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July 18, 2019

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: File No. S7-26-18, Roundtable on the Short-Term/Long-Term Management of Public Companies, Our Periodic Reporting System and Regulatory Requirements**

I am pleased to present the views of Nasdaq, Inc. ("Nasdaq") in connection with the Securities and Exchange Commission's ("SEC" or "Commission") Roundtable on the Short-Term/Long-Term Management of Public Companies, our Periodic Reporting System and Regulatory Requirements. It is an honor to be invited to participate in this event and I commend the Commission for providing this forum to highlight the issues that public companies face when seeking to pursue productive long-term strategies. Nasdaq is submitting this statement today as a supplement to our comment letter dated March 21, 2019 ("Comment Letter")[1] on the Commission's Request for Comment on Earnings Releases and Quarterly Reports ("Comment Solicitation").[2]

Nasdaq operates The Nasdaq Stock Market, which is home to over 3,000 public companies and exchange traded products that drive the global economy and provide investment opportunities for Main Street investors. We collaborate with the public companies that have chosen to list on Nasdaq and regularly communicate with these companies and their investors about the public company model. We often hear concerns from our listed companies about the high costs and regulatory burdens associated with operating as a public company, as well as the issues raised by short-termism in the capital markets.

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[1] Letter from John Zecca, Nasdaq, Inc., to Vanessa Countryman, dated March 21, 2019, available at https://www.sec.gov/comments/s7-26-18/s72618-5177722-183507.pdf.

[2] *Request for Comment on Earnings Releases and Quarterly Reports*, Securities Exchange Act Release No. 34-84842 (December 18, 2018), 83 FR 65601 (December 21, 2018) available at https://www.sec.gov/rules/other/2018/33-10588.pdf.

Two years ago Nasdaq released a report, entitled "The Promise of Market Reform: Reigniting America's Economic Engine" (the "Revitalize Blueprint"),[3] launching a call to action to revitalize the capital markets and ensure the continued strength of the U.S. financial system. Recognizing that the public markets are essential to wealth creation, innovation, and capital stability, but that fewer companies have been taking advantage of the public markets in recent years, we sought to evaluate the dynamics fueling this trend. In the Revitalize Blueprint, Nasdaq proposed multiple reforms that we believe can reduce the burdens on public companies, increase transparency, and improve disclosure requirements, thereby making it more attractive to operate as a public company. As we continue to see the adoption of many of our Revitalize proposals, one of the concerns that our listed companies continue to express is the increasing pressure to prioritize short-term returns over long-term strategic growth.

Numerous factors in recent years have contributed to a market environment that values a short-term orientation at the expense of long-term growth. As Chairman Clayton noted, "An undue focus on short-term results among companies may lead to inefficient allocation of capital, reduce long-term returns for Main Street investors, and encumber economic growth."[4] In our view, the trend away from long-termism not only impacts companies but also harms the vast majority of investors.

In order to provide meaningful data to the Commission in connection with the Comment Solicitation, Nasdaq solicited feedback from public companies on topics relating to the quarterly disclosure process. We reported those findings in our Comment Letter. In the same survey, we also asked our listed companies for their views on short selling and long-term vs. short-term investing.[5]

The results of our survey suggest that short-termism is having an impact on how our listed companies are managing their businesses. We found that 74% of respondents believed that over 40% of their influential investors value short-term returns over long-term returns, a troubling trend. We also discovered that companies feel pressure from short-term investors, with almost 50% reporting that they experience business constraints around long-term investments. This focus by the market on short-term returns is sharply in contrast to how the survey respondents viewed their own business, with 47% of responding companies reporting that their executive management evaluates their business over an 18-36 month horizon and an additional 31% evaluates the business based on a horizon of 3 years or more.

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[3] *The Promise of Market Reform: Reigniting America's Economic Engine* ("Promise of Market Reform Blueprint") available at https://business.nasdaq.com/media/Nasdaq_Blueprint_to_Revitalize_Capital_Markets_April_2018_tcm5044-43175.pdf.

[4] *Public Statement Announcing SEC Staff Roundtable on Short-Term/Long-Term Management of Public Companies, Our Periodic System and Regulatory Requirements*, Chairman Jay Clayton (May 20, 2019) available at https://www.sec.gov/news/public-statement/clayton-announcement-short-long-term-management-roundtable.

[5] In connection with the survey, we invited representatives of Nasdaq-listed companies, representatives of public companies signed up to receive updates on the Revitalize Blueprint and certain representatives of other public companies to participate in the survey. We received feedback from 187 companies. Our views on the topics we address in this submission have been influenced by the valuable feedback from the public companies that participated in this survey and we applaud their efforts to contribute to this process.

Similarly, 45% of the companies reported that their board of directors evaluate the business over an 18-36 month horizon and 39%, a horizon of 3 years or more.

