

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90571; File No. SR–NASDAQ–2020–082]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt Listing Rule IM–5900–9 To Offer Certain Listed Companies Access to a Complimentary Board Recruiting Solution To Help Advance Diversity on Company Boards

December 4, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on December 1, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Listing Rule IM–5900–9 to offer certain listed companies access to a complimentary board recruiting solution to help advance diversity on company boards.

The text of the proposed rule change is detailed below: proposed new language is italicized and proposed deletions are in brackets.

\* \* \* \* \*

#### IM–5900–9. Board Diversity Services

*On December 1, 2020, Nasdaq filed a proposal (SR–Nasdaq–2020–081) to require each listed Company, subject to certain exceptions, to have, or explain why it does not have, at least two diverse directors on its board (the “Diversity Rule”). In order to help advance diversity on Company boards and to help Companies prepare for and, if approved, comply with the Diversity Rule, Nasdaq offers Eligible Companies complimentary access to two seats of a board recruiting solution, which will allow Companies to identify and evaluate diverse board candidates. Until December 1, 2022, any Eligible Company that requests access to this service through the Nasdaq Listing Center will receive complimentary access for one-year from the initiation of the service. This service has a retail value of approximately \$10,000 per year.*

*An Eligible Company is:*

*(a) Any listed Company, except as described below, that represents to Nasdaq*

*that it does not have (i) at least one director who self-identifies as female; and (ii) at least one director who self-identifies as one or more of the following: Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, or Two or More Races or Ethnicities, or who self-identifies as lesbian, gay, bisexual, transgender or as a member of the queer community;*

*(b) a listed Company that (i) is a Foreign Private Issuer (as defined in Rule 5005(a)(19), or (ii) is considered a foreign issuer under Rule 3b–4(b) under the Act and has its principal executive offices located outside of the United States, if it represents to Nasdaq that it does not have (i) at least one director who self-identifies as female; and (ii) at least one director who self-identifies as one or more of the following: female, an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the company’s home country jurisdiction, or lesbian, gay, bisexual, transgender or as a member of the queer community; or*

*(c) a listed Company that is a Smaller Reporting Company (as defined in Rule 12b–2 under the Act), if it represents to Nasdaq that it does not have (i) at least one director who self-identifies as female, and (ii) at least one director who self-identifies as one or more of the following: female, Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, or Two or More Races or Ethnicities, or who self-identifies as lesbian, gay, bisexual, transgender or as a member of the queer community.*

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#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

In a separate rule filing,<sup>3</sup> Nasdaq is proposing to require each of its listed companies, subject to certain exceptions, to: (i) Provide statistical information regarding diversity among

the members of the company’s board of directors; and (ii) to have, or explain why the company does not have, at least one director who self-identifies as a female, and 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, two or more races or ethnicities, or as LGBTQ+.<sup>4</sup> Nasdaq is proposing herein to provide companies that would need to take action to satisfy that requirement, if approved, with a service to help them recruit diverse directors.

In researching the Diversity Proposal, Nasdaq reviewed dozens of empirical studies and found that an extensive body of academic research demonstrates that diverse boards are positively associated with improved corporate governance and financial performance.<sup>5</sup> In particular, studies have found that companies with gender-diverse boards or audit committees are associated with: more transparent public disclosures<sup>6</sup> and less information asymmetry;<sup>7</sup> better reporting discipline by management;<sup>8</sup> a lower likelihood of manipulated

<sup>4</sup> As defined in the proposed rule change, “female” means an individual who self-identifies her gender as a woman, without regard to the individual’s designated sex at birth; and “LGBTQ+” means an individual who self-identifies as any of the following: lesbian, gay, bisexual, transgender or a member of the queer community.

<sup>5</sup> See Nasdaq Diversity Proposal at Section II, Academic Research: The Relationship between Diversity and Shareholder Value, Investor Protection and Decision Making.

