De La Vega Occidental & Oriental Holdings L.L.C.

January 4, 2021

Ms. Vanessa Countryman
Secretary
U.S. Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File Number SR-NASDAQ-2020-81

Dear Secretary Countryman:

I am writing in opposition to The Nasdaq Stock Market's ("Nasdaq') proposed rule change to adopt listing rules related to board diversity (Release No. 34-90574; File No. SR-NASDAQ-2020-81) ("the Proposal"). I believe that is an issue of U.S. competitiveness and longer-term company performance and shareholder value maximization and that the Proposal is antithetical to these ends.

I am writing to you in my capacity as an investor (mostly activist) and as an author and university lecturer on corporate governance. I have been involved in the restructuring and development of 17 boards in the for-profit sector and 9 in the non-profit arena. In addition, I am the author of the book *Governance Arbitrage: Blowing Up the Public Company Governance Model to Maximize Long-Term Shareholder Value*. I wrote this book to address the abysmal shortcomings of the public company governance model and to offer a more robust, entrepreneurial model that can lead to marked improvements in capital allocation, company performance and shareholder value. Finally, I have been a frequent guest lecturer in corporate governance at Harvard University, a visiting professor at York University in Canada and upcoming guest lecturer at the Feliciano School of Business at Montclair University.

It is also important that clarity is provided in regard to my personal views of women and minorities in senior executive and board capacities. Rather than offer theory, I can provide actuality:

1. In the early 1980's the number two executive at my industrial holding company was a female and the CEO of the holding company's largest subsidiary was also female.
2. The CFO at a company that was taken private by a private equity firm and me was female and Chinese (the incumbent CFO at the time of acquisition was a white male).
3. The CFO at a private equity owned portfolio, where I am an investor in the PE Fund and a board member of the portfolio company, is female and black and was hired by us.
4. Several years ago, I lead the development of a board of directors for a company that was raising outside capital for the first time. The end result was a board that was 60% women and 40% men.

[redacted]

However, in regard to each of the aforementioned situations, diversity was *not* sought. The only criteria was competence relative to the specific roles. It should be noted that each of the women/minorities was clear that they were selected because of their skills, experience and most of all, track records.

There are many arguments that I could make in opposition to the Proposal. However, I offer the following as I believe that these are the most important for the Commission to consider:

1. **The Proposal is Disclosure Based Only.** Granted this is a correct statement but the pressure to disclose is tantamount to quotas due to the social pressure that will be placed on companies that do not meet some arbitrary criteria for diversity. History has shown repeatedly that quotas end in failure.

2. **Diverse Boards Do Not Lead To Company Performance Improvement.** This is the specious argument made by those advocating for a social agenda in an attempt to justify their ulterior motives. The two most definitive studies in this regard, to my knowledge, refute this. One is a thoroughly academic peer reviewed study. The second is the ten year history of gender quotas for Norway's listed companies. The following links are to these respective studies:

   https://knowledge.wharton.upenn.edu/article/will-gender-diversity-boards-really-boost-company-performance/

   https://www.economist.com/business/2018/02/17/ten-years-on-from-norways-quota-for-women-on-corporate-boards

3. **The Proposal Will Dilute An Already Weak Public Company Governance Model.** When digging deep to understand the efficacy of the governance model of public companies, which I did for my book, it quickly becomes clear that this model is significantly sub-optimal. The following will provide just a few select examples of many:

   - Only 22% of directors fully understand how their firms create value
   - Only 16% of directors understand the dynamics of the industry in which their firms operate
   - One third of the more than $8 Trillion in invested capital in the S&P 1500 does not earn the cost of capital

   One of many shortcomings of the current public company governance model is the poor selection criteria for directors. Directors should be selected, by and large, for their experience, skills and track records relative to one (or more) of the following: a. Industry experience and track record, b. Experience and track record specific to one or more of the major value creation initiatives of the company or c. General value creation experience and track record across multiple industry segments (e.g. top private equity firm partners). A study of the vast majority of public company boards will reveal that these selection criteria are not evident.

> The Proposal will not improve the already poor selection criteria; instead it will make it worse. When companies are pressured to place diversity in the primary selection criteria role, it is competence that will take at best second place and at worst will not be considered. This does not imply that that there are not women and minorities who are competent. There are, but it is not always a woman or member of a minority that will meet the specific competence needed at a given time. The same is applicable to while males.

For all the otherwise, and also specious, arguments in regard to public company boards having equal responsibility to all "stakeholders" the fact remains that their direct accountability is to the shareholders. In order for this accountability to be in full force, instead of the Proposal, what is seriously needed is a complete revamp of the entire public company governance model. The U.S. is poised for a full onslaught from China's more aggressive and less restrained entrepreneurial companies in the not too distant future - much in the same way that was executed by Japanese and German companies in the late 1970's and 1980's. Most of our public companies are poorly prepared for this. It is incumbent upon the Commission and others to ensure that nothing is done to further weaken an already underperforming aspect of American business.

Your consideration of the issues addressed in this letter is appreciated.

Sincerely yours,

Henry DuWolfe
Chairman