NASDAQ Opening Statement

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Investor Advisory Committee

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Good morning members of the Commission, staff, Committee and my fellow panelists. It is an honor to be here today to represent Nasdaq's unique perspective on the proxy voting system in the United States. By way of introduction, I am Nasdaq's General Counsel for North America and Chief Regulatory Officer. I am proud to oversee the regulatory work of our nineteen regulated entities in the United States and Canada that includes the Nasdaq Stock Market, home to over 3,000 public companies and exchange traded products that drive the global economy and provide investment opportunities for Main Street investors.

I commend the SEC and this committee for focusing attention on the proxy process, which has not changed materially in decades. As Chairman Clayton noted, "shareholder engagement is a hallmark of our public capital markets and the proxy process is a fundamental component of that engagement." In its current form, it is noteworthy that the existing process adequately gets materials to, and voting instructions from, beneficial owners in time for shareholder meetings. However, the process requires a herculean effort for issuers to maneuver the labyrinthine structure and burdensome costs, with layers of intermediary custodians separating issuers from their ultimate owners and byzantine rules preventing more direct feedback. OBOs-"objecting beneficial owners"- are handled differently from NOBOs-"non-objecting beneficial owners"- and importantly the process limits communication with OBOs and NOBOs alike. Meanwhile, voting participation among retail investors continues to drop, creating additional efforts and costs. Indeed, electronic delivery of proxy materials, one of the few major innovations in recent years, appears to contribute to this problem.

We look forward to the Chairman's broad discussion later this year of the entire shareholder engagement process, including retail participation, shareholder proposals, the role of proxy advisory firms, technology and the voting process itself. It is critical that we revisit these questions that the SEC raised in a 2010 Concept Release that spurred discussion, but little meaningful action.

Our panel today focuses on ways to improve mechanics of the voting process through technology in ways that might reduce cost, increase efficiency and facilitate greater retail participation. Nasdaq believes that many of the core questions the SEC raised in the Concept Release back in 2010 remain valid in our discussion today. In particular, is there a need to enhance the accuracy, transparency and efficiency of the voting process and should rules be revised to improve shareholder communication and encourage greater shareholder participation?

I mentioned Nasdaq's unique perspective, which I would separate into three buckets. First, and most importantly, we represent around three thousand public companies that have chosen to list on Nasdaq in the United States. These companies range from the five largest public companies in the world to hundreds of small companies, from companies well over a hundred years old to brand new IPOs, and across all sectors. While these companies may have different perspectives on many issues, one constant is the concern of their boards of directors and management for shareholders and their desire to understand and interact with the shareholders to whom they answer.

While retail ownership varies among our listed companies, the ability to have more effective communication between all shareholders and management, as a method to educate and engage, may help reverse the downward levels of retail participation. This feedback loop is particularly important given the time constraints of the proxy process and the need for full vote counting, particularly as contentious proxy matters become more prevalent. All shareholder votes matter and the voice of retail is even more critical in light of the outsized influence Proxy Advisory firms have on a significant block of votes.

Another common concern expressed by issuers is the opacity of the system that makes it difficult to tie costs back to the size of the shareholder base. Issuers are dependent upon service providers who are in turn dependent upon brokers, to get information about shareholders. We often hear complaints that the total shareholder count billed to an Issuer appears inconsistent with total shares outstanding and known composition of shareholders. Issuers trying to reconcile bills often give up in frustration.

Nasdaq's second perspective is as a listed company itself. As most people know, Nasdaq is a public company, listed on our own stock market. We are subject to the same regulations as other public companies, including the proxy rules, and we face the same frustrations as our listed company clients with the inefficiencies and needless expenses of the current proxy system.

The first issue we have experienced is the difficulty in communicating directly with our retail shareholders. At Nasdaq, we have a robust shareholder engagement program, and we recognize that shareholder engagement is a year-round process that should not occur solely in the weeks before the annual meeting. During 2017, we conducted outreach to a cross-section of shareholders owning approximately 75% of our outstanding shares. Our key stockholder engagement activities included 11 non-deal investor road shows in 8 countries, 21 investor conferences and our Annual Meeting of Stockholders. We also conducted quarterly outreach to the governance teams at many of our top institutional holders. However, we would like to do more, especially with retail shareholders. Unfortunately, because of the complexities of the proxy system, and particularly the OBO/NOBO distinction, we often don't know the identities of our retail shareholders, so it is impossible to contact them directly. And when we do know their identities, for proxy-related matters we must contact them through intermediaries, which is often expensive.

