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By Electronic Mail Only

August 9, 2019

Institutional Shareholder Services Inc. ("ISS")
702 King Farm Boulevard, Suite 400
Rockville, MD 20850
Email: policy@issgovernance.com

Re: ISS 2019 Benchmark Policy Survey

Dear Sir or Madam:

Nasdaq, Inc. ("Nasdaq")[1] appreciates the opportunity to comment on ISS' 2019 Benchmark Policy Survey. We respond both as a public company and as a listing venue for issuers and their investors. We operate The Nasdaq Stock Market, which is home to over 3,000 listings that drive the global economy and provide investment opportunities for Main Street investors. Our listed companies reach across all sectors and include the five largest public companies in the U.S., hundreds of small companies as well as mature, well-established companies that have recently launched IPOs. We strive to operate our markets consistent with the highest regulatory standards to protect investors and the public interest, and we have a unique lens on the issues facing global companies and their investors in today's marketplace.

Nasdaq reviewed the ISS 2019 Benchmark Policy Survey with respect to the global and U.S.-focused topics. Nasdaq has submitted responses to certain survey questions online, and we are respectfully providing feedback on some of the survey topics through this letter. We appreciate ISS soliciting our views and the views of the public.

[1] Nasdaq (Nasdaq: NDAQ) is a leading global provider of trading, clearing, exchange technology, listing, information and public company services. Through its diverse portfolio of solutions, Nasdaq enables customers to plan, optimize and execute their business vision with confidence, using proven technologies that provide transparency and insight for navigating today's global capital markets. As the creator of the world's first electronic stock market, its technology powers more than 100 marketplaces in 50 countries. Nasdaq is home to over 4,000 total listings with a market value of approximately $14 trillion. To learn more, visit https://new.nasdaq.com.

I. Section 2: Board Composition/Accountability

A. Board Gender Diversity

The first two questions in Section 2 of the survey focus on gender diversity in corporate boardrooms. ISS asks respondents for their organization's view on the importance of board gender diversity, and queries whether it should consider mitigating factors, other than those it has already proposed, before recommending a vote against certain directors at Russell 3000 and/or S&P1500 companies that do not have at least one woman on the board.

As Nasdaq has stated in response to previous surveys, diversity is an important factor for public companies in determining board composition. It makes good business sense for the boards of public companies to be as diverse as their investors and customers. Over time, diverse boards will have more robust debates, make sounder decisions, understand customers better and attract higher performing employees. A focus on diversity should, however, include all types of diversity, especially diversity of gender, race, age and skill sets. Achieving gender diversity is but one step in building a strong board. We encourage other public companies to consider diversity (not just of gender, but of all types) as an important factor as they regularly refresh their boards.

At the same time, however, companies must search for directors with the right combination of skills, experience and attributes necessary to ensure that the board as a whole is comprised of the mix of individuals necessary to fulfill the board's ever-expanding responsibilities. For example, it may be important at any given time for a company to search for a director with some specialized expertise, such as in cybersecurity for a firm that handles large quantities of customer data or in financing transactions for an early-stage biotech company. It may be difficult to find a candidate who possesses both that specialized expertise and some diverse attribute. We therefore believe that ISS should focus on board composition with a holistic perspective and not attempt to force the issue of board gender diversity by recommending votes against directors of public companies without female directors.

B. Director Overboarding

Another couple of questions in Section 2 of the survey focus on director overboarding. ISS revisits this topic from its 2015 Policy Survey to ask for views on the maximum number of boards on which executive and non-executive directors should be allowed to serve in cases where there are no local requirements or best practice codes.

While it is important that individual directors have sufficient time to focus on their board responsibilities, the requisite time commitment varies from company to company and even from board member to board member, depending on committee service, number of meetings and the complexity of the board's agenda. Therefore, as Nasdaq stated in 2015, companies and their nominating committees should generally be free to determine whether a director has sufficient time to devote to his or her board responsibilities. There are numerous circumstances in which "one-size-fits-all" policies on overboarding are not appropriate,[2] such as when an investment holding company executive serves on the boards of

[2] Nasdaq urges ISS to avoid "one size fits all" approaches in developing all of its policies. Other examples of areas where such an approach should be avoided are in connection with the final question in Section 2 of the survey, which asks about factors that should be considered in evaluating an independent chair proposal, and with Section 5

companies in which the investment holding company has an interest or when directors serve on the boards of non-operating companies. In addition and echoing our comments above, there may be circumstances in which a board is seeking specialized expertise that could be provided only by individuals who already serve on multiple other boards. That board might determine, based its specific facts and circumstances, that a specific individual who already serves on other boards has sufficient time to focus on his or her responsibilities on an additional board and that it in in the best interests of the company's stockholders to add that individual to its board. We urge flexibility in these circumstances and deference to individual boards, which are in the best position to know what may or may not be appropriate at their specific company.

