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January 4, 2021

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

Re: Exchange Act Release No. 34-90574, File No. SR-NASDAQ-2020-081

Dear Secretary Countryman,

I write to express strong support for the proposal by The Nasdaq Stock Market LLC ("Nasdaq"), in Exchange Act Release No. 90574/File No. SR-NASDAQ-2020-081 (the "Release"), to adopt listing rules related to board diversity (the "Proposed Rules"), as well as to offer comments to strengthen the Proposed Rules. Nasdaq has submitted the Proposed Rules for approval by the Commission pursuant to Rule 19a-4 under the Securities Exchange Act of 1934 (the "Exchange Act"). The Proposed Rules will provide investors with vital information to inform investment and proxy voting decisions, as well as improve shareowner value by fostering increased board racial and gender diversity without imposing mandates or quotas.

Specifically, I recommend that the Proposed Rules go further by requiring companies to identify their directors as individuals, and not in aggregate, and that the proposed matrix be expanded to describe not only each director's self-identified gender and race/ethnicity, but also their skills, experience and attributes that are most relevant to the company's overall business, long-term strategy and risks.

As the Comptroller of the City of New York, I am a fiduciary to each of five New York City Retirement Systems (the "Systems"), which collectively have $224.8 billion in assets under management. In particular, I am the investment advisor to, and custodian of assets of, each of the five Systems, and I serve as a trustee of four of the five Systems.

As long-term shareowners, the Systems prioritize the quality and composition of corporate boards, particularly with respect to diversity. The Systems' strong interest in assessing and promoting robust board diversity is reflected in their *Corporate Governance Principles and Proxy Voting Guidelines* which, similar to the Proposed Rules, define board diversity to include not only race and gender, but also sexual orientation and gender identity. It is also reflected in their successful shareowner initiatives and proposals at individual portfolio companies. In 2019, the Systems launched Boardroom Accountability Project 3.0, building on the "Rooney Rule" pioneered by the National Football League, which called on portfolio companies to adopt a search policy requiring the consideration of both women and racially/ethnically diverse candidates for open board seats (and for CEO appointments recruited from outside of the company). As part of Boardroom Accountability Project 2.0, the Systems petitioned companies to adopt a form of a board diversity matrix similar to, but more expansive than, the matrix in the Proposed Rule. In recent months, three of the Systems[1] have called on companies to match their recent statements affirming their commitments to racial equity, diversity and inclusion, with concrete action by publicly disclosing their annual EEO-1 Report data. By using the same EEO-1 categories as is applicable for their employees, we note that the Proposed Rules will reinforce the importance of self-identification of diversity within the boardroom and help bring transparency and comparability of this type of data into the marketplace.

While the utility and impact of the Proposed Rules can be materially improved by requiring greater specificity, we welcome this systemic framework whereby all Nasdaq-listed companies report board diversity data transparently and comparably. I am in express agreement with Nasdaq in such an approach and in its assessment on page 23: "[T]he heightened focus on corporate board diversity by investors demonstrates that investor confidence is undermined when data on board diversity is not readily available and when companies do not explain the reasons for the apparent absence of diversity on their boards."

Investors Need Accurate, Comparable Data on Company Boards of Directors

Under current disclosure rules and practices, it is difficult for institutional investors to identify the gender, ethnic and racial diversity of individual directors of their portfolio companies in order to inform their investment and/or proxy voting decisions. Investors must try to analyze whether a board has ethnic or racial diversity. Finding information about gender, race and ethnicity of directors, however, can be time-consuming, expensive, and fraught with inaccuracies. The Proposed Rules will obviate such an approach and enable investors to apply their proxy voting guidelines appropriately when it comes to board diversity.

Most institutional investors have publicly available proxy voting guidelines that: 1) clearly inform companies what an investor defines as a lack of diversity on the board, and; 2) delineate the actions the investor may take when they come across such situations. Many of these proxy voting guidelines include a provision to vote against certain directors (such as those on the nominating committee) in cases where a dearth of diversity is identified. According to their *Corporate Governance Principles and Proxy Voting Guidelines* (the "Guidelines"), for example, the Systems will generally vote against members of a board's nominating/governance committee if:

> *The board lacks meaningful gender and racial/ethnic diversity, including but not limited to any board on which more than 80% of the directors are the same gender. The Systems may integrate more explicit racial/ethnic diversity expectations in the future as reliable data become available and may increase the minimum expectation for gender diversity.* [2]

The Proposed Rules would finally provide the Systems with access to reliable data on racial/ethnic

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[1] the New York City Employees' Retirement System, Teachers Retirement System of the City of New York and New York City Board of Education Retirement System

[2] The Systems made the decision to define the voting rule specific to gender diversity because, unlike racial/ethnic diversity, it is typically feasible to identify gender. Director gender is also collected and reported to investors by the leading independent proxy advisors in their research reports.

diversity that is contemplated by, and necessary to fully implement, the Systems' Guidelines.

