



ROPES & GRAY LLP  
PRUDENTIAL TOWER  
800 BOYLSTON STREET  
BOSTON, MA 02199-3600  
WWW.ROPESGRAY.COM

December 31, 2020

Vanessa Countryman, Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

Re: 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:

Ropes & Gray LLP (“Ropes & Gray”) respectfully submits this letter to the U.S. Securities and Exchange Commission (“SEC”) on behalf of the following Diverse Corporate Directors Coalition members and individuals: Ascend Pinnacle, Mellody Hobson, John W. Rogers, Jr. and Charles A. Tribbett III, co-founders of the Black Corporate Directors Conference, the Latino Corporate Directors Association and Out Leadership (together, the “Diverse Corporate Directors Coalition”),<sup>1</sup> to comment on the proposed listing rules filed by The Nasdaq Stock Market LLC (“Nasdaq”) related to board diversity (the “Proposal”).

The Diverse Corporate Directors Coalition applauds Nasdaq’s initiative on this important issue. Our market economy benefits from assuring that all individuals realize their potential, and, in board of director decision-making, diverse viewpoints reduce risk by exposing plans, tactics and strategies to multiple perspectives. A large number of qualified business leaders who are diverse, experienced and interested in board service stand at the ready. Furthermore, investors increasingly demand information about board diversity; uniform disclosure standards efficiently advance the ability of investors and other stakeholders to obtain and assess this information. Accordingly, the Diverse Corporate Directors Coalition strongly supports

---

<sup>1</sup> The vision of the Diverse Corporate Directors Coalition is a corporate America where boardrooms leverage the strength of America’s diversity as a competitive advantage; the coalition comprises member organizations representing directors who identify across the nation’s major diverse population segments. Ascend Pinnacle is an initiative of Ascend Inc. focused on increasing representation of Asian American directors on U.S. public company and large private company boards; Ascend is the largest non-profit Pan-Asian membership organization for business professionals and executives in North America. This letter is submitted on behalf of the co-founders of the Black Corporate Directors Conference, Mellody Hobson, John W. Rogers, Jr. and Charles A. Tribbett III. The Black Corporate Directors Conference brings together the nation’s leading black directors. The conference was designed to develop best practices, to encourage corporate diversity and inclusion and to encourage African American directors to promote the civil rights agenda within their respective boardrooms. Latino Corporate Directors Association is a community of U.S. Latinos at the highest levels of corporate leadership who are committed to advancing representation of Latinx leaders in business. Out Leadership is an organization focused on driving LGBTQ representation at all levels of corporate leadership.

additional reporting requirements regarding board diversity and believes that the Proposal represents a meaningful acknowledgment of the importance of board diversity in corporate governance.

While the Diverse Corporate Directors Coalition generally supports the Proposal, we believe the Proposal should be revised in two important respects:

1. Disclosure Required in SEC Filings. The Proposal should require that disclosure regarding board diversity is included in the annual meeting proxy or information statement.
2. Director-by-Director Reporting. The Proposal should permit compliance through tabular director-by-director board diversity reporting in the form of the template matrix included as *Annex A*<sup>2</sup> (the “Preferred Matrix”).

Disclosure Required in SEC Filings. Investors and other stakeholders value the ability to compare data across companies, and to aggregate such data, without undue effort. Permitting companies to satisfy Nasdaq’s board diversity reporting requirements via individual website postings alone will hinder efforts by interested investors and other stakeholders to use available software to compare and aggregate this important data. Instead, each listed company should be required to include the standardized board diversity matrix in its annual meeting proxy or information statement filed with the SEC. Companies should be encouraged to post and update this information on their websites in addition to including it in annual SEC filings.

Director-by-Director Reporting. Reporting board diversity on a director-by-director basis provides important advantages for investors and other stakeholders. The Diverse Corporate Directors Coalition supports amending the Proposal to require director-by-director disclosure. In lieu of such a requirement, however, the Diverse Corporate Directors Coalition would be supportive of the Proposal in its current form so long as companies are permitted to comply with the reporting requirements by including a uniform, tabular summary matrix that discloses board diversity on a director-by-director basis. The Diverse Corporate Directors Coalition suggests the Preferred Matrix format included as *Annex A* as the standard template for director-by-director disclosure.

