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December 13, 2017

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

Re: File No. S7-08-17

Dear Mr. Fields:

Nasdaq, Inc. (“Nasdaq”)¹ appreciates the opportunity to comment on the Commission’s FAST Act Modernization and Simplification of Regulation S-K proposed rule (the “Proposed Rule”)² and commends the Commission for taking an important step towards modernizing certain disclosure requirements.

As a National Securities Exchange, Nasdaq currently lists 2,945 companies in the U.S. Nasdaq communicates closely with our listed and potential listed companies and their shareholders, who often focus on unnecessary burdens that discourage companies from entering or staying on public markets.³ 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.

¹ Nasdaq is a leading global provider of trading, clearing, exchange technology, listing, information and public company services. 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 90 marketplaces in 50 countries, and 1 in 10 of the world's securities transactions. Nasdaq is home to approximately 3,900 total listings with a market value of approximately \$12 trillion. To learn more, visit: nasdaq.com/ambition or business.nasdaq.com.

² Securities Exchange Act Release No. 34-81851 (October 11, 2017), 82 FR 50988 (November 2, 2017).

³ In a recent survey by Nasdaq of over 200 public companies, and those considering going public, over half of respondents cited regulatory reform, including disclosure reform, as a key focal area. Nasdaq also recently released its blueprint for revitalizing the U.S. capital markets: [The Promise of Market Reform – Reigniting America’s Economic Engine](#), calling upon policy makers, regulators, market participants, companies and investors to modernize rules and consider new approaches to help reinvigorate the U.S capital markets.

Materiality

In a recent comment letter on the Commission's Concept Release entitled "Business and Financial Disclosure Required by Regulation S-K" (the "Concept Release")⁴, Nasdaq reiterated its position that materiality should remain the linchpin of public company disclosure. 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. Repetitive and immaterial disclosure burdens investors by distracting them from new and material information. Nasdaq supports the Proposed Rule amendments that reinforce the concept of materiality.

Specifically, the Commission proposed an amendment to Item 102 (Description of Property) to clarify that a description of property is required only to the extent that physical properties are material to the company's business. In a similar vein, the Commission is proposing to amend Item 303 (Management's Discussion and Analysis or MD&A) to reduce the period-to-period comparison required in MD&A from three to the two most recent fiscal years, so long as the earlier period discussion is not material and is included in the company's previous Form 10-K.

Nasdaq supports these amendments that emphasize disclosure based on materiality because it would reduce the disclosure burden on the companies and improve the readability of periodic reports, registration statements, and other filings by removing immaterial and repetitive information, without sacrificing information that is material to investors. Nasdaq believes the Commission should continue to emphasize principles-based disclosure grounded in materiality, because it allows reporting companies the degree of flexibility needed to provide investors with the proper amount and mix of information. A renewed focus on materiality would also allow the Commission to more effectively achieve the mandate found at Section 72003 of the Fixing America's Surface Transportation Act (the "FAST Act") to reduce the costs and burdens on companies while continuing to provide all material information.

Modernization through Use of Technology

To achieve the FAST Act mandate to reduce the costs and burdens on companies while continuing to provide all material information, the Commission also proposed amendments for more extensive use of disclosure through incorporation by reference to previously filed documents and cross-reference to disclosure found elsewhere in the filing. These amendments underscore technology as a driving force in the modernization of financial reporting and disclosures. Nasdaq supports the Proposed Rule amendments allowing such incorporation by reference and use of cross-reference because it improves the readability of a company's periodic reports by removing repetitive information.

⁴ Letter dated September 16, 2016, in response to the Commission's Concept Release entitled "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). This comment letter is available at: <https://www.sec.gov/comments/s7-06-16/s70616-368.pdf>.

Specifically, the Commission proposed to revise Item 10(d) to permit incorporation by reference of documents that have been on file with the Commission for more than five years, which Item 10(d) currently prohibits. The revision would require specific descriptions of the locations of, and a hyperlink to the EDGAR location of, documents incorporated by reference from SEC filings. The Commission also proposed to allow companies to satisfy Regulation S-K's disclosure requirements in prospectuses by incorporating information by reference to the financial statements.

Nasdaq supports these amendments because they would reduce the disclosure burden on companies and improve the readability of periodic reports and other filings, to the benefit of investors, by removing repetitive information.