<sup>6</sup> See Ferdinand A. Gul et al., *Does board gender diversity improve the informativeness of stock prices?*, 51(3) J. Acct. & Econ. 314 (April 2011) (analyzing 4,084 firm years during the period from 2002 to 2007, excluding companies in the utilities and financial industries, measuring public information disclosure using “voluntary continuous disclosure of ‘other’ events in 8K reports” and measuring stock price informativeness by “idiosyncratic volatility,” or volatility that cannot be explained to systematic factors and can be diversified away).

<sup>7</sup> See David Abad et al., *Does Gender Diversity on Corporate Boards Reduce Information Asymmetry in Equity Markets?* 20(3) BRQ Business Research Quarterly 192 at 202 (July 2017) (analyzing 531 company-year observations from 2004 to 2009 of non-financial companies traded on the electronic trading platform of the Spanish Stock Exchange (SIBE)).

<sup>8</sup> See Bin Srinidhi et al., *Female Directors and Earnings Quality*, 28(5) Contemporary Accounting Research 1610 at 1612–16 (Winter 2011) (analyzing 3,132 firm years during the period from 2001 to 2007 based on S&P COMPUSTAT, Corporate Library’s Board Analyst, and IRRC databases; “choos[ing] the accruals quality as the metric that best reflects the ability of current earnings to reflect future cash flows” (noting that it “best predicts the incidence and magnitude of fraud relative to other commonly used measures of earnings quality”) and analyzing surprise earnings results that exceeded previous earnings or analyst forecasts, because “managers of firms whose unmanaged earnings fall marginally below the benchmarks have [an] incentive to manage earnings upwards so as to meet or beat previous earnings”).

<sup>3</sup> SR-Nasdaq-2020-081(December 1, 2020) available at <https://listingcenter.nasdaq.com/assets/Board%20Diversity%20Disclosure%20Rule%20Filing.pdf> (the “Nasdaq Diversity Proposal”).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

earnings through earnings management;<sup>9</sup> an increased likelihood of voluntarily disclosing forward-looking information;<sup>10</sup> a lower likelihood of receiving audit qualifications due to errors;<sup>11</sup> non-compliance or omission of information;<sup>12</sup> and a lower likelihood of securities fraud.<sup>13</sup> In addition, studies found that having at least one woman on the board is associated with a lower likelihood of material weaknesses in internal control over financial reporting,<sup>14</sup> and a lower likelihood of material financial restatements.<sup>15</sup>

<sup>9</sup> See Ammar Gull et al., *Beyond gender diversity: How specific attributes of female directors affect earnings management*, 50(3) British Acct. Rev. 255 (Sept. 2017), available at: <https://ideas.repec.org/a/eee/bracre/v50y2018i3p255-274.html> (analyzing 394 French companies belonging to the CAC All-Shares index listed on Euronext Paris from 2001 to 2010, prior to the implementation of France's gender mandate law that required women to comprise 20% of a company's board of directors by 2014 and 40% by 2016).

<sup>10</sup> See Francisco Bravo and Maria Dolores Alcaide-Ruiz, *The disclosure of financial forward-looking information*, 34(2) Gender in Mgmt. 140 at 142–44 (2019) (analyzing companies included in the S&P 100 Index in 2016, “focus[ing] on the disclosure of financial forward-looking information (which is likely to require financial expertise), such as earnings forecasts, expected revenues, anticipated cash flows or any other financial indicator”).

<sup>11</sup> See Maria Consuelo Pucheta-Martínez et al., *Corporate governance, female directors and quality of financial information*, 25(4) Bus. Ethics: A European Rev. 363 at 368 (2016) (analyzing a sample of non-financial companies listed on the Madrid Stock Exchange during 2004–2011).

<sup>12</sup> *Id.* at 363.

