**STATE OF WASHINGTON**

# STATE INVESTMENT BOARD

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December 23, 2020

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
*Submitted via rule-comments@sec.gov*

Re: **SR-NASDAQ-2020-081** Proposed Rule Change to Adopt Listings Rules Related to Board Diversity

Dear Ms. Countryman:

The Washington State Investment Board (WSIB), representing $153 billion in invested assets on behalf of more than 780,000 retirement plan beneficiaries, is submitting this letter in support of the above-referenced rules change pertaining to the diversity composition of Boards for companies listed on the NASDAQ exchange. The proposal would adopt listing rules requiring NASDAQ-listed companies to:

(a) have at least one director who self identifies as female, and
(b) to have at least one director who self-identifies as Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, two or more races or ethnicities, or as LGBTQ+, or
(c) to explain why the company does not have at least two directors on its board who self-identify in the categories listed above."

This listings rule is largely consistent with our own Board-approved corporate governance policies and priorities through which we seek meaningful company data and disclosures related to diversity of boards. In fact, at a public meeting on December 17, 2020, the WSIB voted unanimously to update its own Global Proxy Voting Policy to include a clear position on diversity:

> *"We believe that teams with cognitive diversity and diversity of background can make better decisions, and one way to achieve this is to appoint directors representing a range of racial and ethnic backgrounds, as well as a material number of women. The WSIB closely reviews the composition of the board for representation of diverse director candidates…"*

The NASDAQ's proposed listing rule is a reasonable approach that addresses the investor's need to understand diversity in key positions where a multitude of governance practices come into play on issues that directly affect shareholders, employees, customers, suppliers, and a broader community. While some opponents of the proposal have criticized NASDAQ for overreaching beyond the purpose and role of a

stock exchange, we disagree. Granted, if the marketplace was already well-equipped with sufficient standards for diversity data disclosure, it's likely that stock exchanges would not need to employ listing rules to raise the bar on diversity disclosure. However, while clear evidence affirms that diverse boards add value over the long term[1], diversity in the boardroom has been generally lacking or even invisible to investors. Leadership on this issue must come from responsible advocates who are willing to step forward with a call for fair transparency and reasonable change. In this instance, we should credit the exchange for taking on an important initiative rather than shaming the exchange for not remaining quietly confined to the business of making markets.

A stock exchange certainly has a responsibility and obligation to investors, as well as listed companies, in order to provide a fair and open marketplace for investment transactions. However, information on board diversity deserves a defined place in that fairness equation. Publicly listed companies are accustomed to self-disclosure of information in order to satisfy the due diligence of responsible investors. This proposal from NASDAQ provides beneficial guidance on reasonable board diversity benchmarks without imposing hardship or an autocratic mandate on any listed company.

We examined several key points in order to determine a position on this proposal:

- **Fair and Balanced Request for Information** – The proposal calls on listed companies to self-report annual disclosure of diversity-related composition of their boards so that investors who care about such diversity may consider this information part of their overall investment analysis. This allows investors to assess whether the information represents material relevance to the company's value or growth strategy. This seems inherently fair and should be a light lift for any public company.

- **Emphasis on Disclosure** – The NASDAQ proposal seeks accessible information; it is not an arbitrary requirement that would rule out or delist companies that don't meet the stated goals of diverse membership. While NASDAQ puts forth diversity goals that are specific and aspirational, company boards that fall short of the diversity goals are not penalized; they are simply asked for an explanation. Let the market then decide whether the company's position is tenable or not. This too seems inherently fair. We have reached a point in our industry where such explanations to investors are both provided and expected as part of ordinary analysis and decision-making. No longer should we consider board diversity data as exceptional, immaterial, or out of reach.

- **Aims at Sweet Spot in the Marketplace**– NASDAQ has created an exchange and a brand that has attracted technology companies in an economy increasingly comprised of business models that create and leverage intangible assets – software as service or data aggregation rather than hardware or manufactured widgets. But the Achilles heel for many tech enterprises is a longstanding reliance on a close-knit, clubby fraternity of entrepreneurs who at times have shown they can create global reputation risk faster than an algorithm-crunching super computer. Basic board diversity goals and annual disclosures should be something most of these publicly traded technology companies are anxious to embrace, regardless of NASDAQ's listing requirements. For future-minded tech companies, attaining a reasonable benchmark of board diversity should not be a stretch goal.

- **Alignment with Private Markets –** It's interesting – even a bit ironic -- that many private equity general partners are already moving aggressively toward new and improved standards of diversity in a universe where requirements for public disclosure are far less demanding. These investment partners have been urged by limited partners to address diversity in their portfolio companies, but today many of the larger private equity firms are seeing diversity as more opportunity than obligation. They understand that their long-term value propositions will eventually depend on

[1] Predicting Long-term Success for Corporations and Investors Worldwide, FCLT Global, 2019

broader talent pools, wider relationship networks, and more dynamic streams of ideas. No longer are they waiting to be asked for diversity data; they have moved this information into the core of their pitchbooks. Publicly listed companies should be willing to approach this issue with at least the same level of commitment and "woke" realization when compared to the private markets.

In conclusion, we appreciate NASDAQ's proposal and their willingness to lead rather than quietly follow past norms on this issue of diversity. Their position is aligned with industry research and with the ongoing and healthy movement toward improved transparency and practical accountability among publicly traded companies and investors. Over time we expect most companies and investors will come to view board diversity disclosures as basic step in a journey toward responsible governance.

Thank you for this opportunity to provide our perspective and views on this proposal.

Sincerely,

Theresa Whitmarsh
Executive Director

cc: WSIB Board