



California Public Employees' Retirement System

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

December 31, 2020

**Subject: Self-regulatory Organizations; The Nasdaq Stock Market LLC; 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 Secretary Countryman,

On behalf of the California Public Employees' Retirement System (CalPERS), we write to express wholehearted support for Nasdaq's Proposed Rule 5605(f)<sup>1</sup> (Proposed Rule) to advance board diversity and transparency through enhanced listing requirements. As the largest public defined-benefit pension fund in the United States, we manage approximately \$430 billion in global assets on behalf of more than two million members. We are concerned about board quality, which includes diversity, independence and competence. We believe that Proposed Rule 5605(f) is consistent with the principles that we promote, and we are happy to strongly support the Proposed Rule.

In CalPERS' Governance & Sustainability Principles (Principles),<sup>2</sup> we emphasize the importance of board quality in Section B. Board Quality: Diversity, Independence and Competence.<sup>3</sup> In Section B. 9. Board Talent Assessment and Diversity, our Principles emphasize that diversity should be thought of in terms of "skill sets, gender, age, nationality, race, sexual orientation, gender identity, disability, and historically under-represented groups."<sup>4</sup> We believe that a focus on gender, racial diversity, and self-identification as LGBTQ+ as presented by Nasdaq is long

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<sup>1</sup>Proposed Rule 5605(f) requires Nasdaq-listed companies, subject to certain exceptions, (i) (A) to have at least one director who self-identifies as female, and (B) to have at least one director who self-identifies as Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, or as LGBTQ+, or (C) to explain why the company does not have at least two directors on its board who self-identify in the categories listed above, and (ii) to provide statistical information in a proposed uniform format on the company's board of directors related to a director's self-identified gender, race and self-identification as LGBTQ+.

<sup>2</sup> CalPERS' Governance and Sustainability Principles, <https://www.calpers.ca.gov/docs/forms-publications/governance-and-sustainability-principles.pdf>.

<sup>3</sup> Id. at 10.

<sup>4</sup> Id. at 16.

overdue in the U.S. market given the substantial lack of diversity at U.S. companies, especially outside of the S&P 500. Section B. 9.e. of our Principles<sup>5</sup> addresses diversity disclosure. The Proposed Rule would enhance transparency on board diversity and align with our Principles. We applaud Nasdaq for meeting the diversity challenge head-on and presenting a well thought out and highly researched Proposed Rule.

We note that the Proposed Rule articulates a minimum board diversity requirement providing a “regulatory impetus for companies to embrace meaningful and multi-dimensional diversification of their boards.”<sup>6</sup> We do hope that many companies show much greater ambition than the baseline Nasdaq has proposed. Nasdaq has stated that the U.S. currently ranks 53<sup>rd</sup> in board gender diversity, according to the World Economic Forum.<sup>7</sup> Given the lack of disclosures about board diversity, it is hard to obtain reliable data on racial diversity on boards, but Nasdaq found that more than 75 percent of Nasdaq companies’ boards do not meet the diversity requirements in the Proposed Rule.<sup>8</sup> This is an unfortunate state for board diversity in the U.S. and difficult to defend given the importance of diversity and inclusion to company performance, upon which we rely to earn the risk adjusted returns which pay pensions for our members. It is in this light that Nasdaq has taken action.

Discussion of board diversity is not new, but action is. The Securities and Exchange Commission (SEC) has taken up the discussion on a few occasions and has always fallen short of actually addressing diversity. As highlighted in the Proposed Rule, the SEC has yet to define diversity adequately to address the lack of women, racial minorities, and people self-identifying as LGBTQ+. We thus appreciate and praise Nasdaq for directly addressing the gaps in board diversity left by the SEC’s inaction. U.S. boards continue to replicate themselves and do not become more diverse without a legal or regulatory impetus, so the Proposed Rule is important to moving forward and creating better long-term prospects for companies operating in the U.S.

We believe that that the Proposed Rule is significant and would welcome opportunity to further discuss the issues. Please contact Anne Simpson, Managing Investment Director, at [Anne.Simpson@Calpers.ca.gov](mailto:Anne.Simpson@Calpers.ca.gov), if you have any questions or wish to continue this discussion.

Sincerely,

Marcie Frost  
Chief Executive Officer

cc: Anne Simpson

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<sup>5</sup> Id. at 17

<sup>6</sup> Proposed Rule at 4.

<sup>7</sup> Proposed Rule at 31.

<sup>8</sup> Andrew Ross Sorkin, Jason Karaian, Michael J. de la Merced, Lauren Hirsch and Ephrat Livni, *Nasdaq Pushes for Diversity in the Boardroom*. <https://www.nytimes.com/2020/12/01/business/dealbook/nasdaq-diversity-boards.html>