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**Jerry D. Guess**  
*Founder, Chairman & CEO*

December 2, 2020

The Honorable Martha Miller  
Director, Office of the Advocate for Small Business Capital Formation  
United States Securities and Exchange Commission  
100 F Street NE  
Washington, District of Columbia 20549

*Sent via email:* [REDACTED]

Re: Nasdaq's Board Diversity Rule

Dear Director Miller:

I hope that this letter finds you well and in good health. As I have communicated with you and your office in the past, I thought it appropriate to reach out to you regarding Nasdaq's proposed Board Diversity Rule ("Rule"). Guess & Co. Corporation remains a private company, but we intend to become publicly traded at some point in the near future. We reserved a symbol with Nasdaq and the proposed Rule could impact our company. While I am minority, particularly Black American, I object to this Rule being put in place. Our company objects to this Rule being put in place. While we think it is admirable the manner in which companies and now, exchanges, are promoting social equality, it is wholly inappropriate for social issues to become a mandate in the boardrooms of companies whose first obligation is to their shareholders. Time and time again, we have all seen that mandating, albeit forcing, companies to make changes does not work well in the long run. Of course, the headlines are appealing, and public relations teams love this. However, when the cameras are off and the lights are out, boards across the country have real work ahead as they try to manage companies amid a myriad of issues right now. The best candidate for a board is the one who should be on the board. Boards should not be required to select someone because of their gender, skin color or sexual orientation. It is not the place of an exchange or a regulatory agency to force such rules on private sector enterprises. Moreover, we fear that this will start a pattern of socialization of free enterprise and will create a waterfall of rules for years to come that will relegate companies to drafted and primary agents of social justice, when that is not their responsibility alone.

If the public is patient, companies will make changes on their own, at the right time and with the right people. In recent years, companies have coalesced around the notion of prioritizing stakeholder interests (e.g. employees, communities) alongside that of shareholder interests. Companies have found ways to fulfill their fiduciary responsibilities under the shareholder primacy doctrine while also investing in education, health, wellness and social justice. Over the years, major companies have elected visible minorities to their boards. Prior to the events

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Guess & Co. Corporation  
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that took place earlier this year, women served on corporate boards along with other minorities. However, companies selected those who they felt were best qualified – those who would benefit their shareholders and fulfill their legal responsibilities as directors. No director should sit on a board because a rule requires them to be there. They should be on the board because they want to serve, they are qualified to serve, and they will discharge their duties to the best of their ability and in the best interest of their shareholders.

The common argument for this proposed Rule has been that companies are overlooking women and “underrepresented” minorities. The truth based on my experience is that companies would welcome women and underrepresented minorities if they simply expressed interest in joining boards. Those who are interested should be encouraged to contact nominating and governance committees, corporate recruitment firms and institutional investors who control most of the publicly traded companies. Pension funds, mutual funds and other institutional players have the real power to push for change in the boardroom and as shareholders, that is where the focus should be, because it is their right and their right alone to choose the directors they want running a company in which they have a financial interest.

I support diversity and so does our company. In fact, the management team for Guess & Co. Corporation is predominantly women. On our Board of Directors, we have three women directors, we have three minority directors, and we have an LGBTQ director. Before there was talk of a rule or a mandate. Before there were protests in the streets, we made our own decisions based on more than gender, skin color, or sexual orientation. Those on our board expressed an interest in serving – responded to nomination requests. The role of a director is both distinct and sacred in Corporate America. It is a privilege and honor to serve shareholders, not a right. It is a role to be earned and not given. The election of directors has always been and should forever remain the exclusive and sole domain of shareholders, and this interest should never be subordinated to any other party regardless of populace sentiment.

Respectfully yours,

Jerry D. Guess