



August 1, 2017

California State Teachers'  
Retirement System  
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NASDAQ Listing and  
Hearing Review Council  
C/o Nicolai Utochkin  
805 King Farm Blvd.  
Rockville, MD 20850

Via email: [comments@nasdaq.com](mailto:comments@nasdaq.com)

Dear Mr. Utochkin:

RE: Solicitation of Comments about the Definition of Market Value  
For Purposes of Shareholder Approval Rules – Nasdaq Rule 5635(d)

I am writing on behalf of the California State Teachers' Retirement System (CalSTRS) to the comment solicitation request on the *Definition of Market Value for Purposes of Shareholder Approval Rules* by the Nasdaq Listing and Hearing Review Council.<sup>1</sup> CalSTRS also responded to the 2016 comment solicitation on the utility of the listing standards that require shareholder approval to an issuance of securities in connection with acquisitions, equity-based compensation, and change of control and private placements. Thank you for this additional opportunity to respond to your inquiry on whether to modify Rule 5635(d) as reflected in Exhibit A in your request for comment. Additionally, we are aware that Nasdaq recently released a blueprint for revitalizing the U.S. capital markets and its commitment to "regularly reconsider whether Nasdaq's listing rules operate efficiently to provide meaningful protections to investors."<sup>2</sup>

CalSTRS' mission is to secure the financial future and sustain the trust of California's educators. We serve the investment and retirement interests of approximately 914,454 plan participants.<sup>3</sup> CalSTRS is the largest educator only pension fund in the world with a global investment portfolio valued at approximately \$208.7 billion as of June 30, 2017.<sup>4</sup> We have investments that list on the Nasdaq stock exchange which include 329 million shares with a market value of \$19.7

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<sup>1</sup> Nasdaq Solicitation of Comments, June 14, 2017.

<https://listingcenter.nasdaq.com/assets/Shareholder%20Approval%20Comment%20Solicitation%20June%2014%202017.pdf>

<sup>2</sup> Nasdaq – At a Glance: The Promise of Market Reform May 2017.

[http://business.nasdaq.com/media/Revitalize%20Overview%20\\_tcm5044-45204.pdf](http://business.nasdaq.com/media/Revitalize%20Overview%20_tcm5044-45204.pdf)

[http://business.nasdaq.com/media/Nasdaq%20Blueprint%20to%20Revitalize%20Capital%20Markets\\_tcm5044-43175.pdf](http://business.nasdaq.com/media/Nasdaq%20Blueprint%20to%20Revitalize%20Capital%20Markets_tcm5044-43175.pdf)

<sup>3</sup> CalSTRS Fast Facts, June 30, 2016. [https://www.calstrs.com/sites/main/files/file-attachments/fastfacts\\_2016.pdf](https://www.calstrs.com/sites/main/files/file-attachments/fastfacts_2016.pdf)

<sup>4</sup> CalSTRS Current Investment Portfolio for the period ending June 30, 2017. <http://www.calstrs.com/current-investment-portfolio>

billion as of June 30, 2017.<sup>5</sup> 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.

We appreciate the Nasdaq's continued efforts to ensure shareholder protections and provide market-leading technology solutions and intelligence to help business and investors succeed in today's global capital markets.<sup>6</sup> CalSTRS agrees that robust public markets and growth companies play a critical role in economic development, but believe that long-term investment is required to achieve that growth. CalSTRS is a long-term shareholder which allows us to be a patient capital provider. We agree with the OECD report to the G20 that in order to gain access to public equity markets, corporations need to meet investor expectations with respect to corporate governance practices.<sup>7</sup> We also believe that stock exchanges play an important role by establishing listing standards to not only facilitate company growth, but to foster good standards of corporate governance.

As cited in numerous empirical data, companies that invest in improving governance produce substantially better operational and market results. Though, 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' essential 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. A shareholder vote is an important check and balance in the investor – issuer relationship. CalSTRS fundamentally believes shareholders should have a say in transactions that materially affect their investments.

CalSTRS fully concurs with Nasdaq's statement in its recently issued blueprint in market reform, "There is no question that companies that choose to participate in equities markets and make their shares available to the public take on a greater obligation for transparency and responsible corporate practices."<sup>8</sup> While we understand there is a need to balance regulations and seeming obstacles to emerging growth companies, CalSTRS believes stock exchanges should ensure public issuers provide shareholders a vote on transactions that may materially impact them as current shareholders. Nasdaq's proposed rule on stock issuance would not require shareholder approval if independent directors approve either the issuance that equals 20% or more of common stock or 20% or more of the voting power outstanding, or is at a price less than average closing market price. While we genuinely believe and appreciate that a majority of independent

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<sup>5</sup> FactSet, Screening of CalSTRS holdings at Stock Exchange Level, June 30, 2016.