<sup>13</sup> See Douglas J. Cumming et al., *Gender Diversity and Securities Fraud*, Academy of Management Journal 34 (forthcoming) (Feb. 2, 2015), available at <https://ssrn.com/abstract=2562399> (analyzing China Securities Regulatory Commission data from 2001 to 2010, including 742 companies with enforcement actions for fraud, and 742 non-fraudulent companies for a control group).

<sup>14</sup> See Yu Chen et al., *Board Gender Diversity and Internal Control Weaknesses*, 33 Advances in Acct. 11 (2016) (analyzing a sample of 4267 firm-year observations during the period from 2004 to 2013, beginning “the first year internal control weaknesses were required to be disclosed under section 404 of SOX”).

<sup>15</sup> See Lawrence J. Abbott et al., *Female Board Presence and the Likelihood of Financial Restatement*, 26(4) Accounting Horizons 607, 626 (2012) (analyzing a sample of 278 pre-SOX annual financial restatements and 187 pre-SOX quarterly financial restatements of U.S. companies from January 1, 1997 through June 30, 2002 identified by the U.S. General Accounting Office restatement report 03–138 (which only included “material misstatements of financial results”), and 75 post-SOX annual financial restatements from July 1, 2002, to September 30, 2005 identified by U.S. General Accounting Office restatement report 06–678 (which only included “restatements that were being made to correct material misstatements of previously reported financial information”), consisting almost exclusively of non-Fortune 1000 companies); See also Aida Sijamic Wahid, *The Effects and the Mechanisms of Board Gender Diversity: Evidence from Financial Manipulation*, J. Bus. Ethics (forthcoming) (Dec. 2017) Rotman School of Management Working Paper No. 2930132

Studies also identified positive relationships between board diversity and commonly used financial metrics, including higher returns on invested capital, returns on equity, earnings per share, earnings before interest and taxation margin, asset valuation multiples and credit ratings.<sup>16</sup>

In addition, investors and investor groups are calling for diversification in the boardroom<sup>17</sup> and legislators at the

at 1, available at: <https://ssrn.com/abstract=2930132> (analyzing 6,132 U.S. public companies during the period from 2000 to 2010, for a total of 38,273 firm-year observations).

<sup>16</sup> See, generally, FCLTGlobal, *The Long-term Habits of a Highly Effective Corporate Board* 11 (March 2019), available at: <https://www.fcltglobal.org/wp-content/uploads/long-term-habits-of-highly-effective-corporate-boards.pdf> (analyzing 2017 MSCI ACWI constituents from 2010 to 2017 using Bloomberg data); Credit Suisse, *The CS Gender 3000: Women in Senior Management* 16 (Sept. 2014), available at: <https://www.credit-suisse.com/media/assets/corporate/docs/about-us/research/publications/the-cs-gender-3000-women-in-senior-management.pdf> (analyzing 3,000 companies across 40 countries from the period from 2005 to 2013); Meggin Thwing Eastman et al., MSCI, *The tipping point: Women on boards and financial performance* 3 (December 2016), available at: <https://www.msci.com/documents/10199/fd1f8228-cc07-4789-acee-3f9ed97ee8bb> (analyzing of U.S. companies that were constituents of the MSCI World Index for the entire period from July 1, 2011 to June 30, 2016); Harvey M. Wagner, Catalyst, *The Bottom Line: Corporate Performance and Women's Representation on Boards (2004–2008)* (March 1, 2011), available at: <https://www.catalyst.org/research/the-bottom-line-corporate-performance-and-womens-representation-on-boards-2004-2008/> (analyzing gender diversity data from Catalyst's annual Fortune 500 Census of Women Board Directors report series for the years 2005 to 2009, and corresponding financial data from S&P's Compustat database for the years 2004 to 2008); Credit Suisse ESG Research, *LGBT: the value of diversity* 1 (April 15, 2016), available at: [https://research-doc.credit-suisse.com/docView?language=ENG&source=enfromsendlink&format=PDF&document\\_id=807075590&extdocid=807075590\\_1\\_eng\\_pdf&serialid=evu4wNcHexx7kusNLaZQphUKt9naxi1PvptZQvPj1k%3d](https://research-doc.credit-suisse.com/docView?language=ENG&source=enfromsendlink&format=PDF&document_id=807075590&extdocid=807075590_1_eng_pdf&serialid=evu4wNcHexx7kusNLaZQphUKt9naxi1PvptZQvPj1k%3d); McKinsey & Company, *Diversity wins: How inclusion matters* 13 (May 2020), available at: <https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Diversity%20and%20Inclusion/Diversity%20wins%20How%20inclusion%20matters/Diversity-wins-How-inclusion-matters-vF.pdf> (analyzing 1,039 companies across 15 countries for the period from December 2018 to November 2019); and Moody's Investors Service, *Gender diversity is correlated with higher ratings, but mandates pose short-term risk* 2 (Sept. 11, 2019), available at: [https://www.moody's.com/research/Moodys-Corporate-board-gender-diversity-associated-with-higher-credit-ratings-PBC\\_1193768](https://www.moody's.com/research/Moodys-Corporate-board-gender-diversity-associated-with-higher-credit-ratings-PBC_1193768) (analyzing 1,109 publicly traded North American companies rated by Moody's).

