

WOKE CAPITAL, LLC

“Invest in companies that are woke and you won’t go broke.”

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

Re: File No. SR-NASDAQ-2020-081

Dear Ms. Countryman,

It is an understatement to assert that board diversity is crucially important to investors. As an investment advisor, the first things I want to know when I am considering whether to invest my clients’ hard earned money in any company are the race and sexual orientation of each director. In fact, I believe it is a breach of fiduciary duty for management to refuse to disclose these critical attributes. Therefore, the SEC should approve NASDAQ’s proposed rule without delay because at a minimum it will require companies to disclose this vital information that investors need to make informed investment decisions.

However, while the proposed rule a good start, more needs to be done to eliminate the current state of corporate boardrooms of public companies as bastions of lily white xenophobic and homophobic males. In an apparent attempt to assuage non-woke critics, NASDAQ emphasizes that its proposed rule does not establish a quota for diversity directors. However, merely requiring a company that has not met NASDAQ’s diversity guidelines to explain why it has failed to do so is inadequate. What if some insufficiently woke company’s “explanation” is that it does not believe that having a diverse board is necessarily desirable? Clearly, that is unacceptable! There need to be severe consequences for failure to achieve actual diversity. As a condition of listing its securities on NASDAQ, a company should be required to affirm annually that it believes that having a diverse board of directors is in the best interest of shareholders. That would subject management to liability if it fails to meet its quota of diversity directors.

Additionally, as some other commenters have pointed out, the proposed rule is significantly underinclusive. It should be amended to include other groups that have historically been underrepresented on boards of public companies. Just off the top of my head, I can think of three.

First, while transgender people are properly included, crossdressers are notably absent from the proposed rule. This grievous omission needs to be corrected immediately. Indeed, the rule should require boards to eliminate any dress codes that smack of archaic gender stereotypes, e.g., that a straight man cannot wear a dress at board meetings.

Another group that is inexplicably excluded from the proposed rule is illegal aliens. Conservative estimates put the number of undocumented immigrants at more than 10 million. I know of not one illegal alien that is on the board of a NASDAQ company. That is an enormous pool of talent that should be tapped for the benefit of investors. And since many illegal aliens may not be fluent in

English, the proposed rule should be amended to eliminate proficiency in English as a requirement for board membership.

Lastly, many boards routinely discriminate against ex-convicts. They should also be included as potential diversity directors. If someone has been imprisoned for a crime, there is no good reason to prevent that person from becoming a director of a NASDAQ listed company. For example, Bernie Madoff is an indisputably talented marketing genius who would be a great asset to any board if and when he is released from prison. Similarly, if and when Elizabeth Holmes, who was ousted as CEO of Theranos and charged with “massive fraud” by the SEC, is imprisoned and eventually released, she deserves a chance to serve on the board of a public company. Given the accolades she received before the fraud was exposed, investors in such a company would clearly benefit from her promotional expertise.

Aside from these quibbles, I say well done NASDAQ for your noble efforts to bring a corporate America into the 21st Century.

Wokefully yours,

Titania McGrath
Chief Investment and Diversity Officer