<sup>6</sup> Nasdaq's Mission/Cultural Values <http://business.nasdaq.com/discover/careers/cultural-values/Index.html>

<sup>7</sup> See (OECD, 2015b), OECD Report to G20: G20/OECD Principles of Corporate Governance, page 4, September 2015. <https://www.oecd.org/g20/topics/framework-strong-sustainable-balanced-growth/OECD-Growth-Companies-Access-to-Capital-Markets-and-Corporate-Governance.pdf>

<sup>8</sup> Nasdaq, *The Promise of Market Reform, Reigniting American's Economic Engine*, May 2017. [http://business.nasdaq.com/media/Nasdaq%20Blueprint%20to%20Revitalize%20Capital%20Markets\\_tcm5044-43175.pdf](http://business.nasdaq.com/media/Nasdaq%20Blueprint%20to%20Revitalize%20Capital%20Markets_tcm5044-43175.pdf)

directors should always screen and vote on any stock issuances; we firmly believe if a majority of the independent board of directors supports a transaction, then asking shareholders to ratify a transaction is not only integral but also important to the clarity and transparency of the proposed securities issuance.

CalSTRS agrees with the Council of Institutional Investors' (CII) recommendation that "the Nasdaq has an opportunity to meaningfully enhance shareholders' ability to evaluate and, where appropriate, reject issuances that could destroy long-term value."<sup>9</sup> With this in mind, and as members, CII policies reflect the principle that shareowners should be permitted to vote on corporate actions that would significantly affect the nature or value of their investment. CII policies state that "an action should not be taken if its purpose is to reduce accountability to shareowners."<sup>10</sup> CalSTRS supports Nasdaq's current Listing Rule 5635(d) which requires a company to obtain shareholder approval when issuing common stock or securities convertible into common stock equal to 20% or more of the shares outstanding at a price less than the greater of the book value or market value. Specifically, we also affirm the importance of ensuring the need for companies to seek shareholder approval in issuance of any level of stock when the price is less than the greater of book value or market value as this materially impacts current shareholders.

Respectfully, CalSTRS recommends similar edits as outlined in CII's letter to the Nasdaq on Rule 5635(d). In summary, we are asking that shareholders retain the right to approve any stock issuance above 20% (and/or 20% of voting power outstanding) or when issuance of shares is at a price less than current market price. Proposed changes to this Rule should read:

*Shareholder approval is required prior to the issuance of securities in connection with a transaction other than a public offering involving the sale, issuance or potential issuance by the Company of common stock (or securities convertible into or exercisable for common stock), which:*

*1) alone or together with sales by officers, directors or Substantial Shareholders of the Company equals 20% or more of common stock or 20% or more of the voting power of outstanding shares before the issuance; or ~~and~~*

*2)(A) is at a price less than the average closing price of the common stock (as reflected on Nasdaq.com) for the five trading days immediately preceding the signing of the binding agreement of the issuance. ~~;~~ ~~or~~*

*(B) is not approved either by Independent Directors constituting a majority of the Board's Independent Directors in a vote in which only Independent Directors participate or by a committee comprised solely of Independent Directors*

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<sup>9</sup> See Council of Institutional Investors' letter in response to the Nasdaq, dated June 26, 2017.

<sup>10</sup> Council of Institutional Investors Policies on Corporate Governance, Section 1.4 *Accountability to Shareowners*, September 30, 2016. [http://www.cii.org/corp\\_gov\\_policies#shareowner\\_rights](http://www.cii.org/corp_gov_policies#shareowner_rights)

We recommend the Nasdaq approach shareholder approval rights more on the importance of disclosure, transparency and the substance of the transactions to embed its commitment to “operate efficiently to provide meaningful protections to investors.”<sup>11</sup> Thank you again for soliciting comments on this important shareholder rule. If you have any questions, please do not hesitate to contact me at 916-414-7410, [ASheehan@calstrs.com](mailto:ASheehan@calstrs.com), or Mary Hartman Morris, Investment Officer at 916-414-7412, [MMorris@calstrs.com](mailto:MMorris@calstrs.com).

Sincerely,



Anne Sheehan  
Director of Corporate Governance  
California State Teachers' Retirement System

Cc: Aisha Mastagni, Portfolio Manager, Corporate Governance

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<sup>11</sup> Nasdaq, Solicitation of Comments by the Nasdaq Listing and Hearing Review Council About the Definition of Market Value for Purposes of Shareholder Approval Rules, June 14, 2017.