

NICHOLAS D. LAWSON, M.D.



January 15, 2021

**Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F. Street N.E.
Washington, DC 20549-1090**

Re: Proposed Rule Change SR-NASDAQ-2020-081

Dear Secretary Countryman,

I am an M.D. and former psychiatry resident, a third-year law student at Georgetown, and a disability rights advocate with mental disabilities including a learning disability. I write to request that the proposed NASDAQ rule be rewritten to include persons with disabilities.

I first heard about NASDAQ's proposed rule in Corporations class. The rule's exclusion of persons with disabilities did not come up, and their absence probably never occurred to people. Many are simply not used to thinking about disabilities in the context of diversity or thinking about the disability voice as underrepresented.

Yet the data on disability representation among leaders in government and postsecondary education (Table 1), in the medical (Table 2) and legal (Table 3) professions, couldn't be clearer. When we're actually included in diversity data collection, we barely register. We're the most underrepresented, and the other minorities are not close. For institutions, disability inclusion and representation confer relatively few bragging rights and almost no cultural currency. Institutions don't want people to know they include people with disabilities.¹ That may have been one reason why NASDAQ did not include persons with disabilities and a very important reason why it needs to include them in its board diversity rule. Though NASDAQ may not understand what it means to be a person with a disability or how to define it, other minority categories are no less ambiguous, and NASDAQ may ask persons to self-identify as a person with a disability. That NASDAQ is unfamiliar with disability is another reason why it needs to include disability in its diversity rule.

¹ Judith Heumann & John Wodatch, Opinion, *We're 20 Percent of Americans, and We're Still Invisible*, N.Y. TIMES, Jul. 26, 2020, <https://www.nytimes.com/2020/07/26/opinion/Americans-with-disabilities-act.html> ("In most cases, we remain an afterthought. That invisibility persists at least partly because so few disabled people are in leadership positions in government, business and education. We are rarely in boardrooms, featured in TV shows or movies, or occupying positions of political power.... One theory is this: They didn't want to know. Historically, we have been hidden away. Disabled people can make nondisabled people feel vulnerable.... [O]nly when people with disabilities routinely work and play alongside their fellow citizens will deeper change occur.")

Table 1. Members of Congress, State Legislators, Corporate Board Directors, Postsecondary Presidents and Full-Time (FT) Faculty (%), by Diversity Category

Category [% U.S. population]	Women [51%]	Racial/Ethnic [40%]	LGBT [4.5%]	Disability [26%]	Year 2020	Ref. 2
Congress	27%	21.5%	2.1%	1.7%	2021	3
State Legislators	24%	18.1%			2014	4
Board Directors	21%	12.5%			2020	5
Postsecondary Presidents	30%	17%	3.6%		2016; 2020	6
Postsecondary FT Faculty	46%	20%			2020	7

² U.S. CENSUS BUREAU, *Quick Facts* (2019), <https://www.census.gov/quickfacts/fact/table/US/LFE046219>; Frank Newport, *In U.S., Estimate of LGBT Population Rises to 4.5%*, GALLUP (May 22, 2018),

https://news.gallup.com/poll/234863/estimate-lgbt-population-rises.aspx?g_source=link_NEWSV9&g_medium=TOPIC&g_campaign=item_&g_content=In%2520U.S.%2c%2520Estimate%2520of%2520LGBT%2520Population%2520Rises%2520to%25204.5%2525; CTRS. FOR DISEASE CONTROL & PREVENTION, *Disability & Health Infographics* (2020),

<https://www.cdc.gov/ncbddd/disabilityandhealth/materials/infographics.html>.

