

December 23, 2020

Submitted via rule-comments@sec.gov

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File Numbers SR-NASDAQ-2020-081 and 2020-082

Ladies and Gentlemen:

This letter is submitted in response to the Notice of Filing of Proposed Rule Change published by the Securities and Exchange Commission (the “SEC”) in SEC Release No. 34-90574 (December 4, 2020),¹ with respect to the proposal by the Nasdaq Stock Market LLC (“Nasdaq”) to amend the Nasdaq Listing Rules to require, subject to certain exceptions, that the board of directors of Nasdaq-listed companies meet certain diversity objectives and that Nasdaq-listed companies publicly disclose statistical information related to each director’s self-identified gender, race and self-identification as LGBTQ+ (the “Diversity Proposal”). A company that does not meet the standards of diversity must disclose why it does not meet these requirements. In addition, I write to comment in response to the Notice of Filing of Proposed Rule Change published by the SEC in SEC Release No. 34-90571 (December 4, 2020)² to adopt new Nasdaq Listing Rule IM-5900-9 to offer certain Nasdaq-listed companies access to a complimentary board recruiting solution to help advance board diversity (the “Recruiting Proposal” and, together with the Diversity Proposal, the “Proposals”).

Introduction

The depth and perseverance of the problem of opening leadership positions to women, minorities, and other diverse categories, including LGBTQ+ and handicapped persons, has proven to be significant. This situation continues to exist despite the often-courageous efforts of so many individuals of good will throughout the history of the United States to address systemic racism and discrimination that persists in too many aspects of our society.

As have many others, in addition to my securities law practice, I have endeavored to contribute my time and support to ending systemic racism and discrimination. I am a member and supporter of the Southern Poverty Law Center, the NAACP, the Anti-Defamation League, and the Diversity and Inclusion Committee of the Business Law Section of the American Bar

¹ SEC Release No. 34-90574 (December 4, 2020); 85 FR 80472 (December 11, 2020) (the “Proposing Release”).

² SEC Release No. 34-90571 (December 4, 2020); 85 FR 79556 (December 10, 2020).

Association. I have been an intensely involved member for 25 years of the AAUW³ and have held numbers of officer positions at the branch and state levels.

Although this comment is solely submitted to provide my own views, it is instructive that AAUW's mission since 1881 has been to advance gender equity for women and girls, through research, education, and advocacy at the local, state, and national levels. Membership in AAUW allows me to join with over 170,000 members and supporters in fighting sex discrimination, advocating for gender equity, and providing fellowships and grants to enable the education of women.

Among other continued discriminatory practices, the imbalance in diverse representation on the boards of U.S. public companies has proven to be an intractable problem despite the force of public opinion, advocacy, and legislative and regulatory efforts. My colleagues in these organizations and many others consider it to be profoundly discouraging that AAUW's members have labored for 139 years and the NAACP for 111 years without achieving the elimination of systemic racism and discriminatory practices, including equitable access to leadership opportunities for women and other under-represented groups.

Comment

The Nasdaq Diversity Proposal provides an extensive history of efforts to increase diversity representation on the boards of public companies, the benefits that accrue to a company and its investors with increased board diversity, and the *di minimis* progress achieved thus far in increasing diversity through the actions of individual companies and disclosure requirements. Nasdaq noted that, with respect to gender diversity, the boards of U.S. listed companies trail behind the progress of companies in other jurisdictions that have imposed requirements related to board diversity. The Proposals also reflect that Nasdaq found that an extensive body of academic research shows that diverse boards are positively associated with improved governance and financial results.

Based on the federal securities laws, Nasdaq is obligated to adopt rules and carry out its purposes in a manner that is in the interest of the investing public. I believe that all government entities, including the self-regulatory organizations, also have a primary obligation to operate in the interest of society in general. Therefore, this is to support and compliment Nasdaq for making the Proposals as a good "corporate citizen" in the interest of addressing systemic racism. Nasdaq's Recruiting Proposal is a creative and important initiative that will assist companies to achieve the purposes of the Diversity Proposal.

I welcome both the Diversity and Recruiting Proposals as a much-needed and practical means of increasing diversity and inclusiveness on the boards of Nasdaq-listed companies, with

³ www.AAUW.org

standards of compliance, disclosure of statistical information to investors, and making available a complimentary board recruiting solution to help a company to find diverse candidates to fill positions on the company's board. I believe that the proposed changes will encourage investor interest in Nasdaq companies that better reflect the American community and is likely to lead to the qualification of such companies for inclusion in "approved" lists of socially responsible companies.

I do not propose any revisions to the Proposals, although I might prefer even more expansive requirements, because the Proposals are an important step forward toward achieving opportunities for inclusion of diverse members on boards of directors of Nasdaq-listed companies. I make one request for consideration by Nasdaq. I request that Nasdaq commit to publishing a study of the impact of the Proposals on board diversity and the relationship between diversity and corporate governance and financial results based on three years of data after implementation. Such a study may supply a basis for increasing the diversity listing standard that Nasdaq is now proposing and will be instructive in general on the issue of promoting increased leadership opportunities for diverse candidates.

The Nasdaq Proposals will not, alone, end the on-going destructive implications of systemic racism in the corporate environment. Therefore, it is my hope that publicly listed, private companies, and non-profit organizations will strive to establish a new standard of inclusion by taking significant and substantive actions to end all barriers to employment, board service, advancement and leadership opportunities, and business relationships based on age, disability, ethnicity, gender, gender identity, geographical location, national origin, race, religious beliefs, sexual orientation, and socio-economic status.

I appreciate the opportunity to comment on Nasdaq's significant proposed amendments to the Nasdaq Listing Rules.

Sincerely yours,



Suzanne Rothwell
Managing Member

Cc: Arnold Golub, Esq.
Deputy General Counsel and Vice President
The Nasdaq Stock Market LLC