



February 2, 2021

Allison Lee  
Acting Chair  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: #SR-NASDAQ-2020-081

Dear Acting Chairwoman Lee,

We write to you on behalf of the American Association of People with Disabilities and Disability:IN, two of the nation's leading disability 501(c)(3) not-for-profit organizations focused on employment and economic advancement for people with disabilities. AAPD and Disability:IN work together to create and manage the Disability Equality Index (DEI), a corporate benchmarking tool measuring disability inclusion. To date, more than 250 Fortune 500 companies participate in the DEI. The measurable progress catalyzed by this participation in the DEI provided overwhelming evidence that disability inclusion leads to better business performance and outsized shareholder returns, as described in Accenture's recent report, ["Getting to Equal: The Disability Inclusion Advantage."](#) We were excited to see and commend the SEC's efforts to require all companies listed on Nasdaq's U.S. exchange to publicly disclose consistent, transparent diversity statistics regarding their board of directors. We were further excited to see that the SEC cited the "Getting to Equal Report" in its draft rule. Concerning to us, however, is that despite this awareness of the importance and benefits of disability inclusion in the corporate sector, as the proposed rule is currently drafted, the SEC would not require companies to include disability demographics in their diversity statistics. If this omission persists, the SEC misses an enormous opportunity to ensure that corporate leadership reflects the diversity of our nation itself at a time when the imperative for doing so has never been more urgent.

At issue is the dismal employment landscape and outlook for people with disabilities – individuals who are perfectly qualified – and overwhelmingly willing – to work, yet cannot get a job, even in one of the strongest labor markets in years. This is especially frustrating given that the Americans with Disabilities Act (ADA) is now more than thirty years old. The COVID-19 pandemic has further impacted already low disability employment numbers and caused one in five workers with disabilities to lose their jobs, as 20 percent of people with disabilities who

were working in January were out of work in May. People with disabilities face widespread social isolation, segregation, discrimination and profound economic inequality. In fact, people with disabilities experience poverty at more than twice the rate of their non-disabled peers. Although people with disabilities make up only 12 percent of the U.S. working-age population, they account for more than half of those living in long-term poverty.

Disability does not discriminate. Anyone, regardless of sex, race, ethnicity, gender, gender identity or expression, sexual orientation, age or nationality, can join the disability community at any time. That being said, there are disparities connected to disability identity and other marginalized communities. Communities of color and women experience disability at higher rates. Statistics show that one in four Black Americans are disabled, while one in five white Americans are disabled (<https://www.cdc.gov/ncbddd/disabilityandhealth/materials/infographic-disabilities-ethnicity-race.html>). People with disabilities are also more likely to identify as LGBTQ. Including disability as a required component of companies' board diversity statistics will further reinforce the SEC's goals of ensuring that corporate governing bodies are better prepared to address the corporate culture and human capital management challenges, as well as technology-driven changes to the business landscape. Indeed, the many social justice movement efforts occurring in 2020 have brought heightened attention to the need for commitment of public companies to diversity and inclusion. The events of 2020 have also shown the ways that racism, ableism, and sexism are all connected and reinforced by one another. Making disability a required category of board diversity disclosure will work to reinforce the SEC's broader goal of ensuring companies respond to the diversity imperative before them in a way that is both transparent and more fully showcases the diversity of our country and the intersectional nature of identity.

Corporate engagement has become a crucial element for the disability rights movement because nearly half of the world's hundred largest economies are actually public companies – placing you in a unique role in the creation of a more just and equitable society. Some companies have done a commendable job with disability hiring, accessibility, inclusion and culture. Most have not. Many current DEI participants already publicly attest to the benefits of disability inclusion. To date, 51 CEOs of some of the largest brands in the world, are recognizing the benefits of the DEI and encouraging their peers to get involved in the CEO Letter on Disability Inclusion (<https://disabilityin.org/in-the-news/ceo-letter-on-disability-inclusion/>). They write in part, “We have experienced first-hand, within our companies, the potential for innovation, sustainability, and profit as a result of disability inclusion. It is important to us, now more than ever, to drive companies aligned with corporate values and meaningful purpose. Without disability inclusion, we will fail to build sustainable futures that empower all.”

In addition, AAPD and Disability:IN are now spearheading an international shareholder engagement effort, in concert with over 30 of the world's largest institutional investors and pension funds, with a combined \$3 trillion in assets under management, and leveraging our combined voices to call on corporations to make disability inclusion a top strategic priority (see: <https://disabilityin.org/in-the-news/investor-statement/>). Both the New York State Common Retirement Fund and Mass PRIM have even taken the further step of adopting disability

inclusion measures as a new component of their proxy voting guidelines, with other investors expected to follow shortly. We are gaining momentum.

A decision by the SEC to include disability diversity in the corporate boardroom would represent the next logical step in the disability community's ongoing corporate engagement efforts. Please know that the SEC's action would mark a major turning point in the disability rights movement and would have a transformational, catalytic impact on the economic independence and quality of life for millions of people with disabilities in America - and around the world.

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: Disability – 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."

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

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

Including people with disabilities on corporate boards isn't only the right thing to do, but research has shown that when you are fully inclusive of people with disabilities it is also good for business.

Please feel free to reach out to us with any questions or for more information.

Sincerely,

Maria Town  
President & CEO  
American Association of People with Disabilities

Jill Houghton  
President & CEO  
Disability:IN