



January 4, 2021

Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609  
Via email: rule-comments@sec.gov

Re: Comments in Support of Nasdaq's Diversity Proposal: SR-NASDAQ-2020-081

Dear Secretary Countryman:

I write on behalf of the National Asian Pacific American Bar Association (NAPABA), an organization that represents the interests of approximately 50,000 legal professionals and nearly 90 national, state, and local Asian Pacific American bar associations. Through its national network, NAPABA provides a compelling voice for increased diversity in government and the judiciary on the local, state, and federal levels, advocates for equal opportunity in the workplace, works to eliminate hate crimes and anti-immigrant sentiment, and promotes the professional development of people of color in the legal profession. As an association we are deeply committed to diversity, equity, and inclusion and write in support of the Nasdaq proposed rule on diversity and reporting.

The collective experiences of our members, their firms and companies, and their clients makes clear that diversity in leadership and in decision-making —i.e., true inclusion—is a competitive advantage for any organization. Within the legal industry, the public is seeing the benefits of the affirmative steps we are taking to advance highly qualified diverse candidates to all levels of leadership. The Nasdaq proposal should have a similar positive impact on the public interest and should serve to enhance corporate governance, strategic decision-making, investor protections, and investor confidence.

Unfortunately, there is still an extraordinary need and long overdue action when it comes to meaningfully increasing diversity and inclusion on the boards of listed companies. As of 2018, 80% of the 1,033 available board seats on *Fortune 500* corporations were filled by White or Caucasian directors and 59.6% of those directors were White men.<sup>1</sup> Similarly, out of the 1,222 new board members of *Fortune 100* corporations, 77% of new directors were White or Caucasian and 51% of those directors were White men.<sup>2</sup>

We are encouraged that the proposal may lead to more opportunities for numerous talented women, individuals who self-identify as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identify as gay, lesbian, bisexual, or transgender to join corporate boards. Increasing diversity at the board level will lead to a stronger pipeline for and opportunities to develop diverse leaders throughout all levels of a company. This will create a positive cultural shift and experience for employees, the companies, their shareholders, and their clients.

Notably, the proposal includes a broad range of categories capturing backgrounds that are underrepresented on corporate boards, in a manner that companies can implement, as demonstrated by the success in collecting data on the legal industry.<sup>3</sup> However, recognizing the diverse nature of self-identification and the disparities that can exist within racial groups, such as the Asian American and Pacific Islander community, we encourage Nasdaq to consider implementing and sharing best practices in data disaggregation to improve the ability of companies to report data that will provide a more complete picture.

Finally, disappointingly, the proposal fails to assert or impose results-focused requirements beyond what many organizations already undertake voluntarily. The reporting requirement includes flexibility to address why a company was not able to achieve the intended two director objective. Further, the phase-in-period allows companies to develop a strategy to identify, recruit, and retain a talented pool of diverse directors. It would be most regrettable for Nasdaq to squander this opportunity to bring about needed and long overdue change in this important area by taking a less assertive or intentional approach than is warranted.

For the above reasons, NAPABA applauds the efforts of Nasdaq to foster diversity and inclusion and create a standard methodology of measuring and reporting on diversity in corporate board leadership, but also encourages Nasdaq to consider further refining its proposal so that its intended purpose and objectives are indeed timely achieved. For additional information, please contact Priya Purandare, Executive Director, at [REDACTED] or [REDACTED].

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<sup>1</sup> See Deloitte, *Missing Pieces Report: The 2018 Board Diversity Census of Women and Minorities on Fortune 500 Boards* (2018), available at: <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/center-for-board-effectiveness/us-cbmissing-pieces-report-2018-board-diversitycensus.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> See, e.g., National Association for Law Placement (NALP), *2019 Report on Diversity in U.S. Law Firms* (2019), available at: [https://www.nalp.org/uploads/2019\\_DiversityReport.pdf](https://www.nalp.org/uploads/2019_DiversityReport.pdf).

Sincerely,

A handwritten signature in black ink, appearing to read "A.B. Cruz III". The signature is fluid and cursive, with the letters "A", "B", and "C" being particularly prominent and stylized.

Rear Admiral A.B. Cruz III, USN (ret.)  
President