



February 18, 2016

California State Teachers'
Retirement System
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NASDAQ Listing Qualifications
C/o Stan Higgins, Director
805 King Farm Blvd.
Rockville, MD 20850

Via email: comments@Nasdaq.com

Dear Mr. Higgins:

RE: Solicitation of Comments about Shareholder Approval Rules – Nasdaq Rule 5635

I am writing on behalf of the California State Teachers' Retirement System (CalSTRS) to the comment solicitation on *Shareholder Approval Rules* by the NASDAQ Listing and Hearing Review Council. Thank you for the opportunity to provide an investor's perspective on the utility of the listing standards that require shareholder approval to an issuance of securities in connection with acquisitions, equity-based compensation, change of control and private placements.

CalSTRS' mission is to secure the financial future and sustain the trust of California's educators. We serve the investment and retirement interests of more than 879,000 plan participants.¹ CalSTRS is the largest educator only pension fund in the world with a global investment portfolio valued at approximately \$186.1 billion as of December 31, 2015.² Our ownership at the Nasdaq stock exchange is over 406 million shares with a market value of \$18.6 billion as of January 29, 2016.³ The long-term nature of CalSTRS' liabilities, its overall stewardship of the fund and the CalSTRS Board's fiduciary responsibility to act in the best interest of our members, makes the fund keenly interested in governance issues. We have a vested interest in ensuring shareholder protections are safeguarded.

CalSTRS recommends that the Nasdaq Listing and Hearing Review Council not move forward with the contemplated changes on Shareholder Approval Rules. While we understand the Nasdaq's need to strive for a dynamic rulebook to ensure rules are not static, we do not see any supported evidence that issuers are harmed in maintaining the current shareholder approval rules. Even with the given changes in the capital markets and securities laws over the last 25 years, CalSTRS does not agree refreshment is necessary if crucial investor protections are sacrificed.

¹ CalSTRS at a Glance, December 31, 2015. <http://www.calstrs.com/glance>

² CalSTRS Current Investment Portfolio for the period ending December 31, 2015. <http://www.calstrs.com/current-investment-portfolio>

³ FactSet, Screening of CalSTRS holdings at Stock Exchange Level, January 29, 2016.

The Nasdaq, at a minimum, should provide evidence as to how each proposed change to Rule 5635 would impact corporate governance and continue to provide shareowner protection.

As cited in numerous empirical data, companies that invest in improving governance produce substantially better operational and market results. We agree that Nasdaq listing requirements since 1990, have furthered stronger governance practices with the adoption of majority-independent boards and other “stronger corporate governance practices.” However, we do not believe it is necessary to modify shareholder approval rules as they are intrinsic to good governance. Having good governance is not a substitute for shareholders’ right to weigh in on substantive financial transactions as prescribed by current shareholder approval rules. CalSTRS’ principles reflect that shareholders’ fundamental rights should not only include the ability to vote on companies’ governing structures but also on any financial transactions that could affect the value of our investments or seriously dilute the value of our ownership.

CalSTRS supports the Nasdaq’s operating principles, specifically:

Investor confidence: Nasdaq serves the investor first and foremost. Nasdaq instills confidence through the fairness of its trading environment, its transparency, the quality of its listed companies, its rigorous regulatory oversight and commitment to investor education.⁴

With the “Investor first” sentiment, CalSTRS does not believe weakening Nasdaq’s shareholder approval rules, on the premise that “companies may face higher costs of capital by structuring transactions in suboptimal ways” is a compelling or evidence-based reason to change the threshold requiring shareholder approval.

Additionally, CalSTRS agrees with Nasdaq’s shareholder approval requirements for equity based compensation plans in which employees, consultants or directors participate, allowing shareholders a “voice” in decisions that could result in dilution of their interests. We do not believe that an issuer that may be trying to avoid a shareholder vote is a solid argument to undermine the listing standards.

Explicitly with regards to change of control, CalSTRS advocates the importance of disclosure and transparency for investors, versus a strict rule or trigger to define a change in control. Also, we do not concede that a higher threshold be adopted when an investor or group of investors publicly disclose the intent to remain passive and not exert control.

Lastly, regarding private placements, we have some concerns on the proposal regarding whether or not to aggregate two or more transactions for purposes of the shareholder approval rules. The prospect of a bright-line test for a specific time after which two or more transactions would or would not be aggregated is disconcerting as this may encourage manipulation when it comes to timing transactions. We recommend the Nasdaq approach private placement shareholder

⁴ NASDAQ Mission - Operating Principles. <http://files.shareholder.com/downloads/NDAQ/0x0x21341/8f13abf2-a7b2-4165-a81b-a30109ffb612/mission.pdf>

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approval rights more on the importance of disclosure, transparency and the substance of the transactions.

Thank you again for soliciting comments on this important shareholder rule. If you have any questions, please do not hesitate to contact me at 916-414-7418, AMastagni@calstrs.com, or Mary Hartman Morris, Investment Officer at 916-414-7412, MMorris@calstrs.com.

Sincerely,

A handwritten signature in blue ink that reads "Aisha Mastagni".

Aisha Mastagni, Portfolio Manager
Corporate Governance
California State Teachers' Retirement System

Cc: Anne Sheehan, Director of Corporate Governance, CalSTRS