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By Electronic Mail Only

August 31, 2022

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

Re: 2022 Annual Policy Survey

Dear Sir or Madam:

Nasdaq, Inc. ("Nasdaq")[1] appreciates the opportunity to comment on ISS' 2022 Annual Benchmark Policy Survey. We respond as a public company and a home to public companies, especially high-growth, early-stage companies, and their investors. 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.

The Annual Benchmark Policy Survey covers topics related to climate change risk management, climate transition plans, climate risk as an audit matter, financed emissions, and diversity, equity and inclusion. The survey also includes questions related to multi-class capital structures, audit related matters (in U.K. & Ireland markets), and share repurchases (in Sub-Saharan African markets). Nasdaq reviewed the survey with respect only to the Americas region. 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.

A. Climate Change Risk Management

Climate Board Accountability

In Question 2, with respect to companies that are considered to be significant greenhouse gas (GHG) emitters (as defined as those in the Climate 100+ Focus Group) ISS asks what actions or lack of actions may be considered to demonstrate such poor climate change risk management that rise to the level of "material governance failure," which would call for an ISS recommendation against a director or directors.

While Nasdaq is not currently a significant GHG emitter, we regularly evaluate climate risks that

[1] Nasdaq (Nasdaq: NDAQ) is a S&P 500 global technology company serving the capital markets and other industries. Our diverse offering of data, analytics, software and services enables clients to optimize and execute their business vision with confidence.

may affect our products and services, value chain, operations, and investments. The Nominating & ESG Committee of our Board of Directors—comprised of independent directors—oversees sustainability and ESG issues at Nasdaq. The Nominating & ESG Committee also guides and reviews ESG performance objectives, and reviews and approves our annual Corporate Sustainability Report, TCFD report, and related indexes. While Nasdaq's executive management is responsible for day-to-day management of the company's risk exposure and for providing regular reports to the Board, the Audit & Risk Committee has ultimate responsibility for overseeing company-wide risk management.

Based on our experience, we believe that arguments can be made supporting or opposing the potential factors listed by ISS as well as other factors, but as with all ISS policies, Nasdaq cautions against applying a "one-size-fits-all approach" to climate change risk management. An overly prescriptive one-size-fits-all framework that is not tailored by industry, company size, or traditional materiality may elicit information that is not relevant for a particular company and therefore not meaningful for investors, and may as well as be unduly burdensome for certain issuers.

There are many reasons why a company may not declare a "net-zero by 2050" ambition or "realistic" medium term targets. For example, proposed climate-related disclosure requirements by the Securities and Exchange Commission ("Commission") would apply only when a company has set targets or goals, such as Scope 3 emissions.[2] We have heard that the proposed requirements could discourage companies from setting goals due to increased burdens with measuring emissions that are included in a goal or target, and concerns about increased legal liabilities associated with additional disclosures required. An ISS recommendation against a director based on a one-size-fits-all approach could penalize companies who refrain from adopting Scope 3 targets or any climate-related goals because of the associated disclosure burdens.

Climate Board Accountability Application

On a related topic, Question 2 asks if we would support uniform application of ISS's new climate board accountability policy in every market, or continued differentiation by market. ISS notes that it began applying the new policy in 2022 to the Climate 100+ focus group companies based in the U.S., Europe, UK/Ireland, and Russia.

Nasdaq notes that multiple jurisdictions have already implemented, or are contemplating implementing, disclosure requirements and related compliance considerations from ESG frameworks. For example, the Commission's proposed climate-related disclosures for listed companies and funds are each modelled in part on the TCFD framework. While Nasdaq welcomes the Commission's efforts to align to a globally recognized standard, we also encouraged the Commission to further work with securities regulators in other jurisdictions to enhance coordination across various ESG disclosure regimes with the aim of achieving as much interoperability and comparability as possible.[3] We similarly encourage ISS to consider harmonizing certain requirements internationally, which could facilitate

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[2] See The Enhancement and Standardization of Climate-Related Disclosures for Investors, Securities Exchange Act Release No. 34-94478 (March 21, 2022), 87 FR 21334 (April 11, 2022) (hereinafter "Climate-Related Disclosures Proposal").

[3] See Letter from John A. Zecca to Ms. Vanessa Countryman, dated June 14, 2022, available at: https://www.sec.gov/comments/s7-10-22/s71022-20131426-301608.pdf; see also Letter from Jeffrey S. Davis to Ms. Vanessa Countryman, dated August 16, 2022, available at: https://www.sec.gov/comments/s7-16-22/s71622-20137529-308001.pdf.

comparability for investors internationally, while also taking local disclosure requirements into account.