Which brings me to the second issue Nasdaq has faced as a public company, which is the cost of the proxy process, particularly of the use of intermediaries to print and deliver proxy materials. Like other issuers, we receive large, obscure annual bills from intermediaries that were not selected by us, for delivering our proxy materials. In addition, while the notice and access process has improved the proxy system considerably, we still pay a large amount in printing fees each year because intermediaries report to us that large numbers of our stockholders have requested full set delivery of proxy materials. For a variety of reasons, we would like to reach out to those stockholders to encourage them to use technology to receive materials, but again, the proxy system makes it difficult to identify and contact them.

As a public company, the third issue we have experienced is with the shareholder proposal process. Many companies spend thousands of dollars and countless hours of management time addressing proposals from proponents who own minimal amounts of their shares. We strongly advocate reform of Rule 14a-8, including raising the minimum amount of stock required to submit a proposal and increasing the resubmission thresholds so companies aren't burdened year after year with proposals that the majority of their shareholders don't support.

Finally, I would like to share Nasdaq's perspective as a technology vendor to 250 exchanges, clearing houses, central securities depositories, regulators and infrastructure organizations around the world. One in ten of the world's securities transactions are handled by Nasdaq technology. I'd like to focus briefly on Nasdaq's application of blockchain technology to proxy plumbing. Nasdaq's eVoting initiative uses a cryptographically secure transaction private ledger to address many of the current challenges of the proxy process, including:

- Lack of transparency and traceability in voting processes;
- Complicated proxy management that is reliant on manual processes;
- Multiple stakeholders with separate verification requirements;
- Limited or no access to historical data and voting results;
- Complicated know-your-customer processes with possible security issues in providing one-time or multiple-access codes; and
- No universal voting account across companies.

It is important to note that distributed ledger technology does not mandate a particular proxy process. It is for regulators, companies and investors to strike the right balance among transparency, traceability, immediacy, shareholder engagement and certainty of voting results. Blockchain can accommodate whatever balance is struck.

Two Nasdaq projects illustrate this balance. In 2016, Nasdaq completed a proof of concept in Estonia, where we operate the stock exchange and the central securities depository (CSD). The Estonian market has a lot of transparency as we were able to use the national identity numbers issued to each resident to help establish each digital identity in this market where investors directly hold their securities.

Perhaps more relevant for our discussion today, Nasdaq currently is in delivery of an eVoting solution for Strate, the South African CSD. Like the U.S., South Africa has nominee accounts and intermediaries and so Nasdaq's blockchain solution will create voting rights on the blockchain that can be subdivided to accommodate intermediaries. In some cases the beneficial owner may want to convey voting instructions directly to the issuer while in other cases custodians may vote based on instructions from beneficial owners whose identity remains shielded from the issuer. In the first scenario, the solution enables the custodian to distribute the voting rights to the next level in the chain of intermediaries. For the second scenario, the voting rights will remain at the custodian and the custodian cast aggregated (and split) votes based on voting instructions from the beneficial shareholder. It is worth noting that both scenarios can be applied in parallel for the same general meeting.

The eVoting solution is hosted on a private ledger where users are authenticated via an enrollment process that does not rely on authentication by outside miners. The system can accommodate the transmission of voting-related materials and, of course, the audit trail and immediate vote tally functionality is available through permissioned reports that provide different levels of information to issuers and shareholders and, if needed, auditors and even regulators. Best of all, users access eVoting via a web enabled front end; the system records the data on the blockchain.

It would of course take time and a lot of effort to bring this type of technology solution to market in the United States. Any application of blockchain would need buy-in from the many stakeholders in the proxy voting process and must be done in a cost effective manner. But regardless of what technology is employed, Nasdaq believes that it is important that we remember the critical importance of the shareholder voting process and that we strive to include the viewpoints of as many investors as possible as we build the economy of the future. Thank you for inviting me and I look forward to the discussion.