<sup>17</sup> Vanguard announced in 2020 it would begin asking companies about the race and ethnicity of directors. See Vanguard, *Investment Stewardship 2020 Annual Report* (2020), available at: [https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/2020\\_investment\\_stewardship\\_annual\\_report.pdf](https://about.vanguard.com/investment-stewardship/perspectives-and-commentary/2020_investment_stewardship_annual_report.pdf). Starting in 2020, State Street Global Advisors will vote against the entire nominating committee of companies that do not have at least one woman on their boards and have not addressed questions on gender diversity

federal and state level are increasingly taking action to encourage or mandate corporations to diversify their boards and improve diversity disclosures.<sup>18</sup>

Given the positive attributes associated with diverse boards and investor desire for greater diversity in the boardroom, Nasdaq wants to advance board diversity among its listed companies. Nasdaq believes that offering a board recruiting solution will assist and encourage listed companies to increase diverse representation on their boards, which can result in improved corporate governance, thus strengthening the integrity of the market and building investor confidence. Nasdaq also believes that offering this service will help aid compliance with the Nasdaq Diversity Proposal, if it is approved. Nasdaq therefore is proposing to provide companies that have not yet achieved a certain level of diversity with one-year complimentary access for two users to a board recruiting solution, which will provide access to a network of board-ready diverse candidates, allowing companies to identify and evaluate diverse board candidates, and a tool to support board benchmarking. This service has an approximate retail value of \$10,000.

Nasdaq will offer this service to any Eligible Company, which is a listed company (except as described below)

within the last three years. See State Street Global Advisors, *Summary of Material Changes to State Street Global Advisors' 2020 Proxy Voting and Engagement Guidelines* (2020), available at: <https://www.ssga.com/library-content/pdfs/global/proxy-voting-and-engagement-guidelines.pdf>. Beginning in 2018, BlackRock stated in proxy voting guidelines they “would normally expect to see at least 2 women directors on every board.” See BlackRock Investment Stewardship, *Corporate governance and proxy voting guidelines for U.S. securities* (Jan. 2020), available at: <https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-us.pdf>. The NYC Comptroller's Office in 2019 asked companies to adopt policies to ensure women and people of color are on the initial list for every open board seat. See Scott M. Stringer, *Remarks at the Bureau of Asset Management Emerging Managers and MWBE Managers Conference* (Oct. 11, 2019), available at: [https://comptroller.nyc.gov/wp-content/uploads/2019/10/10.11.19-SMS-BAM-remarks\\_distro.pdf](https://comptroller.nyc.gov/wp-content/uploads/2019/10/10.11.19-SMS-BAM-remarks_distro.pdf).