Company Climate Transition Plans

Question 2 also asks what we consider to be the top three priorities when determining if a company's transition plan is adequate, with regards to the ISS global policy guidelines on Management Say on Climate proposals. Potential priorities include, among other examples, alignment with TCFD recommendations, "net zero" commitments, medium- and long-term targets for emissions, science-based targets, and third party assurance for climate data or financial assumptions.

Again, Nasdaq cautions against applying the same three priorities to companies regardless of size, industry or level of emissions. Nasdaq is relatively mature as a public company and in our sustainability reporting, but we receive feedback from companies of all sizes, ranging from startups considering going public to large cap companies. For example, Nasdaq recently submitted GHG reduction targets to the Science-Based Targets initiative ("SBTi") and we report our GHG emissions to the Carbon Disclosure Project ("CDP") in accordance with the GHG Protocol. However, 93% of companies with less than a $700 million market cap surveyed by Nasdaq in 2022 do not report emissions.[4] More broadly, less than 40% of constituents of the MSCI ACWI Investable Market Index report Scope 1 and 2 emissions, and less than 25% report Scope 3.[5]

In addition, the Commission's Climate-Related Disclosures Proposal would exempt smaller reporting companies from obtaining third-party assurance at all. For larger companies, the Commission estimates that assurances could impose additional costs ranging from $30,000 to $235,000, while the Society of Corporate Governance found that third-party assurance costs ranged from $10,000 to $600,000, depending on the company's size and level of attestation.[6] A one-size-fits-all approach could penalize smaller companies that may not be required to obtain a third party assurance, or could impose additional costs if they are required to obtain such assurance in order to receive ISS's support on management say on climate proposals.

Climate Risk As Critical Audit Matter

Question 2 also asks (i) if we favor seeing commentary from the auditors, in the auditor report, on climate-related issues (in the case of significant emitters); (ii) if climate risk considerations should be included among the Critical Audit Matters / Key Audit Matters; and (iii) which actions we consider appropriate for shareholders to take if climate risk considerations are not included among a company's Critical Audit Matters / Key Audit Matters.[7]

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4 See Nasdaq, Inc. and TechNet, The SEC's Proposal on Climate Change Disclosure: A Survey of U.S. Companies (2022), available at: https://nd.nasdaq.com/rs/303-QKM-463/images/1497-Q22_SEC-Climate-Change-Survey-Findings-Report-Listings-CP-v3.pdf?utm_medium=Email&utm_source=Marketing&utm_programid=4743&mkt_tok=MzAzLVFLTS00NjMAAAGFK9dFrOizg9ddnoKLldfEyQvA1H8z-859VMxY8L3W-DCi6fL8Zc-Zzx-AUlIhn7kykt6VFAahuzea8vjhSJg (the "Nasdaq 2022 Survey").

5 See MSCI, *Reported Emission Footprints: The Challenge is Real* (March 9, 2022), available at: https://www.msci.com/www/blog-posts/reported-emission-footprints/03060866159.

6 See Climate-Related Disclosures Proposal, supra note 2, at 380.

7 Potential factors include: vote against re-election of audit committee members; vote against re-appointment of auditors; support a related shareholder proposal; no voting action; or other.

Nasdaq does not believe it is appropriate for climate-related issues to be included in the auditor report or among Critical Audit Matters / Key Audit Matters. Given that financial statement disclosure of climate-related risks is currently under consideration by the Commission in its Climate-Related Disclosures Proposal, we believe it would be premature of ISS to require Critical Audit Matters / Key Audit Matters to be included in the auditor's report.[8] In addition, auditing firms have pointed out significant challenges to including climate-related information in financial statements. For example, Deloitte and PricewaterhouseCoopers noted that the Commission's proposal to require line-item disclosure in an issuer's note to the audited financial statements if such amount exceeds 1% of the related line item includes a "threshold that low is unusual in the financial statements"[9] and "may elicit information that is not meaningful to investors."[10] Ernst & Young believes that "the Commission should reconsider the proposed financial statement disclosures because of the challenges we see in implementing and auditing them."[11] The views of auditors should be carefully considered before ISS implements any requirements related to Critical Audit Matters / Key Audit Matters to fully understand any associated challenges.

