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Mr. Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1050

Re: File No. SR-NASDAQ-2016-013; Release No. 34-77481

Dear Mr. Fields:

This letter responds to comments submitted in connection with a proposal filed by The NASDAQ Stock Market LLC (“Nasdaq”) with the Securities and Exchange Commission (“Commission”) to adopt a listing standard to require listed companies to publicly disclose compensation or other payments by third parties to any nominee for director or sitting director in connection with their candidacy for or service on the companies’ board of directors.<sup>1</sup>

As of the date of this letter, seven commentators submitted a total of eight letters.<sup>2</sup> The letters from the Society for Corporate Governance (“SCG Letter”), the Business Roundtable (the “BRT Letter”) and the American Business Conference (the “ABC Letter”) expressed support for the proposal and highlighted their view – shared by Nasdaq – that information about third party payments to directors for board service is meaningful to shareholders and relevant to their investment and voting decisions.<sup>3</sup> And as Nasdaq did in its rule proposal, these letters noted concerns that third party payments to

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<sup>1</sup> See Securities Exchange Act Release No. 34-77481 (March 30, 2016), 81 FR 19678 (April 5, 2016)(SR-NASDAQ-2016-013). On June 30, 2016, Nasdaq withdrew Amendment No. 1 to the proposal and filed Amendment No. 2, which superceded the original filing in its entirety.

<sup>2</sup> See Letters from Andrew A. Schwartz, Associate Professor of Law, University of Colorado Law School, dated April 25 and 26, 2016; Letter from Bobby Franklin, President & CEO, National Venture Capital Association, dated April 26, 2016 (the “NVCA Letter”); Letter from John Hayes, Chair, Corporate Governance Committee, Business Roundtable, dated April 26, 2016; Letter from John Endean, President, American Business Conference, dated April 28, 2016; Letter from Marc M. Rossell, Chair, Securities Regulation Committee, Bar of the City of New York, dated May 20, 2016 (the “NYC Bar Letter”); Letter from Heather C. Briccetti, Esq., President & CEO, The Business Council of New York State, Inc., dated June 15, 2016 (the “NYS Business Council Letter”); and Letter from Darla Stuckey, President and CEO, Society for Corporate Governance, dated June 28, 2016. The letters are available at: <https://www.sec.gov/comments/sr-nasdaq-2016-013/nasdaq2016013.shtml>.

<sup>3</sup> The letters from Andrew A. Schwartz, Associated Professor of Law at the University of Colorado Law School, also supported Nasdaq’s proposal.

nominees or directors in connection with their candidacy or service on a listed company board could create incentives to focus on short term price increase over long-term valuation creation, improperly influence a director's independence and create conflicts of interest that affect a director's ability to carry out his or her fiduciary duties to all shareholders.

The SCG Letter, BRT Letter and ABC Letter also expressed support for specific provisions in Nasdaq's proposal. The SCG Letter, for example, highlighted that the proposed rule would not separately require duplicative disclosure when a company discloses third party payment arrangements pursuant to existing Commission proxy requirements. These letters similarly highlight that a company that makes a reasonable good faith effort to identify third party payment arrangements would not be deficient under the proposed rule. The BRT Letter further noted that the inquiries of directors and nominees by companies that would be mandated by the proposal are "appropriate" and do not impose "undue burdens or penalties for noncompliance due to a director's failure to provide necessary information." The ABC Letter commended Nasdaq's reasonable efforts provision as being "essential to the fairness and practicality of the proposal."

The NYC Bar Letter and the NYS Business Council Letter did not support the proposal, noting their view that existing Commission regulations may already require the disclosure mandated by the proposed rule.

We do not believe this concern warrants disapproval. The rule proposal – as noted in the SCG Letter, the BRT Letter and the ABC Letter – specifically addresses the issue of potential duplicative disclosure, providing that the proposed rule would not require separate disclosure when disclosure sufficient to satisfy the proposed rule has been made by a company under existing Commission proxy rules. And while there are various SEC disclosure rules that may, in some circumstances, apply to third party director payments, the nature, scope and timing of these required disclosures may not in all cases be the same as the disclosure mandated by our proposal, including for example ongoing annual and remedial disclosure. As such, while Nasdaq considered the concerns raised in these letters, we believe the proposal as amended adequately addresses them and enhances meaningful and effective transparency around third party payments to directors for board service.<sup>4</sup>

Nasdaq appreciates the opportunity to address the Commission and respectfully requests that it approve SR-NASDAQ-2016-013.

Respectfully Submitted,



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<sup>4</sup> We believe the proposal as amended also adequately addresses the concerns raised in the NVCA Letter around board service by venture capital board members.