I am writing to lay out the numerous reasons why the SEC should not approve the Nasdaq proposal to impose board room diversity reporting requirements on listed companies.

The Proposal is based on a false premise

The proposal asserts that more demographically diverse boards produce more shareholder value. This assertion is unproven for three reasons:

1. Various studies on the correlation between board diversity and financial results have come to differing conclusions. There is no scientific consensus on this question. I cite this letter to the editor of *The Wall Street Journal*:

   > "You note that in its SEC filing the Nasdaq cites that "multiple studies" show that increasing the number of women on corporate boards improves financial performance. These claims tend not to be based on rigorous analyses.
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   > These findings have recently been codified in three major meta-analyses of hundreds of rigorous academic studies. The most recent meta-analysis examined the results of 40 academic studies, and "no significant correlation [was] found." Another integration of 140 scholarly articles concluded that female representation on boards is "neither wholly detrimental nor wholly beneficial to firm financial performance." A 2015 study analyzed 20 rigorously selected peer-reviewed articles, and found that "a higher representation of females on corporate boards is neither related to an increase, nor to a decrease in firm financial performance . . . these results do not support the business case for diversity." (Notably, seven of the nine academic researchers cited in this paragraph are female.)
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   > Advocates of quotas for women on boards—not only from Nasdaq, but also those from the state of California—should be called upon to demonstrate the financial associations that they assert. None appear to be based on rigorous academic study."
   >
   > Prof. Lori Verstegen Ryan
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   > *San Diego State University*
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   > *Appeared in the December 9, 2020, print edition.*

   Professor Ryan graciously shared her sources with me:

   Herrera-Cano, Carolina, & Maria-Alejandra Gonzalez-Perez. 2019. Representation of Women on Corporate Boards of Directors and Firm Financial Performance. In A. Georgiadou, M. A. Gonzalez-Perez and M. R. Olivas-Lujan, Eds., ***Diversity within Diversity Management*:** 37-60.

   Klein, Katherine. 2017. Does Gender Diversity on Boards Really Boost Company Performance? ***Knowledge@Wharton*** Available at https://knowledge.wharton.upenn.edu/article/will-gender-diversity-boards-really-boost-company-performance/.

   Pletzer, Jan Luca, Romina Nikolova, Karina Karolina Kedzior, & Sven Constantin Voelpel. 2015. Does gender matter? Female representation on corporate boards and firm financial performance - A meta-analysis. ***Plos One,*** 10(6): 1-20

   The alleged correlation between board member demographic diversity and company financial performance remains unproven.

2. Correlation does not demonstrate causation

   Ice cream sales are highly correlated with street crime rates, but banning ice cream won't reduce crime. The statistical correlation is a result of a third factor; warm weather increases both street crime rates and ice cream sales. If a study was done that showed that companies headquartered in Silicon Valley produce better financial returns than those headquartered in

other places (which seems likely), would the SEC order all companies to move their headquarters to Silicon Valley? Obviously not.
If a correlation between board diversity and financial performance exists, the correlation may be due to a third (probably difficult to measure) factor. Perhaps companies that welcome minority members may also be more welcoming to new ideas in general. Or perhaps companies in Silicon Valley are more apt to have minority members.

Statistics alone cannot prove that board member demographic diversity improves financial performance.

3. Coerced changes to board membership will probably not have the same result as voluntary changes.
Even if more diverse boards have produced better results in the past, and even if this has been because of the participation of the minority members, that is no guarantee that the coerced addition of minority members to boards will have the same result. We have already seen cases where companies bring in a "token minority officer" for appearances sake, but no intention to let them change anything. In fact, the diversity reporting requirement may cause other board members to discount the qualifications and abilities of new minority board members, assuming their primary qualification was their minority status.

This type of coercion is counterproductive.

The Proposal violates board members right to privacy

In the landmark case Roe v. Wade, the Supreme Court established a constitutional right to privacy. For many members of the LGBTQ+ community, their sexual identity is an extremely private matter. Some "come out" and declare themselves, but many others do not wish to do so. The Nasdaq and the SEC should not incent companies to try and "out" their board members. In some families, even race is a private matter. "Board diversity" is not a sufficient cause to dig into people's very private histories.

Investors' right to know is outweighed by board members right to privacy.

The Proposal's demographic identity test is easily counterfeited

How, precisely, do you define a "black" person? How do you know if a person is bisexual? The proposal skirts the practical impossibility of objectively making these determinations by allowing the board members to self-identify. But that definition of identity is subject to fraud.
Any member of a white male board may declare that he has felt attraction to certain other men, at some time in his life, and can therefore consider himself bisexual. No change in his lifestyle, nor his outlook is necessary. There is no test to determine the accuracy or falsehood of his claim.

Relying on self-declaration encourages unassailable false claims.

The Proposal's demographic categories are superficial with regard to diversity

I've been investing in stocks for decades, and the primary board member demographic I've been interested in is their age; which is already widely published. Wisdom usually grows over the years, irrespective of other demographics.
There is an unstated assumption that these particular demographic categories reflect diversity in decision making. Having a black person on the board of a haircare products company might improve decision making, because the haircare needs of black people are somewhat different than the haircare needs of white people. But how does this help decision making in a business-to-business cloud services company? Is there a black perspective on cloud services? Or a gay perspective?

Why is it assumed that a variety of skin tones and genders adds diversity, but a variety of ages or home towns or colleges or degrees or native tongues does not?
Once a list of “diverse” demographics is approved, other groups will petition to be added to the list. People with disabilities, veterans, naturalized immigrants, and others will wish to get in on this.

This is not a diversity program, it’s an affirmative action program.

The Proposal’s definition of diversity is unreasonably narrow

The proposal claims that it will promote board diversity, but the actual provisions don’t require diversity. The only nondiverse board this proposal would prevent is a board composed of 100% white, cis-gendered males. Nearly all other board demographics, no matter how uniform, are accepted.

This is not diversity promotion, its affirmative action program.

The Proposal does not fight racism and sexism, it encourages them.

The Reverend Dr. Martin Luther King Jr. famously said:

> “I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.”

By explicitly setting qualifications based on skin color, this proposal moves American further from that dream; it takes America backwards.
I agree with Supreme Court Justice John G. Roberts when he said:

> “The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”

The same is true of discrimination on the basis of sex and sexual orientation. We need to stop discriminating.

For any or all of these reasons, the SEC should reject this proposal from the Nasdaq.

John Richter

Submitted to: https://www.sec.gov/cgi-bin/ruling-comments

On 12/12/2020

Reference: SR-NASDAQ-2020-081 (filed 9-Dec)