In addition, climate-related issues are already required to be reported in other portions of SEC reports, if material. For example, Items 101(c)(2)(i) and 103 of Regulation S-K require disclosure of litigation and compliance costs related to the "discharge of materials into the environment or otherwise relate to the protection of the environment."[12] Disclosure is triggered if the litigation is material to the company; involves a claim that exceeds 10% of the company's assets; or involves sanctions above $300,000, or an alternative threshold set by the company subject to certain conditions.[13] In 2010, the Commission issued guidance to clarify how the existing reporting requirements under Regulation S-K could require a company to disclose climate-related matters, including the impact of climate change legislation and regulation; the impact of international accords; the indirect consequences of regulation or business trends; and the physical impacts of climate change.[14] Nasdaq does not believe that requiring additional disclosure items in a company's SEC filings that are already required to be disclosed if material benefits investors, while likely increasing disclosure burdens and costs for reporting companies.

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8 Under the Commission's Climate-Related Disclosures proposal, issuers would be required to provide disclosure in a note to the audited financial statements regarding the financial impacts and expenditures due to climate-related risks and activities, such as severe weather events and other natural conditions (e.g., impairment charges or increased loss reserves) and transition activities (e.g., changes in salvage values or useful lives of assets), if such amount exceeds 1% of the related line item. These will be subject to existing audit requirements for financial statements.

9 See Letter from Deloitte & Touche LLP to Ms. Vanessa A. Countryman, dated May 31, 2022, available at: https://www.sec.gov/comments/s7-10-22/s71022-20129946-296218.pdf.

10 See Letter from PricewaterhouseCoopers to Vanessa A. Countryman, dated June 17, 2022, available at: https://www.sec.gov/comments/s7-10-22/s71022-20132060-302540.pdf.

11 See Letter from Ernst & Young LLP to Ms. Vanessa Countryman, dated June 17, 2022, available at: https://www.sec.gov/comments/s7-10-22/s71022-20131957-302416.pdf.

12 See Climate-Related Disclosures Proposal, supra note 2, at 16.

13 17 CFR § 229.103(c)(3).

14 U.S. Securities and Exchange Commission, *Interpretation: Commission Guidance Regarding Disclosure Related to Climate Change* (February 8, 2010), available at: https://www.sec.gov/rules/interp/2010/33-9106.pdf.

Financed Emissions

Question 2 also asks what we consider to be appropriate investor expectations for large companies in the banking and insurance sectors regarding the GHG emissions associated with their lending, investment, and underwriting portfolios. Nasdaq believes that investor pressure or regulatory requirements for disclosures or targets for financed emissions in the financial industry could have unintended consequences making it difficult for smaller publicly traded financial institutions to provide capital to small businesses. These financial institutions could face additional challenges gathering Scope 3 emissions from smaller companies that they provide with debt or equity financing. The SEC Small Business Capital Formation Advisory Committee discussed concerns that if a small company is not able to provide Scope 3 data to a bank, the bank may be disincentivized to extend financing to smaller companies.[15] This could disproportionately impact community banks, which provide "roughly 60% of all small business loans" and "more than 80% of agricultural loans"[16] but lack the resources of their larger peers and do not have "a trove of climate data readily at their disposal to collect, examine, or disclose,"[17] as noted by the Independent Community Bankers of America. If community banks are deterred from providing financing to small businesses and rural farmers because they cannot meet the burdens imposed by regulators or investors, Main Street America could suffer further as America is trying to emerge from a pandemic among unprecedented inflation and supply chain disruptions.

B. Topics Specific to United States Market

Potential Exceptions to Adverse Recommendations Under ISS Policy on Multi-Class Capital Structures

In Question 3, ISS revisits differential voting rights, a topic addressed in previous ISS surveys. In 2023, ISS plans to start recommending votes against certain directors at U.S. companies that maintain a multi-class capital structure with unequal voting rights, including companies that were previously "grandfathered" (exempted from adverse vote recommendations) based on the date they went public. This year, ISS explores that topic further, noting that ISS plans to apply a "de minimis" exception in cases where the capital structure is not deemed to meaningfully disenfranchise public shareholders (e.g. where most of the super-voting shares have already been converted into regular common shares). ISS asks what percentage of total voting power, held by the owners of the super-voting shares, we would consider to be "de minimis"? ISS also asks what other factors we consider relevant to the question of whether a company should be exempt from adverse ISS vote recommendations under this policy, including the degree to which ownership of super-voting shares is dispersed, whether the company is controlled (or de facto controlled) by current officers/directors, and limitations on super-voting rights.

