

**ICGN**

International Corporate Governance Network

*Inspiring good governance & stewardship*

Chairman Jay Clayton  
Securities and Exchange Commission  
Washington, D.C. 20549  
USA

Sent by email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)  
[chairmanoffice@sec.gov](mailto:chairmanoffice@sec.gov)

16 December 2020

Dear Chairman Clayton:

**Re: NASDAQ Listing Requirements on Board Diversity (SR-NASDAQ-2020-081)**

The International Corporate Governance Network (ICGN) is pleased to provide comments to the United States Securities and Exchange Commission (U.S. SEC) regarding SR-NASDAQ-2020-081 relating to listing requirements around board diversity.

Led by investors responsible for assets under management in excess of US\$54 trillion, ICGN is a leading authority on global standards of corporate governance and investor stewardship. Our membership is based in more than 45 countries and includes companies, advisors and other stakeholders. ICGN's mission is to promote high standards of professionalism in governance for investors and companies alike in their mutual pursuit of long-term value creation contributing to sustainable economies world-wide. Our policy positions are guided by the ICGN Global Governance Principles<sup>1</sup> and the ICGN Global Stewardship Principles,<sup>2</sup> both of which have been developed in consultation with ICGN Members and as part of a wider peer review. For more information on ICGN please see: [www.icgn.org](http://www.icgn.org).

ICGN has engaged with the U.S. SEC over two decades by virtue of our responses to public consultations to help promote good corporate governance and responsible investment practices in the US.<sup>3</sup> Over 30% of ICGN Members are based in North America and many others based overseas hold significant equity positions in US companies.

<sup>1</sup> See: ICGN Global Governance Principles:

[http://icgn.flpbks.com/icgn\\_global\\_governance\\_principles/](http://icgn.flpbks.com/icgn_global_governance_principles/)

<sup>2</sup> See: ICGN Global Stewardship Principles:

[https://www.icgn.org/sites/default/files/ICGN%20Global%20Stewardship%20Principles%202020\\_0.pdf](https://www.icgn.org/sites/default/files/ICGN%20Global%20Stewardship%20Principles%202020_0.pdf)

<sup>3</sup> For example see:

ICGN letter to the SEC on Modernization of Regulation S-K Items 101, 103, and 105, 26 August 2020:

<https://www.icgn.org/sites/default/files/12.%20ICGN%20Letter%20Req%20S-K%20to%20%20SEC.pdf>

ICGN letter to the SEC on proposed amendments to Exchange Act Rule 14a-8 (4 December 2019):

[https://www.icgn.org/sites/default/files/20.%20SEC%20shareholder%20resolution%20\\_0.pdf](https://www.icgn.org/sites/default/files/20.%20SEC%20shareholder%20resolution%20_0.pdf)

ICGN letter to SEC Regarding Proxy Advisor Interpretation and Guidance (21 November 2019):

<https://www.icgn.org/sites/default/files/19.%20SEC%20Proxy%20Advisor%20Interpretation%20and%20Guidance.pdf>

ICGN letter to the SEC on Modernization of Regulation S-K Items 101, 103, and 105; Release Nos. 33-10668; 34-86614 ("Proposed Rule"), 22 October 2019:

<https://www.icgn.org/sites/default/files/16.%20ICGN%20USSEC%20S7-11-19.pdf>

**ICGN strongly supports Nasdaq’s proposed listing requirements for board diversity for Nasdaq-listed firms which was filed on 1 December 2020 and encourage the US SEC to approve this.**

Our Members regard diversity as a strategic issue that is fundamental to board quality. Principle 3 of the ICGN Global Governance Principles emphasises there should be a sufficient mix of directors with relevant knowledge, independence, competence, industry experience and diversity of perspectives to generate effective challenge, discussion and objective decision-making. This principle is supplemented by specific guidance on diversity as follows:

*“Boards, and the workforce as a whole, should comprise a diverse group of individuals to ensure effective and inclusive decision-making in alignment with the company’s purpose and key stakeholders. This includes individuals from different genders, ethnicities, social and economic backgrounds, and personal attributes. Boards should disclose and report against the company’s policy on diversity which should include specific goals, measurable targets and a time period for achievement. The report should include an explanation of how the diversity policy supports the company strategy and how diversity is considered as part of succession planning on the board and throughout the company.”* Guidance 3.1, Diversity, ICGN Global Governance Principles

We would also observe that it is now commonplace in many markets for companies to publish a board diversity policy; however but disclosure is often disappointingly insufficient and boilerplate. To enrich information to investors around board diversity, we encourage companies to disclose a skills matrix for the board, aligned with the company’s long-term strategic needs and succession planning.

Board refreshment is critical to enable board diversity. As such, ICGN advocates that director tenure should be contingent on individual performance and annual re-election based on satisfactory evaluations of his or her contribution to the board. A report from the nomination committee explaining how they considered the representation of women or other minorities in director selection and board evaluation is useful.

These matters are discussed further in the ICGN Global Governance Principles. We also refer you to ICGN’s Guidance on Gender Diversity<sup>4</sup>, which was followed by ICGN Guidance on Diversity in a broader context, taking into consideration not only gender, but also other factors such as nationality, race, ethnicity and sexual orientation.<sup>5</sup> Both documents serve to emphasise ICGN’s view that board diversity is a strategic contributor to effective boards and good governance, not simply as a hygiene factor.

We applaud Nasdaq for demonstrating leadership with this initiative, particularly given the important role that stock exchange listing rules play in shaping corporate governance in the US—and the absence of a mandatory and regulatory based

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<sup>4</sup> See ICGN’s Guidance on Gender Diversity (2013): [http://icgn.flpbks.com/icgn\\_gender-diversity\\_2015/#p=1](http://icgn.flpbks.com/icgn_gender-diversity_2015/#p=1)

<sup>5</sup> ICGN Guidance on Diversity on Boards (2016): [http://icgn.flpbks.com/icgn\\_diversity-on-boards/#p=4](http://icgn.flpbks.com/icgn_diversity-on-boards/#p=4)

national Code of Corporate Governance. Particularly useful are NASDAQ's suggestions relating to disclosing board-level diversity statistics and the requirement for companies to explain when they do not have at least two diverse directors. These steps are both sensible—and should be readily achievable.

Notwithstanding the good suggestions, these requirements alone should not be regarded by companies as the limit of what can and should be achieved to achieve diversity. There is potential scope to go further in this domain, including external pressures and market forces emerging that may call for require further regulatory initiatives in this area. For example, requiring the appointment of two directors to increase diversity and reduce groupthink on a board is a fairly modest expectation. But it is a good place to start and build from. We also do not see these disclosure requirements posing a cost or administrative burden to listed companies.

We hope these comments are useful to your deliberations and please do not hesitate to contact me or ICGN Policy Director, George Dallas, if you would like to discuss this in further detail: [REDACTED]

Yours sincerely,



Kerrie Waring  
**Chief Executive Officer**  
**International Corporate Governance Network**

Copy: Deborah Gilshan, Chair, ICGN Ethics and Systemic Risk Committee:  
[REDACTED]