³ RUTGERS EAGLETON INST. FOR POL., CTR. FOR AM. WOMEN & POLITICS, *Women Serving in the 117th Congress 2021-22*, <https://cawp.rutgers.edu/list-women-currently-serving-congress>; STATISTICA, *Chart: How Diverse is U.S. Congress?* (Jan. 7, 2021), <https://www.statista.com/chart/18905/us-congress-by-race-ethnicity/>; Andrew Flores, Charles Gossett, Gabriele Magni & Andrew Reynolds, *11 Openly LGBTQ Lawmakers Will Take Their Seats in the Next Congress. That's a Record in Both Numbers and Diversity*, WASH. POST (Nov. 30, 2020 7:00 A.M. EST),

<https://www.washingtonpost.com/politics/2020/11/30/11-lgbtq-legislators-will-take-their-seats-next-congress-largest-most-diverse-group-ever/>; NAT'L COUNCIL ON INDEPENDENT LIVING, *Candidates with Disabilities Database* (Dec. 11, 2020),

<https://secureservercdn.net/198.71.233.129/bzd.3bc.myftpupload.com/wp-content/uploads/2020/11/11-17-2020-Candidates-with-Disabilities-Database.xlsx>.

⁴ NAT'L CONFERENCE OF STATE LEGISLATORS, *Who We Elect* (2020), <https://www.ncsl.org/research/about-state-legislatures/who-we-elect-an-interactive-graphic.aspx>. (2015 data)

⁵ Peter Eavis, *Diversity Push Barely Budes Corporate Boards to 12.5%, Survey Finds*, N.Y. TIMES, Sept. 15, 2020, <https://www.nytimes.com/2020/09/15/business/economy/corporate-boards-black-hispanic-directors.html>. Existing data suggest that the proportions of board directors who self-identify as LGBT or as persons with disabilities are negligible. See OUT LEADERSHIP, *Out Leadership's LGBT+ Board Diversity and Disclosure Guidelines* (June 2019),

<https://outleadership.com/wp-content/uploads/2019/06/OL-LGBT-Board-Diversity-Guidelines.pdf> (“A 2016 review of 600 U.S. insurance companies by the Multistate Insurance Diversity Survey found LGBT+ directors held only 0.5% of seats on their boards. Although no comprehensive studies of LGBT+ membership on Boards of directors of all U.S. companies has been conducted, representation of LGBT+ directors is assumed to be similarly rare.”) (citation omitted); Lisa Bertagnoli, *People with Disabilities: The New Diversity Frontier*, 40 CRAIN'S CHICAGO BUSINESS 10 (Mar 6, 2017),

<https://www.chicagobusiness.com/article/20170227/NEWS07/170229905/people-with-disabilities-the-new-diversity-frontier> (“at nonprofits, people with disabilities account for maybe 2 percent of board members. Experts say that's a generous guess”); Tara Deschamps, *Door to the C-Suite Still Locked for Many Diverse Candidates Amid Slow Pace of Change*, TORONTO STAR (Dec. 16, 2020),

<https://www.thestar.com/business/2020/12/16/door-to-the-c-suite-still-locked-for-many-diverse-candidates-amid-slow-pace-of-change.html> (reporting on a 2020 survey of “205 [Canadian] companies that disclosed data ... five had people with disabilities in top positions.”)

⁶ AM. COUNCIL ON EDUC., *American College President Survey*, <https://www.acenet.edu/Research-Insights/Pages/American-College-President-Study.aspx> (in 2016; surveys were emailed/mailed to 3,615 presidents, and there were 1,546 responses); LGBTQ Presidents, LGBTQ Presidents in Higher Education: Current Presidents and Chancellors, <https://www.lgbtqpresidents.org/about-2/members>. (52 current presidents and 3 others who are current chancellors; representation estimate calculated as 55/1,546 (3.6%)).

⁷ Bill Hussar, Jijun Zhang, Sarah Hein, Ke Wang, Ashley Roberts, Jiashan Cui, Mary Smith, Farrah Bullock Mann, Amy Barmer, Rita Dilig et al., *The Condition of Education 2020* 151, NCES 2020-144, U.S. DEP'T OF EDUC., NAT'L CTR. FOR EDUC. STAT. (May 2020), <https://nces.ed.gov/pubs2020/2020144.pdf>

Table 2. Medical School Full-Time (FT) Faculty, Physicians, Residents, and Medical Students (%), by Diversity Category

Category [% U.S. population]	Women [51%]	Racial/Ethnic [40%]	LGBT [4.5%]	Disability [26%]	Year 2020	Ref. 8
Medical School FT Faculty	41.1%	36.1%			2019	9
Physicians	35.5%	28.9%		2-10%	2018; 2005	10
Residents	45.8%	35.9%			2019-2020	11
Medical Students	50%	40%	7.7%	4.6%	2018; 2019	12

Table 3. Law School Deans, Full-Time (FT) Faculty, Lawyers, and Law School 1L Students (%), by Diversity Category

Category [% U.S. population]	Women [51%]	Racial/Ethnic [40%]	LGBT [4.5%]	Disability [26%]	Year 2020	Ref. 13
Law School Deans	20%	20%			2013	14
Law School FT Faculty	46.5%	21.3%	0.8%	0.2%	2020; 1990	15
Lawyers	36.33%	16.98%	2.99%	0.5%	2019	16
Law School 1L Students	54.6%	38.5%			2020	17

⁸ See *supra* note 2.

⁹ ASS'N OF AM. MED. COLLS., *Diversity in Medicine: Facts and Figures 2019 Executive Summary* 3 (2019), <https://www.aamc.org/media/38266/download>.

¹⁰ See *id.*; Julie K. Silver, Allison C. Bean, Chloe Slocum, Julie A. Poorman, Adam Tenforde, Cheri A. Blauwet, Rebecca A. Kirch, Ranna Parekh, Hermioni L. Amonoo, Ross Zafonte, et al., *Physician Workforce Disparities and Patient Care: A Narrative Review*, 3 HEALTH EQUITY 360, 366 (2019).

¹¹ ASS'N OF AM. MED. COLLS., *2020 Report on Residents*, <https://www.aamc.org/data-reports/students-residents/report/report-residents>

¹² ASS'N OF AM. MED. COLLS., *Matriculating Student Questionnaire: 2018 All Schools Summary Report* (Dec. 2018), <https://www.aamc.org/media/9641/download> (also, 0.7% “report[ed] a different gender identity from their sex assigned at birth”); Lisa M. Meeks, Ben Case, Kurt Herzer, Melissa Plegue & Bonnielin K. Swenor, *Change in Prevalence of Disabilities and Accommodation Practices Among US Medical Schools, 2016 vs 2019*, 322 [J]AMA 2022, 2022 (2019).

¹³ See *supra* note 2.

¹⁴ AM. BAR ASS'N, *2020 Faculty Resources*, <http://abarequireddisclosures.org/Disclosure509.aspx>.

¹⁵ *Id.*; Stephen L. Mikochik, *Law Schools and Disabled Faculty: Toward a Meaningful Opportunity to Teach*, 41 J. LEGAL EDUC. 351, 352 (1991) (citing Report of the Special Committee on Disability Issues for the Association of American Law Schools 47 (1990), which reported on an 1989-1990 survey finding that only 85 of 6555 (1.3%) faculty members at ABA-accredited schools were known by their Deans as having a disability and only 16 (0.24%) self-identified as having a disability); THE LGBT BAR, *LGBT Bar’s Law School Campus Climate Survey 2020* (2020), <https://lgbtbar.org/climate-survey/climate-survey-2020/> (only 82 law schools participated).

¹⁶ NAT'L ASS'N FOR LAW PLACEMENT, *2019 Report on Diversity in U.S. Law Firms* 7-8 (Dec. 2019), https://www.nalp.org/uploads/2019_DiversityReport.pdf.

¹⁷ AM. BAR ASS'N, *2020 JD Enrollment and Ethnicity*, <http://abarequireddisclosures.org/Disclosure509.aspx>.

Table 4. Absent Data Collection/Inclusion on Disability

Institution	Absent Data Collection/Inclusion
National Conference on State Legislators	Does not include disability.
U.S. Department of Education	Does not include disability for faculty.
NASDAQ	Does not include disability in board diversity rule.
American Council on Education	Does not include disability for college/university presidents.
Association of American Medical Colleges	Does not include disability within definition of underrepresented in medicine; does not include disability for medical students, residents, or physicians.
American Bar Association	Does not include disability for law school deans, faculty, or students.

My experiences in the medical and legal professions and [academic scholarship](#) lead me to believe that disability stigma is most intense within the professions and positions of power. Persons with disabilities—particularly mental disabilities—have become pariahs of the medical and legal professions: their professional and institutional policies explicitly target persons with mental disabilities,¹⁸ not women, not racial/ethnic minorities, and not LGBT persons. I experienced disability discrimination myself as a psychiatry resident on multiple occasions, which ultimately ended my career in the medical profession.

The legal profession seems somewhat better. But persons with disabilities are no more visible or represented. Georgetown Law, I found out recently, has *no known full-time faculty with disabilities*. Not even in health law. We do not have a disability student association,¹⁹ which had existed in name only, with repeated failed attempts to have a first meeting. Students said there was simply too much disability stigma within the profession for them to be associated with it. Nor are persons with disabilities formally invited to RISE diversity pre-orientations or included in diversity/inclusion efforts.²⁰ In my opinion, the absence of full-time faculty with known disabilities has led to uninformed, sometimes counterproductive policy decisions and practices.

¹⁸ See generally Nicholas D. Lawson, “*To Be a Good Lawyer, One Has to Be a Healthy Lawyer*”: *Lawyer Well-Being, Discrimination, and Discretionary Systems of Discipline*, 34 GEO. J. LEGAL ETHICS (forthcoming 2021), <https://ssrn.com/abstract=3588952>.

¹⁹ GEORGETOWN LAW, *Student Organizations*, <https://www.law.georgetown.edu/your-life-career/activities-organizations/student-organizations/> (listing 85 organizations, including Argentine Students Association; Asian Pacific American Law Students Association (APALSA); Black Law Students Association (BLSA); Christian Legal Society (CLS); Foreign Lawyers at Georgetown (FLAG); Georgetown African Lawyers Association (GALA); Georgetown Arab Lawyers’ Organization (GALO); Georgetown Law Association of Mexican Students (GLAMS); Georgetown Law First Generation Student Union (FGSU); Georgetown Law Secular Student Association; Georgetown Law Students for Justice in Palestine; Jewish Law Students Association (JLSA); Korean American Law Students Association (KALSA); Latin American Law Students Association (LALSA); Men of Color Collective; Muslim Law Students Association (MLSA); Native American Law Student Association (NALSA); OutLaw; Republican Law Students Association; Russian Law and Security Club (RULS); South Asian Law Students Association (SALSA); and a Women of Color Collective (WoCC))

²⁰ GEORGETOWN LAW, RISE, <https://www.law.georgetown.edu/your-life-career/campus-services/office-of-the-dean-of-students/rise/> (“RISE is intended to serve incoming JD students from racial, ethnic, religious, geographic and socioeconomic backgrounds historically underrepresented in the legal profession,” but not persons with

I also know that approving the NASDAQ board diversity rule without including persons with disabilities would create inter-minority conflict and would weaken solidarity between groups who need to remain allied. And it would be unfair to the country's most underrepresented minority group. I want board inclusion for women, racial/ethnic minorities, and LGBTQ+ persons, but do not want persons with disabilities to be excluded. Boards need to get to know persons from different backgrounds. Though persons with disabilities might at first seem alien, and their presence may make some people uncomfortable, it would be unwise for the SEC and NASDAQ to divide us by picking minority favorites, unhelpful to business, and not respectful of the lives and experience of the largest and most invisible American minority.

Thank you very much.

Sincerely,

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J.D. Candidate, Class of 2021
Georgetown University Law Center

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disabilities.); GEORGETOWN LAW, OFF. OF DIVERSITY & INCLUSION, <https://www.law.georgetown.edu/your-life-career/diversity-inclusion/equity-inclusion-office/> (not including persons with disabilities).