Duke Ashwood, Esq.
[redacted]

J. Matthew DeLesDernier
Assistant Secretary
U.S. Securities Exchange
Division of Trading and Markets

August 1, 2021

Re: Release No. 34-90574; File No. SR-NASDAQ-2021-055

Dear J. Matthew DeLesDernier:

For the reasons set for the below, I am writing to express my strong objections to the proposed rule SR-NASDAQ-2021-055. The premise on which this proposal is founded is backed by neither logic nor serious academic study. Rather, this proposal is driven by passion and popular media- neither of which should have any bearing on well-functioning financial exchanges.

The circular logic used to support this proposal can only be described as stunning. In a classic case of what Noam Chomsky called manufactured consent, NASDAQ relies on media propaganda and pooular headlines to justify a change they can't justify with logic.

Working backwards from a conclusory statement about diversity being our strength, NASDAQ attempts to cobble together a series of self-interested studies that merely echo their conclusion but never answer the fundamental question as to "why"? Why is it that 'diversity" as they define it so wonderful? What makes it protect investors from fraud?

They state without evidence that companies with at least one female have fewer financial restatements? Sure, there is a citation to a study out of Norway, that says female board members engage in "longer discussions" and that the discussions are more often "drawn out" but it is hardly insightful to say that because women talk more than men, that that is why there are fewer accounting restatements.

Similarly, there is absolutely no, zero, zip, nada, evidence in Nasdaq's 100 page proposal to explain why having a black, a Hispanic or a LGBTQ+ person on the board does anything more than make bathroom breaks more awkward.

Nasdaq strains to say that study after study shows that companies with more diverse boards have consistently better stock returns, fewer financial misstatements and less fraud. One study boldly stated that each diverse board member contributed 5% to a stocks total return for the time frame studied. Other studies cited in the proposal stated the diverse board consistently lead to higher returns for all companies studied. Really?

Incredible statements like this strain credulity and if taken to their logical conclusion would lead to absurd results. For example, if it is true that each diverse board member adds 5% to a company's stock returns then logic and simple math would dictate that companies immediately fire all of their non-diverse board members and hire 100% diverse board members and sit back and enjoy record earnings and profits. Such an absurd proposal points to the fallacy of the logic underlying the premise of this proposal.

If these studies are even remotely correct, and diversity results in real bottom line profits and higher stock prices, then companies would be tripping over themselves trying to hire diverse candidates to improve their financial performance and there would be no need for NASDAQ to mandate such a rule.

However, companies are doing no such thing which is why NASDAQ is beating them over the head to hire more diverse board members. But, because Nasdaq has a pesky rule making process that requires public comment, it has to do *something* to get companies to believe their bumper sticker logic about diversity and strength. Enter the spurious correlation studies that are dumped on the reader like a garbage truck making a delivery in the reader's front driveway.

According to NASDAQ, so called "study" after "study" demonstrates that diversity is a winning formula for American companies. Studies from far away public markets like Lithuania, Denmark and Norway and touted as proof positive that diversity works! You read that correctly, Lithuania with a homogeneous population of 2.6 million people (less than 1% the size of the U.S. population) and a stock exchange with only 30 companies and a total market cap of €3.9Bn, is somehow supposed to point the way for the largest stock market in the world in a country with over 320MM people.

Then again buried on about page 75 of its 130 page tome are some studies that essentially say "meh, not really" to the whole diversity is strength thing. One of these counter vailing studies in particular, directly undercuts another one of the studies that NASDAQ relies on heavily for its performance data (Carlton). No matter. After admitting that the data is in fact "mixed", NASDAQ nevertheless waves its administrative arms and says: never mind, it's a good idea any way and proceeds to say that the idea nevertheless has merit.

These feel good sentiments may make for an interesting shout fest on MSNBC and Fox, but they are hardly the basis for formulating regulatory policy.

On several occasions throughout the proposal, NASDAQ admits that the data on effects on boards of diverse members is scant. This doesn't seem to bother them though. Rather than mandating that companies disclose the make-up of their boards so that NASDQ would have empirical data with which to examine this issue, NASDAQ overreaches by insisting that firms must disclose the gender, ethnic, sexual orientation of its board and meet certain (arbitrary) diversity goals or be publicly shamed by explaining why their board is not diverse enough according to NASADQ. This is too much.

While acknowledging the social justice climate and heated political rhetoric surrounding this issue and the killing of George Floyd (which is cited in the proposal) we have to remember, just as with the PATRIOT Act which was rushed through Congress after 911, as seductive as it is to want to feel like we are doing something, heated passions make for poor public policy.

By NASDAQ's own admission, great progress has been made in both gender and minority inclusion on boards and it is reasonable to want further studies in this area. I would urge the rule making body to require companies to continue to voluntarily report on the diversity of their boards and let the invisible hand of the market cajole companies into acceptance of this new reality.

With the wind at our backs on this issue, further mandates will only alienate and polarize those companies that are trying to convince their colleagues to embrace this new reality.

For the reasons cited above, and others having to do with the some of the shockingly circular logic contained within the proposal, I respectfully OBJECT to this proposal.

Sincerely,

Duke Ashwood

Duke Ashwood*, JD, LLM, MBA

*Duke Ashwood is a pseudonym used to protect the identity of the author who is a practicing attorney with a mid-sized wall street firm and NASDAQ listed company.