The absence of regulatory requirements for information on racial and ethnic diversity on boards has made it incredibly challenging for investors to be transparent themselves in how they define lack of such diversity on boards. The Proposed Rules will aid investors in a number of other significant ways, including by: 1) helping boards benchmark their diversity against peers and more clearly understand the expectation of their investors; 2) greatly improving investors' ability to appropriately and efficiently apply their own proxy voting guidelines as well as track this data; and 3) leveling the playing field for smaller institutional investors who may not have the resources available to do the research and engagement necessary to ascertain the racial and ethnic diversity of boards. Finally, the Proposed Rules will benefit investors by advancing research into racial and ethnic board diversity and its effects on company performance.

Notwithstanding the many benefits of the Proposed Rules, we believe they could be substantially strengthened by expanding the proposed matrix to describe not only each director's self-identified gender and race/ethnicity, but also their skills, experience and attributes that are most relevant to the company's overall business, long-term strategy and risks. Based on our experience negotiating similar expanded disclosure with portfolio companies, we believe that boards, and their individual directors, will voluntarily comply; those that do not will have the flexibility to explain their rationale under the Proposed Rules' "comply-or-explain" framework.

In addition, the Proposed Rules should include safeguards to limit the ability boards to engage in "grade inflation," in which all directors are claimed to possess all, or virtually all, of the various skills and experiences identified as relevant to the company and its board.

Providing such an appropriately expanded board matrix would give shareowners a "big-picture" view of directors' attributes and how they fit together, thereby enabling shareowners to: (a) assess how well-suited individual director nominees are for the company in light of (i) the company's evolving business strategy and risks and (ii) the overall mix of director skills and experiences; (b) identify any gaps in skills, experience, diversity or other characteristics; and (c) make better informed proxy voting and investment decisions. It would also allow investors to perform intersectional analyses and ascertain the gender, race/ethnicity and relevant skill sets of any director who may soon be stepping down from a board due to term or age limits, or a previously announced retirement.

The matrix approach that we are recommending is consistent with the request in a March 31, 2015 rulemaking petition to the Commission seeking mandatory matrix disclosure by all U.S. public companies, which I submitted jointly with eight other major U.S. pension systems (available at https://www.sec.gov/rules/petitions/2015/petn4-682.pdf).

Companies are not Required to Have Board Diversity – There are no Mandates, Only Transparency

The Proposed Rules do not call for a quota for diversity on boards – instead, companies are being asked to disclose information about the diversity of their directors. Nor do they preclude companies from considering other diverse attributes for their directors. **Furthermore, the Proposed Rules establish a "comply-or-explain" model, where boards that lack two diverse directors have the opportunity to explain not only to Nasdaq but to ALL of their investors (ideally in their proxy statement rather than on their website) the reasoning behind their actions**. Therefore, such disclosures will help companies and boards as well as investors communicate more clearly and efficiently.

We are hopeful that the Proposed Rules, consistent with the objective of our "Rooney Rule" initiative, will lead to increased gender and racial diversity in corporate boardrooms, at least for those Nasdaq-listed companies that do not already satisfy the minimum diversity criteria. In the words of SEC Commissioner Lee: "[G]iven that women of color hold just 4.6% of Fortune 500 board seats and less than one percent of Fortune 500 CEOs are Black, it's time to consider how to get investors the diversity information they need to allocate their capital wisely."[3]

I appreciate the opportunity to provide supportive comments. If you have any questions or require additional information, please do not hesitate to contact Yumi Narita, Executive Director of Corporate Governance, at [redacted]

Sincerely,

Scott M. Stringer
New York City Comptroller

[3] "Diversity Matters, Disclosure Works, and the SEC Can Do More: Remarks at the Council of Institutional Investors Fall 2020 Conference", available at: https://www.sec.gov/news/speech/lee-cii-2020-conference-20200922