



Via Electronic Submission - rule-comments@sec.gov

December 22, 2020

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

Re: **NASDAQ Proposal to Adopt Rules 5605 and 5606 (Diverse Board Representation)**
File Number: SR-NASDAQ-2020-081

Dear Madam Secretary:

The opportunity to comment on a landmark policy change that promises to shape the future of financial markets and harmonize equitable decision-making and diversity within the framework of market accountability marks an exceptional moment. Corporate Counsel Women of Color (CCWC) respectfully submits this letter in response to this historic moment and the U.S. Securities and Exchange Commission's request for public comments regarding NASDAQ's proposal to adopt new listing and disclosure rules that advance board diversity.

Our organization was founded in 2004 to foster diversity, inclusion, and equity in the legal profession. We have been on the front lines championing the advancement of women of color attorneys at corporations and law firms. CCWC is a membership organization composed of over 4,500 women attorneys of color who serve in senior and mid-level in-house counsel roles at Fortune 1000 and Forbes 2000 companies throughout the country. The multifaceted responsibilities associated with their roles can include serving as corporate secretaries for their corporations and resident experts in corporate governance, securities law, investor relations, corporate transactions, risk, and litigation.

Our members offer not only a valuable perspective on the adoption of Rule 5605(f) but also considerable expertise and exposure to the ways in which corporate decision-making drives market dynamics and investment returns that can fuel growth, job creation, and economic stability. The broadened and more substantively engaged role of in-house counsel with respect to investors, shareholders, consulting with teams on strategies for growth, and oversight of corporate due diligence for proposed ventures and mergers positions them as crucial advisors within the financial markets. This compels us to weigh in on the above-referenced proposal.

Our nation is diverse, and the corporations on NASDAQ's list should reflect the diversity of our country and the communities they serve. Moreover, when corporate boardrooms are diverse, the benefits are clear and the business case is irrefutable. Growth, innovation, and the returns on performance are higher. Companies have a better grasp on the risks. These dynamics are the linchpin of a healthy economy and robust financial markets.

Key Observations About the Impact of Diversity and Inclusion:

NASDAQ's proposals are aligned with the findings made by McKinsey & Company. In its May 2020 report titled "Diversity Wins: How Inclusion Matters," McKinsey & Company studied the impact of board diversity in an assessment that included 1,000 large companies. Its 2019 analysis of the resulting data sets revealed that companies in the top quartile for gender diversity on executive teams are 25 percent more successful in achieving above-average profitability. Boards that are ethnically diverse achieve 35 percent higher returns in profitability. Companies with 30 percent more women are more likely to outperform companies with lower gender representation within their ranks.

NASDAQ's proposals are also aligned with global developments concerning corporate reporting of diversity information. Adoption of the proposal will better align companies in the United States with trends within the global economy that recognize the materiality of board diversity. The European Commission pursuant to its Directive 2014/95/EU mandates non-financial reporting by large companies of diversity information in order to foster business practices and norms that are deemed both responsible and inclusive. The proposed listing and disclosure requirements of Rules 5605 and Rules 5606 harmonize the accountability framework for non-financial factors within the global corporate landscape, an especially important consideration for companies with multinational aspirations.

In its 2017 report, the U.S. Treasury Department observed: "Our markets are built on timeless, proven principles, but the markets of tomorrow require a new way of thinking." Rules 5605 and 5606 serve as gateway principles to new norms that will shape the future of our markets and market competitiveness. No longer can companies retain practices that require trade-offs between economic factors and social or environmental factors. The ecosystem that sustains broader market vitality, resilience, and competitiveness will have an inclusive representation of decision-makers and stakeholders. A policy framework of accountability that recognizes the materiality of inclusion and diversity via new stock market listing and disclosure rules represents the paradigm shift needed to advance a new model for growth and governance.

Most importantly, proposed Rules 5605 and 5606 will help to strengthen the ability of companies to identify emerging market opportunities, optimize human capital investment, enable workplace stability, and mitigate legal liability. The average U.S. Equal Employment Opportunity Commission lawsuit costs \$250,000. That sum represents a lost investment in company operations, strategic positioning, and compensation. At this pivotal economic moment, it is imperative that companies be especially mindful of risk and the competitive disadvantage posed by governance norms that are out of alignment with social pressures regarding diversity and inclusion.

Conclusion:

In conclusion, the position of Corporate Counsel Women of Color is that of strong support for NASDAQ's diversity-related proposals. The members of CCWC, if given the opportunity to serve on a public company board, would feel comfortable with disclosing the categories in the disclosure requirements. We commend NASDAQ for its visionary strategy to anchor board diversity within its exchange. We believe this action represents progress, transparency, and the path toward market resilience, greater consumer confidence, and increased performance, as well as profitability. It is our sincerest hope that the U.S. Securities and Exchange Commission will adopt Rules 5605 and 5606.

Sincerely,

Laurie Robinson Haden
President and CEO
Corporate Counsel Women of Color
www.cwomencolor.org