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November 29, 2016

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

Re: File No. S7-18-16

Dear Mr. Fields:

Nasdaq, Inc. (“Nasdaq”)<sup>1</sup> appreciates the opportunity to respond to the request of the Securities and Exchange Commission (“Commission”) for comments regarding Subpart 400 of Regulation S-K.<sup>2</sup>

In its request for comments, the Commission noted this initiative is intended to improve the “disclosure system for the benefit of investors and registrants.” Consistent with this intent, 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 arrangements whereby a third party pays a director or nominee in connection with candidacy or service as a director.<sup>3</sup> 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. Given these concerns, Nasdaq believes such disclosure is appropriate, protects investors and ensures they have necessary information to make informed investment and voting decisions. Furthermore, the disclosure required by the rule is not burdensome on directors, on those making these payments, nor on the companies required to make the disclosure.

There are various Commission disclosure rules that arguably may, in some circumstances, apply to third party director payments. In recognition of this, Nasdaq’s rule would not require duplicative disclosure where the required information is already disclosed pursuant to Commission rule. However, the nature, scope and timing of these required disclosures may not in all cases be the same as the disclosure

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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. 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](http://nasdaq.com/ambition) or [business.nasdaq.com](http://business.nasdaq.com).

<sup>2</sup> Request for Comments on Subpart 400 of Regulation S-K Disclosure Requirements Relating to Management, Certain Security Holders and Corporate Governance Matters, Release No. 33-10198, 81 Fed. Reg. 59,927 (Aug. 31, 2016).

<sup>3</sup> Securities Exchange Act Release No. 34-78223 (July 1, 2016), 81 FR 44400 (July 7, 2016) (SR-NASDAQ-2016-013) (approving IM-5250-2).

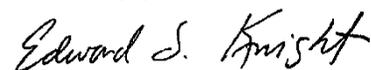
mandated by Nasdaq's rule. Accordingly, we believe the rule provides enhanced disclosure for the benefit of investors and the market. While Nasdaq is proud to be a leader by requiring this disclosure for the benefit of investors in our listed companies, we believe that such disclosure would benefit investors in all public companies.

During the comment period on Nasdaq's proposed rule, the Commission received eight comments on the proposal by seven commenters.<sup>4</sup> All but two commenters supported Nasdaq's proposed rule. These two commenters appeared to be primarily concerned that "the SEC is the appropriate regulator regarding required public disclosure," and it would be "appropriate to address any proposed new disclosure requirements through the SEC's Disclosure Effectiveness Project, in order to promote desirable uniformity in the nature of required disclosures...".<sup>5</sup> We concur.

For this reason, Nasdaq recommends that the Commission adopt a rule similar to the recently approved Nasdaq rule to benefit investors in all public companies and to promote uniformity in disclosure.<sup>6</sup>

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

Sincerely yours,



Edward S. Knight

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<sup>4</sup> See Letters to Brent J. Fields, Secretary, Commission, from Andrew A. Schwartz, Associate Professor of Law, University of Colorado Law School, Boulder, Colorado, dated April 25 and 26, 2016; Bobby Franklin, President & CEO, National Venture Capital Association, dated April 26, 2016; John Hayes, Chair, Corporate Governance Committee, Business Roundtable, dated April 26, 2016; John Endean, President, American Business Conference, dated April 28, 2016; Marc M. Rossell, Chair, Securities Regulation Committee, Bar of the City of New York, dated May 20, 2016 ("New York City Bar Letter"); Heather C. Briccette, President & CEO, The Business Council of New York State, Inc., dated June 15, 2016 ("NYS Business Council Letter"); Darla Stuckey, President & CEO, Society for Corporate Governance, dated June 27, 2016. See also Letter to Brent J. Fields, Secretary, Commission, from David Strandberg, Associate Vice President, Nasdaq dated June 30, 2016.

<sup>5</sup> See NYS Business Council Letter and New York City Bar Letter. These commenters also suggested that Commission rules may already require this disclosure. Based on Nasdaq's discussions with market participants, we do not believe that there is wide-spread agreement on this point and, as noted above, the nature, scope and timing of currently required disclosures may not in all cases be the same as the disclosure mandated by Nasdaq's rule. Therefore, we believe that this clarification is appropriate, even if the Commission believes similar disclosure is already required.

<sup>6</sup> Nasdaq made the same suggestion in a comment 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>.