The Diverse Corporate Directors Coalition favors director-by-director reporting over the aggregate, board-level disclosure proposed by Nasdaq for several reasons:

- A. Preferred by Investors, Governance Organizations and Diversity Groups. The Preferred Matrix is favored by members of the Diverse Corporate Directors Coalition. Additionally, we have spoken with leading institutional shareholders and corporate governance organizations, all of whom support director-by-director reporting as an important input in their evaluation of corporate governance. These investors and other stakeholders also appreciate that director-by-director

---

<sup>2</sup> The Preferred Matrix is adapted from a similar matrix included in Out Leadership’s Board Demographics Reporting Guidelines, published most recently in November 2020: [https://outleadership.com/content/uploads/2020/11/OL\\_Board\\_Demographics\\_Reporting\\_Guidelines.pdf](https://outleadership.com/content/uploads/2020/11/OL_Board_Demographics_Reporting_Guidelines.pdf).

reporting facilitates more cost-efficient and substantively meaningful tracking of diversity across companies.

- B. Integrates Intersectionality and a Holistic Approach to Diversity Reporting. The Preferred Matrix allows investors and other stakeholders to view each director's skills & experience, board tenure and demographic information in an integrated table, which showcases each diverse director's qualifications beyond such director's identity as a woman or underrepresented minority. Additionally, the Preferred Matrix provides important incremental information regarding intersectionality across racial, ethnic, gender and LGBQ identities—individual directors who identify in multiple diverse categories offer perspectives informed by intersectionality.
- C. Identifies Diverse Director Leadership Roles. The Preferred Matrix indicates whether a director serves as chair of the company's board or board committees, providing investors and other stakeholders information regarding leadership roles held by diverse directors.
- D. Avoids Enshrining Outdated Paradigms of LGBTQ Identity. The Proposal assumes that diverse directors prefer aggregate, board-level diversity disclosure. As a practical matter, however, privacy in one's voluntary, self-identification seems focused primarily on directors who identify as lesbian, gay, bisexual or a member of the queer community, given that companies often include photos of directors on websites and in SEC filings, and investors and others often can ascertain from those photos and/or associated pronouns who most likely identifies as a woman or as a racial or ethnic minority. Out Leadership data suggests that very few directors who identify as LGBTQ will oppose public disclosure of that identity—in fact, quite the opposite; diverse directors appreciate the opportunity to self-identify. In any event, all individuals should and would be permitted to decline such public identification. The Proposal needlessly addresses an incredibly narrow subset of situations—those in which a diverse director considers public self-identification as unacceptable but disclosure of aggregate group characteristics as acceptable. Those situations require the director to expect that information about individuals is not discernable from photos, pronouns, disclosed aggregate data or other publicly available sources. Given the empirical reality that few individuals are reluctant to be identified, coupled with the paucity of real-world situations in which aggregate data actually would shield against identification, we consider this component of the Proposal misguided. Public company boards simply are not sufficiently large to “hide” behind aggregate data, and the vast majority of diverse directors are not inclined to hide their identities even if obfuscation were feasible. The benefits from individualized data far outweigh any theoretical privacy benefit.

We hope Nasdaq will consider requiring companies to include board diversity disclosures in annual proxy statements (or information statements for companies that do not hold annual meetings) and permitting companies to comply with the proposed diversity reporting requirements via inclusion of a completed Preferred Matrix in annual SEC filings as an alternative to the matrix proposed by Nasdaq.

Ropes & Gray supports the Proposal, as modified by the comments addressed in this letter, and believes the rule change included in the Proposal is consistent with the Securities Exchange Act of 1934 (the “Exchange Act”). Pursuant to Section 6(b)(5) of the Exchange Act, the Nasdaq rules should be designed “to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest . . . .” The Proposal advances those objectives. The Proposal references numerous studies suggesting investor benefits from board diversity, and institutional investors increasingly advocate for increased board diversity. Enhancing the efficiency with which investors are able to monitor board diversity at Nasdaq-listed companies would substantially advance the efficiency of these investor initiatives, reducing costs associated with hand-painted efforts to compare companies. Similar to the corporate governance disclosure mandated under the SEC’s rules, including Item 407 of Regulation S-K, the Proposal would promote uniformity of disclosure in an area of corporate governance garnering substantial investor attention.

\* \* \*

Ropes & Gray appreciates the SEC’s consideration of these comments and would be pleased to discuss them in greater detail. If you have any questions or need any additional information, please contact us at the email addresses or phone numbers below.

Sincerely,



Paul M. Kinsella, a partner  
Ropes & Gray LLP



Emily J. Oldshue, a partner  
Ropes & Gray LLP



Jeremiah Williams, a partner  
Ropes & Gray LLP



cc: Janet Wong, National Executive Advisor of Ascend Pinnacle  
Melody Hobson, John W. Rogers, Jr. and Charles A. Tribbett III, co-founders of the Black Corporate Directors Conference  
Esther Aguilera, Chief Executive Officer of the Latino Corporate Directors Association  
Todd G. Sears, Founder & Chief Executive Officer of Out Leadership