In order to counter the increasing influence of investors with a short-term view, Nasdaq supports reforms that promote the benefits of the capital markets, such as innovation, business growth and job creation, which require a long-term perspective for maximum success. These reforms, which we summarize briefly below, include:

- Enhancing transparency around proxy advisors and activist investing;
- Recognizing the value of dual class structures;
- Imposing short interest transparency;
- Increasing the flexibility of reporting obligations; and
- Preserving optionality in capital management.

**Enhancing transparency around proxy advisors and activist investing**

As described in Nasdaq's submission in connection with the SEC's Roundtable on the Proxy Process, over time the widespread use of proxy advisors has distanced companies from their shareholders and in many ways has amplified the short-termism issues.[6] Although proxy advisory firms can provide a valuable service to institutional investors, their methodologies are often opaque and their business models and ownership structure may create conflicts of interest. For these reasons, Nasdaq has supported proposals for increased regulatory oversight and transparency in connection with proxy advisory services.

Increasingly, our listed companies have reported that short-term activists have been using proxy advisors in an effort to further outcomes that often are contrary to a company's long-term objectives. Innovators and entrepreneurs have expressed frustrations with needlessly becoming targets for activist investors, some of whom can monopolize management's time with a minimal investment. Nasdaq believes that the tactics and financial arrangements of activist investors should be examined by policy makers and made transparent to the companies and the marketplace.

**Recognizing the value of dual class structures**

Among the key recommendations in the Revitalize Blueprint, Nasdaq expressed its continued support for differential class structures in appropriate situations. Historically, some companies have elected to issue multiple share classes with different voting rights. There are many reasons that companies adopt dual class structures and typically this approach is favored by company founders, management and key shareholders who wish to retain a larger share of company control than is provided with a single share class structure. In the right circumstances, a dual class structure may be beneficial for an innovative company that is seeking a high-growth strategy, as well as its employees and investors. A multi-class structure also may protect a company from outside investor pressure to maximize short-term profits and allow more flexibility to focus on long-term shareholder value creation.

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[6] Letter from John Zecca, Nasdaq, Inc., to Brent J. Fields, dated November 14, 2018, available at https://www.sec.gov/comments/4-725/4725-4649196-176472.pdf.

The debate around dual class structures in recent years has encouraged studies about the long-term impact of class structure on shareholder returns and the results have been mixed. An MCSI study found that unequal voting stocks in aggregate outperformed the market over the period from November 2007 to August 2017[7], while a study by SEC Commissioner Robert Jackson presented data that companies with a dual class structure only outperformed in the early years after an initial public offering.[8] In addition, some critics of dual class share structures have proposed fixed time-based sunsets on these structures.[9] In the absence of clear and convincing data, we believe that there is no compelling reason to prohibit dual class structures. Furthermore, many foreign jurisdictions in which Nasdaq competes for global listings allow flexible dual class structures, creating a competitive landscape for listings.[10]

We believe that investors benefit when more companies access the public markets and, as a result, support allowing entrepreneurs to choose the share class structure that works best for their business. When there is comprehensive and transparent disclosure, investors can make the choice to invest in a dual class company with full visibility into the class structure and how it may impact their voting rights. Recognizing that one structure does not fit all companies, we believe it is critical for stock exchanges to have the discretion to craft listing standards that support innovation and entrepreneurship among their listed companies while ensuring that the interests of long-term investors are served and important investor protections are maintained.

**Short interest transparency**

Nasdaq supports reforms that would require disclosure of short interest positions. Currently, the lack of transparency in short-selling positions deprives investors and the market of important information, can cause speculation regarding the motives of short selling activities and may limit a company's ability to engage with investors. In some cases, it may also foster abusive trading behavior. Short positions are often in sharp contrast to long-term investment strategies that show support for a company's strategic plans.

Although short selling, when used appropriately, can contribute to price discovery, enhance liquidity and, in some cases, help to identify fraud, disclosure of short-selling positions would improve

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[7] *Assessing Control: Measuring the alignment between economic exposure and voting power at controlled companies,* Alan Brett, MCSI (April 2019) available at https://www.msci.com/documents/10199/a7c17b59-10de-9849-9f7c-1f70abece5da.

[8] Perpetual Dual-Class Stock: The Case Against Corporate Royalty, SEC Commissioner Robert J. Jackson, Jr., February 15, 2018 available at https://www.sec.gov/news/speech/perpetual-dual-class-stock-case-against-corporate-royalty.

[9] Petition to the Nasdaq Stock Market on multi-class common stock structures with differential voting rights dated October 24, 2018, Council of Institutional Investors.

[10] Douglas Appell, *Singapore's Stock Exchange Gives Dual-Class Shares a Secondary Listing Toehold*, Pensions & Inv. (July 31, 2017) available at http://www.pionline.com/article/20170731/ONLINE/170739996/singapores-stock-exchange-gives-dual-class-shares-a-secondary-listing-toehold; *Hong Kong's Stock Exchange Proposes a Controversial Reform*, Economist (June 22, 2017).

investors' ability to evaluate claims made by short-sellers who stand to profit from their activity. Issuers also would be in a better position to address investor concerns or allegations in the marketplace. Regulators would also benefit from more information that can be used to identify suspicious trading behaviors and investigate claims in the marketplace.