Elimination of Obsolete, Duplicative or Conflicting Disclosure Requirements

Consistent with the recommendation made in the FAST Act Report, the Commission proposed to eliminate some obsolete or duplicative disclosure requirements. Specifically, the Commission is proposing to eliminate the Item 512(d), Item 512(e), and Item 512(f) undertakings, because they are obsolete; and Item 512(c) because it is duplicative. The Commission also proposed to amend Item 401(b) to clarify that disclosure of the business experience of executive officers is not required in the proxy statement if it is included in Form 10-K. Finally, the Commission is proposing updating a reference to an outdated auditing standard in Item 407(d)(3)(i)(B) and revising Item 407(e)(5) to clarify that emerging growth companies are not required to provide a compensation committee report. Nasdaq supports these amendments because they eliminate confusion and simplify disclosure requirements, without impacting the amount of material information available to investors.

Tagging Cover Page Data

Currently, SEC reporting companies are required to file their financial statements as an exhibit in a machine-readable format using eXtensible Business Reporting Language ("XBRL"). This disclosure is required as an exhibit to registration statements, periodic and current reports, including reports on Form 8-K or Form 6-K, that contain revised or updated financial statements. Tagged disclosures include the registrant's primary financial statements, financial statement footnotes, and financial statement schedules. In addition to these requirements, the Commission is now proposing to require all of the information on the cover pages of Form 10-K, Form 10-Q, Form 8-K, Form 20-F, and Form 40-F to be tagged in Inline XBRL in accordance with the EDGAR Filer Manual.

Nasdaq believes that this additional requirement will impose only a minimal incremental burden on the reporting companies and, therefore, does not object to it. However, advancing technology has created new alternatives that may reduce the usefulness of XBRL. With many institutional and private investors deploying their own sophisticated research tools, Nasdaq suggests that XBRL should be reconsidered and that the Commission study whether investors and other parties use XBRL sufficiently to justify the burden on the companies. For example, as noted above, each year Nasdaq reviews between 40,000 and 50,000 periodic and current reports filed

with the Commission by Nasdaq-listed companies. Our compliance program would benefit from a machine readable tagged disclosure provided by XBRL; however, we are unable to rely on XBRL because the assignment of XBRL tags is subjective and companies can use custom tags, which limits comparative analysis. We have heard similar complaints from other users of this technology and urge the Commission to reconsider whether the benefit to investors outweighs the complexity and burden of current XBRL requirements.

Market for the Securities

Item 501(b)(4) requires a registrant to name the national securities exchanges that list the securities being offered and to disclose the trading symbols for those securities. A “national securities exchange” is a securities exchange that has registered with the Commission under Section 6 of the Exchange Act. Under existing Item 501(b)(4), registrants are not required to name markets that are not a “national securities exchange.” The Commission is proposing to amend Item 501(b)(4) to require registrants issuing securities that are not listed on a national securities exchange to disclose the principal United States market or markets where the registrant, through the engagement of a registered broker-dealer, has actively sought and achieved quotation and the corresponding trading symbols.

Nasdaq supports the requirement to disclose the trading symbols, but opposes the requirement to disclose the principal United States market that is not a national securities exchange. The rules of National Securities Exchanges are subject to Section 6(b) of the Securities Exchange Act of 1934 (the “Act”) and further the objectives of Section 6(b)(5) of the Act, which requires that the rules of an exchange promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest. However, the rules and requirements of other United States markets are not subject to any similar investor protection requirements. Nasdaq believes that requiring companies to disclose trading markets other than national securities exchange may confuse investors by giving those other markets the same imprimatur of a National Securities Exchange, without requiring that they satisfy the same investor protection and other requirements of a regulated market. Finally, the Commission proposal in this area would serve to complicate and not streamline reporting.

Additional Changes

In the Proposed Rule the Commission states that “[w]e are continuing to consider potential additional changes to our disclosure regime in connection with recent proposing releases and requests for comment.” Nasdaq commends the Commission for the initial steps in the Proposed Rule towards modernizing and simplifying Regulation S-K and encourages the Commission to continue with its review and urges action on changes to meaningfully reduce the hurdles of compliance as a public company where that can be done without harming investor protection or while enhancing investor protection. In that regard, in a recent paper, Nasdaq called upon policy makers, regulators, market participants, companies and investors to modernize rules and consider

new approaches to help reinvigorate the U.S capital markets.⁵ Nasdaq noted that it “fully supports the transparent and robust disclosure, which is one of the reasons why U.S. markets are the world’s most trusted. However, this necessary disclosure must be re-evaluated to reduce the cost and burden for smaller companies while maintaining the level of access and detail that investors need.” Specifically, Nasdaq suggested that the Commission could offer flexibility on quarterly reporting, expand classifications for disclosure relief and roll back politically-motivated disclosure requirements. Nasdaq also suggested that the Commission could evaluate whether the content of quarterly reports is optimal by running 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 certain quarterly financial information.⁶ Nasdaq encourages the Commission to consider, and act upon, these and other proposals it received on its Concept Release.

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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

⁵ See footnote 3, supra.

⁶ See footnote 4, supra.