<sup>18</sup> For example, California requires companies headquartered in the state to have at least one director who self-identifies as a Female and one from an Underrepresented Community. See Cal. S.B. 826 (Sept. 30, 2018); Cal. A.B. 979 (Sept. 30, 2020). Washington requires companies headquartered in the state to have at least 25% women on the board by 2022 or provide certain disclosures. See Wash. Subst. S.B. 6037 (June 11, 2020). At least eleven states have proposed diversity-related requirements. See Michael Hatcher and Weldon Latham, *States are Leading the Charge to Corporate Boards: Diversify!*, Harv. L. Sch. Forum on Corp. Governance (May 12, 2020), available at: <https://corpgov.law.harvard.edu/2020/05/12/states-are-leading-the-charge-to-corporate-boards-diversify/>.

that represents to Nasdaq that it does not have: (i) At least one director who self-identifies as female; and (ii) at least one director who self-identifies as one or more of the following: Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, or Two or More Races or Ethnicities or who self-identifies as lesbian, gay, bisexual, transgender or as a member of the queer community. A company that is a Foreign Private Issuer (as defined in Rule 5005(a)(19)) or, (i) is considered a foreign issuer under Rule 3b-4(b) under the Act and (ii) has its principal executive offices located outside of the United States, will be an Eligible Company if the company represents to Nasdaq that it does not have: (i) At least one director who self-identifies as female; and (ii) at least one director who self-identifies as one or more of the following: Female, an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the company's home country jurisdiction, or lesbian, gay, bisexual, transgender or as a member of the queer community. A company that is a Smaller Reporting Company (as defined in Rule 12b-2 under the Act), will be an Eligible Company if the company represents to Nasdaq that it does not have: (i) At least one director who self-identifies as female, and (ii) at least one director who self-identifies as one or more of the following: female, Black or African American, Hispanic or Latinx, Asian, Native American or Alaska Native, Native Hawaiian or Pacific Islander, or Two or More Races or Ethnicities, or who self-identifies as lesbian, gay, bisexual, transgender or as a member of the queer community.<sup>19</sup>

Nasdaq will offer this one-year service to Eligible Companies that request it on or before December 1, 2022. Nasdaq intends to evaluate the service and the progress made in enhancing diversity and may extend the program prior to its expiration through another rule filing.

Nasdaq notes that no other company will be required to pay higher fees as a result of this proposal and represents that providing this service will have no impact on the resources available for its regulatory programs.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

of the Exchange Act,<sup>20</sup> in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,<sup>21</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. It is also consistent with this provision because it is not designed to permit unfair discrimination between issuers. Nasdaq also believes that the proposed rule change is consistent with the provisions of Sections 6(b)(4)<sup>22</sup> and 6(b)(8),<sup>23</sup> in that the proposal is designed, among other things, to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities and that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Nasdaq believes that research surrounding the value of diversity on a company's board and investor interest in more diverse boards supports the fact that the proposal to offer access to a board recruiting solution promotes just and equitable principles of trade and protects investors and the public interest. Nasdaq believes that by making this service available more companies will seek to enhance the diversity of their boards to achieve these benefits. However, no company is required to use this service.

Nasdaq also believes it is reasonable, and not unfairly discriminatory, to offer the board recruiting solution only to Eligible Companies because these companies have the greatest need to identify diverse board candidates. In addition, if the Nasdaq Diversity Proposal is approved, these companies will need to identify diverse board candidates if they wish to satisfy that requirement instead of explaining why they do not satisfy it. Further, Nasdaq believes that companies that already have two diverse directors will already be familiar with the benefits of board diversity and have demonstrated that they do not need Nasdaq's assistance in identifying diverse candidates.