U.S. securities laws require certain investors to disclose long positions after the end of each quarter and when a position reaches or exceeds 5% of a company's outstanding shares.[11] However, there are no equivalent requirements in the U.S. for investors who hold short positions.

Based on our survey and continued outreach to our listed companies, we believe that many companies have been negatively impacted by short selling and that there is strong support for improved transparency. In response to our survey, 44% of respondents believed that their company's stock price had been negatively impacted by manipulative actions such as false claims or questionable lawsuits initiated by short sellers used for their financial benefit. Most significantly, 96% of respondents supported the enactment of transparency requirements by Congress or the SEC for short positions similar to those of long positions.

**Increasing the flexibility of reporting obligations**

Nasdaq strongly believes that a one-size-fits all approach to corporate disclosure is no longer consistent with the evolution of the markets and technology.[12] As we previously noted in our Comment Letter, Nasdaq supports the view that companies looking to encourage long-term returns could benefit from a requirement to provide reports semi-annually as found in the United Kingdom and in some EU jurisdictions.[13] Based on our survey of public companies, 75% of participants supported this view. Surprisingly, 54% of survey respondents also reported that the quarterly reporting cycle vs. semi-annual reporting cycle contributed to short-selling in their company's securities, a data point that supports the view that a focus on quarterly results may encourage short-term investment behaviors.

In the market today, companies need to reach investors quickly and efficiently to provide material information that can move the market. For this reason, Nasdaq also supports a principles-based disclosure framework that is focused on a materiality standard. By moving away from form-based requirements, companies would be able to spend time and resources on delivering key disclosures to investors rather than providing pages of less significant and sometimes duplicative information. Focusing on materiality-based reporting would give issuers the flexibility to provide the type of disclosure that matters most to their investors and allow a company to prioritize those activities that grow a business over time such as long term asset creation, innovation, human capital and research and development.

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[11] See Sections 13(d), 13(g) and 13(f) of the Securities Exchange Act.

[12] See n. 1 above.

[13] Letter from Edward Knight, Nasdaq, Inc., to Brent J. Fields, dated September 16, 2016.

**Preserving optionality in capital management**

Corporations have used stock buybacks as part of their capital management strategies for over 100 years.[14] Recently, however, stock buybacks have been labeled as tools to maximize stockholder and insider returns at the expense of employees, capital spending and research and investment. We believe this view is misguided and not supported by the data. While buyback authorization announcements increased in 2018 to $1 trillion, business investment also increased substantially and at the fastest rate since 2011.[15] American companies invested almost $3 trillion in the economy during 2018, including $460 billion in research and development.[16] According to Nasdaq's analysis of SEC filings of companies in the S&P 500, among larger public companies, those that repurchased stock in the first three quarters of 2018 were more likely to engage in more capital expenditures and research and development investment than those electing not to do buybacks.

Repurchases also have not been rising as a percentage of market capitalization, with repurchases in the 12 months ending in September 2018 equaling 2.72% of total market cap, well below 4.31% in 2007.[17] Stock buybacks are often overstated as the value of repurchases completed in a given year is much lower than authorizations.

What we learn from this data is that once again one-size-does-not-fit-all. Stock buybacks are a critical capital allocation tool and Nasdaq believes that a company's management and board are in the best position to make decisions on how best to manage capital while taking into account time horizons and other information.

**Conclusion**

Nasdaq receives valuable feedback from our listed companies, companies seeking to access the public markets and their investors about issues that are important to them, and we believe that such insights enable us to propose innovative solutions to improve the U.S. capital markets for public companies and investors. At the same time, Nasdaq is a self-regulatory organization mandated to protect investors and the public interest. We believe that investors, issuers and other market participants will benefit from healthy capital markets that promote trust and transparency. The reforms we are advocating for today will ensure that the interests of long-term investors are served and provide public companies with the opportunity to focus on innovation, job creation, economic growth and the prosperity of their companies and the global economy.

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[14] *The Fireworks Over Share Buybacks Are Duds*, Wall Street Journal (July 5, 2019); *Misperceptions surrounding corporate cash spending priorities and the economics of share repurchases*, U.S. Equity Views, Goldman Sachs Portfolio Strategy Research.

[15] The Facts on Stock Buybacks and Dividends, Business Roundtable available at https://www.businessroundtable.org/the-facts-on-stock-buybacks-and-dividends.

[16] Id.

[17] *Top Senate Democrats Propose Limits to Corporate Buybacks,* Bloomberg (February 4, 2019), available at https://www.bloomberg.com/news/articles/2019-02-04/top-senate-democrats-propose-limits-to-corporate-buybacks.

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We commend the Commission for bringing attention to the issues that will be discussed at the Roundtable and we appreciate the opportunity to participate in this important conversation.

Sincerely yours,

John Zecca