CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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[redacted]

January 4, 2021

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Adopt Listing Rules Related to Board Diversity (Release No. 34-90574; File No. SR-NASDAQ-2020-081)

Dear Ms. Countryman:

The U.S. Chamber of Commerce's ("the Chamber") Center for Capital Markets Competitiveness ("CCMC") is pleased to provide comments on the Proposal from the Nasdaq Stock Market LLC that is currently pending consideration by the Securities and Exchange Commission ("SEC" or "Commission"), "Proposed Rule Change to Adopt Listing Rules Related to Board Diversity" ("Proposal").

The CCMC commends Nasdaq for promoting a private sector-based solution to foster greater diversity among boards of directors. The Proposal encourages companies to think critically about how to incorporate diversity into their corporate leadership, which is a goal that the Chamber shares.

The Chamber supports efforts to increase gender, racial, and ethnic diversity on corporate boards of directors. It is clear that board diversity is valuable. In fact, according to PwC's 2019 Annual Corporate Directors Survey, corporate directors feel that board diversity significantly benefits a company: 94% of board directors who responded indicated that a diverse board brings unique perspectives; 87% thought that diversity enhances board performance; 84% felt that board diversity improves relationships with investors; and 76% agree that board diversity enhances the performance of the company.[1]

Last year, the Chamber launched the Equality of Opportunity Initiative ("EOI") to develop real, sustainable solutions to help close race-based opportunity gaps in six areas – education, employment, entrepreneurship, criminal justice, health, and wealth disparity. Systemic inequalities hurt individuals, communities, our economy, and our society. Within its

[1] PwC's 2019 Annual Corporate Directors Survey, https://www.pwc.com/us/en/services/governance-insights-center/assets/pwc-2019-annual-corporate-directors-survey-full-report-v2.pdf.pdf

EOI efforts, the Chamber is committed to promoting and accelerating diversity in America's boardrooms, including to specifically help develop and match diverse talent to public and private board positions. Through sharing strategies and best practices, as well as tapping our expansive networks, the private sector is well-positioned and well-suited to advance board diversity at a rapid pace.

The Chamber has also supported Congressional efforts around board diversity disclosure. The Chamber endorsed the "Improving Corporate Governance through Diversity Act of 2019" (H.R. 5084/S. 360 [116th]), a bill co-authored by Congressman Gregory Meeks and Senator Bob Menendez that would require issuers to disclose the racial, ethnic, and gender composition of their boards of directors and executive officers, as well as the status of any of those directors and officers as a veteran. Further, the bill would establish an advisory group that would carry out a study and provide recommendations on private sector strategies to increase diversity among boards of directors. This legislation would establish a model to organically boost diversity on boards through disclosure without imposing a one-size-fits-all, mandated approach.

American businesses have an unmatched ability to innovate, change, and grow, and it is precisely these attributes that make the private sector particularly apt to respond to the diversity imperative. Comparatively, a mandated quota model for board diversity, as some jurisdictions have adopted, allows companies inadequate flexibility when identifying potential board members. A "one-size-fits-all" approach does not provide ample flexibility. Businesses should have discretion to consider how to find the candidates best-suited to a company's long-term performance.

The Proposal rightfully acknowledges that not all businesses may be able to meet new listing standards on the same timetable. The CCMC suggests ongoing careful assessment concerning how Nasdaq's Proposal could affect Emerging Growth Companies ("EGCs"), as well as the potential effect that the proposed new listing standard could have on the future of initial public offerings. It is important for start-ups and EGCs to have the flexibility needed to tap specific founder and entrepreneur expertise. It is why Congress, through the 2012 JOBS Act, provided flexibility in certain board requirements to businesses who fall within the EGC category. We believe that it is important for EGCs and start-ups to have similar levels of flexibility under the Proposal.

The CCMC applauds Nasdaq for increasing the market's recognition of the value of diversity in the boardroom and agrees with Nasdaq that boardroom diversity is a goal that the business community must undertake with urgency.

Sincerely,

Tom Quaadman