avoid duplicative work, we believe that issuers should be allowed to report the number of shareholders as of the record date for their annual meeting, when they would already need to ascertain the approximate number of shareholders in order to distribute their proxy material. To allow timely disclosure, this number should be disclosed with the results of the company's annual shareholder meeting, rather than in the Form 10-K or Proxy Statement.

⁵ While SEC rules currently require that a foreign private issuer provide only an annual report on Form 20-F, Nasdaq Rule 5250(c)(2) requires a foreign private issuer listed on Nasdaq also submit on a Form 6-K an interim balance sheet and income statement as of the end of its second quarter. Nasdaq also requires that all listed companies, including foreign private issuers, disclose any material information. We believe these information requirements provide investors with sufficient information about foreign private issuers and operate as a precedent for this type of disclosure regime.

⁶ See Item 201, 17 CFR 229.201, and the Instructions thereto.

Sustainability and Public Policy

In the Concept Release, the Commission asked “which, if any, sustainability and public policy disclosures are important to an understanding of a registrant’s business and financial condition and whether there are considerations that make these disclosures important to investment and voting decisions.” The short answer, in Nasdaq’s view, is that it depends.

Nasdaq acknowledges the importance of material sustainability information disclosure and has long been a leader in our own sustainability efforts, including supporting programs to educate our listed companies about these issues. We participate in the World Federation of Exchanges’ sustainability working group and the United Nations Sustainable Stock Exchange Initiative. We have hosted webinars and events at our MarketSite in Times Square, and developed sustainability-related “green” indices.

However, we also recognize that one size does not fit all. As noted above, we believe the proper benchmark for whether disclosure in general is required should be materiality and, therefore, also believe that sustainability disclosure should be mandatory only in cases where it is material to a particular company. In all other cases, disclosure related to sustainability, as well as other public policy issues, is better addressed by other means.

As noted above, the disclosure requirements should be grounded in materiality, target a reasonable shareholder, and not require public companies to incur the expense associated with disclosure simply because one shareholder, or even one group of shareholders, may find it useful. We will continue to provide resources to our companies to help them assess the materiality of these issues, as the question of materiality is ever changing, and to provide useful, comparable sustainability information that is valuable to investors.

Increasingly, it is in companies’ interests for management to focus on sustainability issues and to highlight their sustainability performance and achievements as more investor money flows to sustainability investment strategies. Most companies provide some form of sustainability information, whether in their periodic reports, on their websites, in separate sustainability reports, or in response to questionnaires. Because transparency around sustainability is more and more often viewed as a good business practice, Nasdaq believes that market-based forces will result in more optimal sustainability related disclosure by public companies than that driven by a Commission mandate.

Third-Party Director Compensation

While the Commission is not reviewing the corporate governance disclosure requirements in this Concept Release, the Commission noted that any disclosure related comments are also welcome.

In that regard, Nasdaq recently proposed, and the Commission approved, a rule to require Nasdaq listed companies to disclose (on their website or annual proxy statement) agreements and

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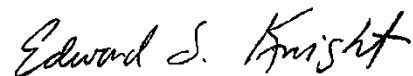
arrangements whereby a third party pays a director or nominee in connection with candidacy or service as a director.⁷ Nasdaq believes these undisclosed compensation arrangements potentially raise several concerns, including that they may lead to conflicts of interest among directors and call into question the directors' ability to satisfy their fiduciary duties. These arrangements may also tend to promote a focus on short-term results at the expense of long-term value creation. Disclosure of these agreements is thus important in helping investors make informed investment and voting decisions.

Nasdaq recommends that the Commission adopt a similar rule making this disclosure requirement applicable to all public companies.

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

Sincerely yours,



Edward S. Knight

⁷ Securities Exchange Act Release No. 78223 (July 1, 2016), 81 FR 44400 (July 7, 2016) (SR-NASDAQ-2016-013) (approving IM-5250-2).