II. Section 3: Board/Capital Structure

The last question in Section 3 revisits a topic that the survey has addressed the past two years: differential voting rights. This year ISS inquires about the appropriate maximum term of a time-based sunsetting provision for differential voting rights.

As mentioned in our responses to prior surveys, Nasdaq has been advocating for over two years in favor of certain proposals and recommendations that will revitalize the U.S. financial markets.[3] As part of this initiative, Nasdaq continues to support differential class structures in appropriate situations. In this regard, Nasdaq believes that each publicly traded company should have the flexibility to determine the class structure that is most appropriate for it, so long as this structure is fully transparent and disclosed up-front so that investors have complete visibility into the company. While differential class structures have existed for some time, they have risen in prominence recently as companies are using them as a method to facilitate long-term thinking and value creation. For example, these structures may: provide protection against short termers, raiders and activists looking to promote their own agenda, such as stock buybacks or an untimely company sale; reduce pressure on companies to achieve short-term earnings targets at the expense of long-term growth; and allow companies to pursue opportunities with longer time horizons but significant upside potential.

In the United States, securities exchanges prohibit any action that disenfranchises existing shareholders.[4] For this reason, differential class structures are generally adopted only when a company first goes public, ensuring that the structure is disclosed in advance to all public investors. Accordingly, differential voting classes are transparent from the outset.

In order to ensure the long-term success of the American economy, we need to be careful about assuming that a "one-size-fits-all" voting structure is appropriate for all companies. Differential class structures allow Main Street investors to invest in innovative and high-growth companies, enjoying the

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of the survey, which considers how investors should respond to companies that are assessed not to be effectively reporting on and addressing their climate change risks.

[3] See "The Promise of Market Reform: Reigniting America's Economic Engine," issued May 2017, available at: http://business.nasdaq.com/revitalize (the "Revitalize Report"). This report, which is based on extensive research and insights, is a blueprint for reform designed to create a dialogue and facilitate common sense action steps that help reignite America's economic engine by modernizing market structure, reconstructing the regulatory framework and reorienting to a longer term view. See also "Progress In Process: Update on Nasdaq's Blueprint to Revitalize Capital Markets," issued May 2018, available at: http://business.nasdaq.com/revitalize (the "Revitalize Update").

[4] See, e.g., Nasdaq Listing Rule 5640, which provides that voting rights of existing shareholders of publicly traded common stock cannot be disparately reduced or restricted through any corporate action or issuance.

financial benefits of these companies' success. If such companies decide not to go public, retail investors are denied these opportunities to share in wealth creation. Investors have the choice as to whether to invest in these companies or not. Going public, of course, provides the investing public with more information on which to base their decision than the private market.

For these reasons, Nasdaq continues to discourage ISS from adopting policies that penalize companies with differential class structures.

III. Section 4: Compensation

The second topic in the "Compensation" section of the survey relates to ISS' reporting of companies' performance using Economic Value Added (EVA) metrics. EVA attempts to measure a company's residual profit after accounting for the cost of capital. In February 2018, ISS acquired the business of EVA Dimensions LLC, a business intelligence firm that measures corporate performance based on EVA. Subsequently, ISS added EVA data to its research reports in response to requests that ISS consider the use of additional financial metrics beyond total shareholder return. Going forward, ISS plans to incorporate EVA metrics into the pay-for-performance tests it uses to evaluate executive compensation in certain circumstances.

Taking a step back, Nasdaq has expressed over and over again its concerns about the proxy advisory industry and the conflicts of interest inherent therein.[5] ISS's addition of EVA to its research reports, after purchasing a business that provides EVA-related software, training and support services, appears to be another example of such a conflict of interest. By promoting EVA as a metric to measure a company's performance, ISS may drive demand for its own EVA tools by issuers and investors alike. As a result, Nasdaq urges ISS to include in its policy guidelines and research reports full disclosure about its acquisition of EVA Dimensions and the conflicts of interest inherent in its advocacy of EVA as a performance measure.

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Thank you for your consideration of our comments. Please feel free to contact me with any questions.

Sincerely,

John A. Zecca
Senior Vice President
General Counsel North America &
Chief Regulatory Officer

5 See, e.g., the Revitalize Report and the Revitalize Update.