As stated in previous years, Nasdaq released a report, entitled "The Promise of Market

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15 See U.S. Securities and Exchange Commission Small Business Capital Formation Advisory Committee, Transcript of Meeting Held May 6, 2022, available at: https://www.sec.gov/info/smallbus/acsec/sbcfac-transcript-050622.pdfat 41.

16 Independent Community Bankers of America, *About Community Banking*, available at: https://www.icba.org/about/community-banking (last accessed August 26, 2022).

17 Independent Community Bankers of America, *Request for Extension of Time to Provide Comments on Proposed Rule Amendments titled "The Enhancement and Standardization of Climate-Related Disclosures for Investors"* (SEC: April 21, 2022).

Reform: Reigniting America's Economic Engine" (the "Revitalize Report"), which notes that the continued strength of U.S. financial markets is far from certain and issues a call to action to revitalize those markets.[18] Among its many recommendations in the report, Nasdaq expressed its continued support for differential class structures in appropriate situations.

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.[8] 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. For these reasons, Nasdaq discourages ISS from adopting policies that penalize companies with differential class structures.

Problematic Governance Structures

In Question 3, ISS also notes that its current U.S. benchmark policy specifies that no sunset provision of greater than seven years from the date of the IPO would be considered reasonable for newly public companies with a "problematic governance structure." ISS now seeks to define a time period which would be considered reasonable, and asks what the most appropriate time period is for companies to begin sunsetting problematic governance structures. However, ISS recognizes that these practices may be seen by investors as more acceptable for smaller companies, and asks if smaller companies should be exempted from negative ISS recommendations for maintaining a classified board or supermajority vote requirements.

Nasdaq rules do not prohibit a company from having a classified board of directors. [19] 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" governance structure is appropriate for all companies. Similar to differential voting rights, classified boards may provide protection against short term investors, corporate raiders and activists looking to promote their own agenda, such as stock buybacks, spin-offs or an untimely company sale. For these reasons, Nasdaq discourages ISS from adopting

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[18] "The Promise of Market Reform: Reigniting America's Economic Engine," issued May 2017, available at: http://business.nasdaq.com/revitalize. The 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.

[19] See Nasdaq Listing Center, FAQ 147.

policies that penalize companies with differential governance structures.

Diversity, Equity & Inclusion (DEI)

In Question 3, ISS notes that many shareholders have increased their engagement with companies on diversity and racial equity issues. An essential part of Nasdaq's culture is its diversity, equity, and inclusion initiatives. For the first time in 2021, we published statistics on the composition our its global workforce, including our EEO-1 data, in our Sustainability Report. We also initiated a pay equity analysis covering both gender and race, strengthened our diversity recruiting efforts and created customized developmental and talent retention programs for underrepresented talent. Reflective of our efforts, Nasdaq was included in the 2022 Bloomberg Gender-Equality Index, recognized as a "Best Place to Work for LGBTQ+ Equality" for the fourth consecutive year and named to Seramount's list of "Best Companies for Dads." In addition, our President and CEO, Adena T. Friedman, was included in TIME Magazine's inaugural Women of the Year List for her role in working toward a more equal world. In 2021, we received approval from the SEC on the Nasdaq Board Diversity listing rule, which requires Nasdaq-listed companies to publicly disclose consistent, transparent diversity statistics regarding their board of directors and choose whether to meet recommended board diversity objectives or disclose their reasons for not doing so.

We believe our Board Diversity listing rule will enhance disclosures and encourage the creation of more diverse boards through a market-led solution. In our own experience, our directors represent a wide range of diverse backgrounds, experiences, leadership and skills that, together, embody the knowledge relevant to Nasdaq's strategic long-term vision and global operations. Advancing diversity creates a competitive advantage that differentiates and elevates everything we do—and that commitment starts at the top.

Nasdaq believes that corporate culture, human capital management, and technology-driven changes to the business landscape have underscored the benefits of enhanced board diversity—diversity in the boardroom is good corporate governance. The benefits to stakeholders of increased diversity are becoming more apparent and include an increased variety of fresh perspectives, improved decision making and oversight, and strengthened internal controls. 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.

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

Sincerely yours,

John A. Zecca