



Bay Area Asian American General Counsel

January 4, 2021

Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609

**RE: SR-NASDAQ-2020-081**

Dear Secretary Countryman:

On behalf of the Bay Area Asian American General Counsel (BAAAGC), we write in support of Nasdaq's proposed rule change to adopt listing rules related to board diversity (the "Proposal"). BAAAGC is an organization of over 130 Asian American general counsels and chief legal officers of companies in the San Francisco Bay Area, from start-ups to Fortune 500 companies. Our members regularly advise boards and their companies on corporate governance.

One of BAAAGC's core values as an organization is to promote diversity and inclusion throughout not only the legal profession but industry-wide. Our general counsel and chief legal officer members recognize the critical role that diversity plays within an organization, especially on their corporate boards.

The Proposal cites extensive empirical data that "diversity in the boardroom is good corporate governance" and leads to "an increased variety of fresh perspectives, improved decision making and oversight, and strengthened internal controls." An extensive body of academic research "demonstrates that diverse boards are positively associated with improved corporate governance and financial performance."

Despite this clear evidence, women and minorities remain under-represented in the board room. Minorities hold only 16.1% of board seats in the Fortune 500 yet are 39.9% of the U.S. population.<sup>1</sup> Asian Americans are no exception despite the model minority narrative myth. Even though Asian/Pacific Islanders represent 12% of the professional workforce nationwide, only 3.7% are directors in the Fortune 500.<sup>2</sup>

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<sup>1</sup> Deb DeHaas, Linda Akutagawa, and Skip Spriggs, Deloitte LLP, "Missing Pieces Report: The 2018 Board Diversity Census of Women and Minorities on Fortune 500 Boards" (Feb. 15, 2019), available at <https://corpgov.law.harvard.edu/2019/02/05/missing-pieces-report-the-2018-board-diversity-census-of-women-and-minorities-on-fortune-500-boards/#6>; US Census Bureau, QuickFacts, available at <https://www.census.gov/quickfacts/fact/table/US/PST045219>.

<sup>2</sup> DeHaas, et al., *supra* note 1; Buck Gee and Denise Peck, "Asian Americans Are the Least Likely Group in the U.S. to Be Promoted to Management," *Harvard Business Review* (May 31, 2018), available at <https://hbr.org/2018/05/asian-americans-are-the-least-likely-group-in-the-u-s-to-be-promoted-to-management>.

This under-representation stems in part from the traditional search process for board candidates. Directors often engage their networks to identify board candidates and/or rely on referrals from other directors. Networking is key to obtaining a board seat. As a result, new directors and director candidates tend to reflect the socio-demographic composition of the personal networks of current directors.

Moreover, the same candidate pools are repeatedly tapped to find board candidates. Those that already serve on boards are often asked to serve on other boards. CEO or other C-suite experience is commonly a criterion for candidate searches, but this process perpetuates racial and gender inequity that exists at the executive level. For example, an analysis published in the Harvard Business Review found that Asian Americans are the least likely racial group to be promoted into Silicon Valley's executive levels, even though they are the most likely to be hired into high-tech jobs.<sup>3</sup>

The Proposal provides an appropriate impetus to depart from the traditional director search process and to diversify the candidate pool. While some critics of the Proposal contend that it would not lead to the selection of the "best qualified candidate," this argument overlooks not only the evidence that a diverse board contributes to better decision making, corporate governance and financial performance, but also the reality that factors other than merit play in the traditional search process for directors.

Nevertheless, if a company believes that it is selecting the best qualified candidates despite a lack of diversity, it remains free to do so under the Proposal. In that case, the Proposal merely requires disclosure – promoting transparency, a core principle of good corporate governance and efficient capital markets.

Accordingly, BAAAGC strongly supports the Proposal and urges the Commission to approve it.

Sincerely,



Thomas Chow



Irene Liu



Andrew Song  
Co-Chairs, BAAAGC

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<sup>3</sup> Gee and Peck, *supra* note 2.