Nasdaq faces competition in the market for listing services,<sup>24</sup> and

competes, in part, by offering valuable services to companies. Nasdaq believes that it is reasonable to offer this complimentary service as a tool to attract and retain listings as part of this competition. In particular, Nasdaq believes some companies will view the proposed board recruiting solution as a valuable tool to help achieve diversity, to the potential benefit of the company and its investors. Nasdaq also believes that offering this complimentary service will help it compete to attract and retain listings in light of the additional requirements contained in the Nasdaq Diversity Proposal.

For these reasons, Nasdaq believes it is not an inequitable allocation of fees, unfairly discriminatory, nor an unnecessary or inappropriate burden on competition to offer the board recruiting solution only to Eligible Companies.

The Commission has previously indicated pursuant to Section 19(b) of the Exchange Act<sup>25</sup> that providing and updating the value of services offered to certain listed companies within the rulebook is necessary,<sup>26</sup> and Nasdaq does not believe this indication of value has an effect on the allocation of fees nor does it permit unfair discrimination, as all companies with fewer than two diverse directors will receive the same services. Further, this provision will enhance the transparency of Nasdaq's rules and the value of the services it offers, thus promoting just and equitable principles of trade. As such, the proposed rule change is consistent with the requirements of Section 6(b)(4) and (5) of the Exchange Act.

Nasdaq represents, and this proposed rule change will help ensure, that individual listed companies are not given specially negotiated packages of products or services to list, or remain listed, which the Commission has previously stated would raise unfair discrimination issues under the Exchange Act.<sup>27</sup>

[http://www.justice.gov/atr/public/press\\_releases/2011/271214.htm](http://www.justice.gov/atr/public/press_releases/2011/271214.htm).

<sup>25</sup> 15 U.S.C. 78s(b).

<sup>26</sup> See Exchange Act Release No. 72669 (July 24, 2014), 79 FR 44234 (July 30, 2014) (SR-NASDAQ-2014-058) (footnote 39 and accompanying text: "We would expect Nasdaq, consistent with Section 19(b) of the Exchange Act, to periodically update the retail values of services offered should they change. This will help to provide transparency to listed companies on the value of the free services they receive and the actual costs associated with listing on Nasdaq.")

<sup>27</sup> See Exchange Act Release No. 79366, 81 FR 85663 at 85665 (citing Securities Exchange Act Release No. 65127 (August 12, 2011), 76 FR 51449, 51452 (August 18, 2011) (approving NYSE-2011-20)).

<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78f(4).

<sup>23</sup> 15 U.S.C. 78f(8).

<sup>24</sup> The Justice Department has noted the intense competitive environment for exchange listings. See "NASDAQ OMX Group Inc. and Intercontinental Exchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit" (May 16, 2011), available at

<sup>19</sup> A company that is not an Eligible Company is able to receive a complimentary 90-day trial of the board recruiting solution, which is being offered by Nasdaq's partner to all clients of Nasdaq, Inc., including non-listed companies.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. As noted above, Nasdaq faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. The proposed rule change reflects that competition, but does not impose any burden on the competition with other exchanges. Rather, Nasdaq believes that some companies will find the proposed board recruiting solution an attractive offering and therefore make listing or remaining listed on Nasdaq more attractive, which will enhance competition for listings.

Other exchanges can also offer similar services to companies, thereby increasing competition to the benefit of those companies and their shareholders. Accordingly, Nasdaq does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2020-082 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2020-082. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2020-082, and should be submitted on or before December 31, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2020-27089 Filed 12-9-20; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>28</sup> 17 CFR 200.30-3(a)(12).

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

[Docket No. FRA-2020-0027-N-35]

### **Proposed Agency Information Collection Activities; Comment Request**

**AGENCY:** Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Interested persons are invited to submit comments on or before February 8, 2021.

**ADDRESSES:** Submit written comments and recommendations for the proposed ICR to Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, at [Kim.Toone@dot.gov](mailto:Kim.Toone@dot.gov). Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**SUPPLEMENTARY INFORMATION:** The PRA, 44 U.S.C. 3501-3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated