

# *Deaf and Hard of Hearing Bar Association*

January 25, 2021

Deaf and Hard of Hearing Bar Association  
c/o Zainab Alkebsi, President  
8630 Fenton Street, Suite 820  
Silver Spring, MD 20910  
[REDACTED]

Vanessa Countryman, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

*Via Email:* [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Re: The Nasdaq Stock Market LLC; Comments on 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:

I am writing to you on behalf of the Deaf and Hard of Hearing Bar Association (DHHBA, [www.deafbar.org](http://www.deafbar.org)), a 501(c)(3) nonprofit membership organization of deaf, hard of hearing, and late-deafened attorneys, judges, law school graduates, law students, and legal professionals. DHHBA is the only bar association in the country dedicated solely to advancing employment and education opportunities for deaf and hard of hearing legal professionals. We submit this letter in connection with the public comment period concerning Nasdaq's proposed listing rules related to board diversity.

If approved as is, the U.S. Securities and Exchange Commission's (SEC) proposed rule change published at 85 FR 80472 and referenced above would require all companies listed on Nasdaq's U.S. exchange to publicly disclose consistent, transparent diversity statistics regarding their board of directors.<sup>1</sup> We commend the SEC's efforts. However, as currently drafted, these diversity statistics exclude disability.

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<sup>1</sup> "All Nasdaq listed companies, except those that are exempt under Nasdaq Listing Rule 5605(f)(4) are required to disclose board level diversity statistics using the format below. The disclosure must be titled 'Board Diversity Matrix.'" Exhibit 3, SR-NASDAQ-2020-081 Pg. 259.

We request that you include disability in your diversity statistics. Including disability as part of the SEC’s diversity statistics gathered is necessary. Disability impacts nearly all people in the United States — more than 61 million adults in the United States, or 1 in every 4 adults, live with a disability.<sup>2</sup> Despite this, people with disabilities are significantly underrepresented in leadership positions, including in corporate governance.

The Americans with Disabilities Act (ADA, [www.ada.gov](http://www.ada.gov)) was enacted over 30 years ago and is one of the most comprehensive pieces of civil rights legislation. Together, with Section 504 of the Rehabilitation Act of 1973, federal legislation ensures that people with disabilities have the same rights and opportunities as everyone else, including in the context of employment and as individual consumers. Including disability as a diversity statistic promotes the realization of the ADA by pushing for true equity for people with disabilities in all sectors.<sup>3</sup>

Ultimately, the proposed rule’s diversity imperative to promote “the commitment of public companies to diversity and inclusion”<sup>4</sup> should include people with disabilities. It is undisputed that board diversity creates more value for corporations, which “correlates with lower stock price volatility, more consistent investment in R&D projects over time, and better performance overall.”<sup>5</sup> Similar to the gender, race, and LGBTQ+ categories in the proposed diversity statistics categories, disability is underrepresented and a person in this category can self-identify.

Including disability in the diversity statistics in the proposed rule change need not be a burdensome drafting effort. Accordingly, we propose the following amendments:

### **The Instructions (Exhibit 3)**

1. Add new language under “Definitions” as follows:

**Disabled** – a person who identifies as having (a) a physical or mental impairment that substantially limits one or more major life activities as defined by Section 12102(2) of the Americans with Disabilities Act, as amended; (b) a record of such an impairment; or (c) being regarded as having such an impairment as described under Section 12102(3) of the Americans with Disabilities Act.

2. In each of the two Board Matrixes, add a new line item titled Disabled under The Board Disclosure Format section below “Number of directors who identify in any of the categories below.”

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<sup>2</sup> *Disability Impacts All of Us*, Centers for Disease Control and Prevention, available at <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>.

<sup>3</sup> *Uphold the ADA and Commit to Employees and Leaders with Disabilities* by Emily Blum & Karen Tamley, Medium, available at <https://medium.com/disability-power-and-influence/uphold-the-ada-and-commit-to-employees-and-leaders-with-disabilities-956ad528c7c5>.

<sup>4</sup> *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 Pgs. 2-3.

<sup>5</sup> *Data Shows that Diverse Boards Create More Value*, Governance Article | 28 May 2019, FCLTGlobal, available at <https://www.fcltglobal.org/resource/data-shows-that-diverse-boards-create-more-value/>.

## **Proposed Changes to Sec. 5605(f) (Exhibit 5)**

1. Add a definition of disabled at 5605(f)(1) as follows:

“Disabled” means an individual who self-identifies as having a disability as defined by Section 12102 of the Americans with Disabilities Act, as amended at 42 U.S.C. 126 § 12101 *et seq.*

2. Amend the definition of diverse at 5605(f)(1) as follows:

“Diverse” means an individual who self-identifies in one or more of the following categories: Female, Underrepresented Minority, Disabled, or LGBTQ+.

3. Amend the general reporting requirements language at 5605(f)(2)(A) as follows:

Each Company, except as described below in (B) or (C), must have, or explain why it does not have, at least two members of its board of directors who are Diverse, including (i) at least one Diverse director who self-identifies as Female; ~~and~~ (ii) at least one Diverse director who self-identifies as an Underrepresented Minority or LGBTQ+; and (iii) Disabled.

4. Amend the foreign issuers reporting requirements language at 5605(f)(2)(B) as follows:

(i) In the case of a Foreign Issuer, in lieu of the definition in Rule 5605(f)(1), Diverse means an individual who self-identifies as one or more of the following: Female, LGBTQ+, Disabled, or an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the Company’s home country jurisdiction.

(ii) Each Foreign Issuer must have, or explain why it does not have, at least two members of its board of directors who are Diverse, including at least one Diverse director who self-identifies as Female. For greater clarity, the second Diverse director may include an individual who self identifies as one or more of the following: Female, LGBTQ+, Disabled, or an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the Company’s home country jurisdiction. (C) Smaller Reporting Companies Each Smaller Reporting Company must have, or explain why it does not have, at least two members of its board of directors who are Diverse, including at least one Diverse director who self-identifies as Female. For greater clarity, the second Diverse director may include an individual who self-identifies as one or more of the following: Female, LGBTQ+, Disabled, or an Underrepresented Minority.

5. Amend the smaller companies reporting requirements language at 5605(f)(2)(B) as follows:

Each Smaller Reporting Company must have, or explain why it does not have, at least two members of its board of directors who are Diverse, including at least one Diverse director who self-identifies as Female. For greater clarity, the second Diverse director may include

an individual who self-identifies as one or more of the following: Female, LGBTQ+, Disabled, or an Underrepresented Minority.

6. In each of the two Board Matrixes, add a new line item titled Disabled under The Board Disclosure Format section below “Number of directors who identify in any of the categories below.”

Should you have any questions about our request to include disability as a diversity statistic in Proposed Rule Change to Adopt Listing Rules Related to Board Diversity Release No. 34-90574, File No. SR-NASDAQ-2020-081, I would be happy to discuss at your convenience. You may reach me at [president@deafbar.org](mailto:president@deafbar.org).

Thank you for your consideration of our proposed amendments, which will promote and ensure the inclusion of all diverse groups, including disability.

Sincerely,

A handwritten signature in cursive script that reads "Zainab Alkebsi".

Zainab Alkebsi  
President, Board of Directors  
Deaf and Hard of Hearing Bar Association