



December 23, 2020

*Submitted via electronic filing: rule-comments@sec.gov*

Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

*Re: SR-NASDAQ-2020-081 - Notice of Filing of Proposed Rule Change to Adopt Listing Rules Related to Board Diversity*

Dear Ms. Countryman:

The Ohio Public Employees Retirement System (“OPERS”) appreciates the opportunity to submit comments on SR-NASDAQ-2020-081, a proposed rule concerning the adoption of listing requirements related to corporate board diversity (“Diversity Proposal” or “Proposal”). OPERS supports the proposed rule and encourages its adoption.

OPERS is the largest public retirement system in Ohio with more than 1.1 million members and over \$100 billion in assets under management. We maintain a diversified investment portfolio that includes holdings in more than 9,000 public companies. Consistent with our fiduciary duty, we take prudent steps to maximize the value of these investments, including engaging directly with our portfolio companies and conscientiously voting our proxies.

As a member of the Thirty Percent Coalition and the Midwest Investors Diversity Initiative, OPERS has long advocated that corporate boardrooms should “reflect the gender, racial, and ethnic diversity of the United States workforce.”<sup>1</sup> We firmly believe that diversity in the boardroom fosters discussion and stirs innovation, leading to more sustainable and profitable enterprises, and by extension, increased returns for shareholders. The Exchange’s Diversity Proposal promotes that ideal.

In particular, we support the Exchange’s decision to require listed companies to disclose board-level diversity statistics. In our experience, maximizing shareholder wealth requires effective shareholder engagement. Effective engagement requires a level of transparency and access to data so that shareholders can identify potential areas of concern, measure progress made toward addressing those issues, and hold corporate boards accountable for decisions that will negatively impact the long-term value of their investments.

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<sup>1</sup> Thirty Percent Coalition, “Frequently Asked Questions About the Thirty Percent Coalition – What is the Thirty Percent Coalition?,” (Last visited December 23, 2020). <https://www.30percentcoalition.org/who-we-are>.

Societal views regarding diversity and inclusion are changing. In our corporate engagements and legislative advocacy, we have repeatedly requested access to the information necessary to assess whether the companies in our investment portfolio can adapt to this changing environment and draw upon diverse viewpoints to adequately prepare for potential market shifts.

The proposed reporting structure will benefit shareholders who are increasingly faced with decisions relating to the sustainability of their investments. Currently, shareholders may not be able to ascertain something as simple as whether a company's board appropriately reflects its customer base or target market. Access to reliable and consistent information regarding board composition and representation will allow shareholders to more effectively evaluate the relationship between diversity (or lack thereof) and business outcomes.

Beyond the Proposal's transparency requirements, we also want to highlight the Exchange's efforts to encourage and maximize compliance with its Diversity Proposal by assisting companies in their efforts to locate diverse and capable board candidates. In eschewing a mandate or quota regarding board composition, the Exchange has proposed a system based on companies' voluntary participation and shareholders' cooperation. For true progress to be made, each party must play its role, and the Exchange has taken steps to facilitate this.

As noted above, the Proposal provides shareholders with the information they need to determine whether companies are embracing "meaningful and multi-dimensional diversification of their boards," and continue their engagement efforts in that direction.<sup>2</sup> Similarly, the Exchange has taken steps to provide companies with the informational and administrative resources they need to better understand the Proposal's diversity requirements and identify the best candidates for their boards, as well as the latitude to do so in a meaningful and contemplative manner.

As shareholders, we will continue to do our part. It is our sincere hope that, as a result of the Exchange's collaborative approach and transitional assistance, companies will do theirs by taking advantage of the opportunity and resources they have been given to investigate, identify, and integrate diverse board candidates in a timely and organic fashion. In deciding how best to comply with the Proposal's diversity requirements, we expect that companies will understand that while the Proposal provides them with some flexibility, it also shines a light on the inadequacy and unsustainability of the status quo and adds weight to shareholders' expectations that progress must be made.

OPERS expects the best candidates to be selected for corporate boards. We support the Exchange's Diversity Proposal because we believe that the best board candidates are those who bring diverse perspectives, backgrounds, mindsets, and approaches to problem solving with them into the boardroom. In our view, the benefits associated with diverse corporate boards outweigh the costs associated with asking companies simply to refrain from repeatedly returning to the same pools of talent to find board candidates who may be familiar or comfortable, but who ultimately will not challenge their fellow board members or move their companies forward.

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<sup>2</sup> The Nasdaq Stock Market LLC Proposed Rule, File Number SR-NASDAQ-2020-081, "*Notice of Filing of Proposed Rule Change to Adopt Listing Rules Related to Board Diversity*," at 6 (December 4, 2020).

We are encouraged that board diversity is finally getting the attention it is due. We are at a unique time in the history of corporate governance when the benefits of board diversity are generally recognized, but the pace of change to a truly diverse system of board governance is still frustratingly slow. Certainly, progress has been made – particularly in the area of gender diversity – but, as noted in the Proposal, there is still much more work to be done.

After years of engagement and advocacy, we agree that an “additional regulatory impetus” was necessary to overcome the inertia in the current system and we welcome the Exchange’s pragmatic intervention.<sup>3</sup>

Once again, we appreciate the opportunity to submit comments regarding the Exchange’s Diversity Proposal. If you have any questions, please do not hesitate to contact me at [REDACTED].

Sincerely,



Patricia Gazda  
Corporate Governance Officer  
Ohio Public Employees Retirement System

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<sup>3</sup> *Id.*