



Secretary Vanessa Countryman
U.S. Securities and Exchange Commission
100 F St NE
Washington, D.C. 20549
Sent by email: rule-comments@sec.gov
chairmanoffice@sec.gov

December 31, 2020

Re: NASDAQ Listing Requirements on Board Diversity (SR-NASDAQ-2020-081)

Dear Secretary Countryman:

We are writing to provide comments to the United States Securities and Exchange Commission (SEC) regarding SR-NASDAQ-2020-081 relating to listing requirements around board diversity. We support the NASDAQ's proposed listing requirements for the disclosure of board member demographic data and the "comply or explain" provision to include at least two diverse directors on issuer's boards. While we do not think the proposed requirements go far enough, we recognize, given the current statistics on board composition, it as a step in the right direction towards increasing diversity in the boardroom.

The CtW Investment Group is committed to challenging the status quo.

The CtW Investment Group works with union-sponsored pension funds to enhance long-term stockholder value through active ownership. The funds the CtW Investment Group works with have over \$250 billion in assets under management, and are substantial public market investors. For several years, we have engaged public companies to encourage greater diversity and inclusion. We have filed shareholder proposals requesting the adoption of Rooney Rule policies and directly engaged with shareholders and boards of directors to remove nominating committee chairs who have failed to take decisive action towards diversifying their respective boards. After the killings of George Floyd, Ahmaud Arbery, and Breonna Taylor earlier this year, we, like many investors, have committed to work more forcefully to challenge the structures of racial and economic inequality that dominate corporate America and endanger Black lives. As part of this commitment, we, in partnership with SEIU, launched an initiative to engage some of America's largest financial institutions, including Bank of America, Wells Fargo, Citi Group, Goldman Sachs, Morgan Stanley, and JP Morgan. We are challenging each bank to conduct a racial equity audit, examining its role in perpetuating systemic racism through its external and internal practices - including diversity, inclusion, and equity at all levels of its employment hierarchy - and prioritizing the remediation of these adverse impacts. We take our commitment to foster a diverse, equitable, and inclusive society very seriously.

The NASDAQ proposal will provide a necessary accelerant to board diversity at listed companies.

We, like many investors, believe that diversity in the boardroom leads to a range of corporate governance benefits, including healthier debates, better decision making, and greater adaptability to change. According to a 2020 report published by The Conference Board and ESG data analytics firm ESGAUCE, over 13 percent of companies in the Russell 3000 had no female directors on their boards.

According to their analysis, only 10 percent of S&P 500 companies disclosed director ethnicity and of those 8 out of 10 directors were white.ⁱ These statistics highlight the need for stronger board diversity and disclosure measures.

As detailed in the NASDAQ's proposal, numerous studies have found a positive link between company performance and greater board diversity. The bulk of the research so far has focused on gender diversity because the current dearth of broader disclosure of the diversity characteristics of board members has made evaluating the effects of greater racial and sexual orientation diversity more challenging. The uniform disclosure of board diversity data will lead to further study of the impacts of broader board diversity on a range of outcomes. Moreover, mandatory, standardized disclosure of board member demographic data will be useful for investors to evaluate and compare companies' progress towards greater board diversity. We expect this will lead to increased shareholder engagement on board refreshment and diversity.

The proposed listing requirement to add two diverse board members will be the push that many laggards need to start the refreshment process. Although we would prefer this to be mandatory, we anticipate the issuers that choose to explain rather than comply will be subject to increased shareholder pressure and will eventually move towards compliance.

We do note, however, that unless the board is very small, two diverse board members are not sufficient to constitute the critical mass often considered necessary to avoid tokenism and for minorities to have a strong voice in the boardroom. This shortfall combined with the option to explain rather than comply with the diversity requirements, lead us to conclude that the NASDAQ's proposal does not go far enough. This does not, however, preclude our support of the proposed listing requirements.

We urge the SEC to approve the proposed listing requirements.

Thank you for your consideration of our comments.

Sincerely,



Dieter Waizenegger
Executive Director

ⁱ *Corporate Board Practices in the Russell 3000 and S&P 500: 2020 Edition*. The Conference Board, Debevoise & Plimpton, Russell Reynolds Associates, the KPMG Board Leadership Center (BLC), the John L. Weinberg Center for Corporate Governance at the University of Delaware, and ESGAUGE. Oct. 2020.
<https://conferenceboard.esgauge.org/boardpractices>