STATE BOARD OF ADMINISTRATION OF FLORIDA

1801 HERMITAGE BOULEVARD
TALLAHASSEE, FLORIDA 32308
(850) 488-4406

POST OFFICE BOX 13300
32317-3300

July 16, 2013

Transmitted via Email: edward.knight@nasdaqomx.com

Mr. Edward Knight
Executive Vice President & General Counsel
NASDAQ OMX
805 King Farm Boulevard
Rockville, MD 20850

Re: Requirement of a Majority Vote Standard in Uncontested Director Elections

Dear Mr. Knight:

The State Board of Administration (SBA) of Florida respectfully requests that the NASDAQ OMX propose a rule for approval by the Securities and Exchange Commission (SEC) that would require that an issuer listing its equity securities on the NASDAQ Stock Market or the NASDAQ OMX BX (collectively, NASDAQ) adopt a majority voting standard in uncontested elections of directors with a requirement that incumbent directors who do not receive a majority of votes promptly resign from the board.

The SBA manages the assets of the Florida Retirement System (FRS), one of the largest public pension plans in the United States with 1.1 million beneficiaries and retirees. The SBA's governance philosophy encourages companies to adhere to responsible, transparent practices that correspond with increasing shareowner value. The SBA corporate governance principals and proxy voting guidelines have long supported the view that electing directors by majority vote is a basic shareowner right and that directors who lack the support of the shareowners they represent should not serve on the board.

More specifically, the SBA supports proposals encouraging companies to adopt true majority voting through a formal bylaw amendment. The SBA strongly endorses majority voting for the meaningful accountability it affords shareowners and because it provides an additional component to the system of checks and balances of power within the corporate structure. A true majority vote standard provides shareowners the ability to better monitor the board of directors and helps make its members more accountable to shareowners.

Recognition in the U.S. that majority voting in the uncontested election of directors is a basic shareowner right has grown significantly in recent years.[1] More than 78 percent of S&P 500 companies have adopted a majority voting standard;[2] in contrast to just 16 percent in 2006.[3] In addition, from 2007 to 2012 the

[1] See, e.g., Bruce Kistler, State of Play, A Snapshot of US Corporate Governance in 2012, ISS Corporate Services 12 (July 19, 2012).
[2] Id.

"proportion of small-cap companies with majority voting provisions in director elections has grown from 7 to 19 percent and the proportion of mid-cap companies has jumped dramatically from 18 to 52 percent."[4] In the current proxy season, support for shareowner resolutions to adopt majority voting has averaged more than 54 percent.[5]

Directors in uncontested elections at most NASDAQ listed companies are elected by a plurality, rather than by a majority of votes cast. The Investors' Working Group, an independent taskforce sponsored by the CFA Institute Centre for Financial Market Integrity and the Council of Institutional Investors, observed in their 2009 report on U.S. financial regulatory reform that plurality voting in uncontested elections results in 'rubber stamp' elections. For the minority of listed companies that have adopted a majority voting standard, the evidence indicates that only half of directors ultimately step down from the board after failing to obtain a majority of the "For" votes. [6] The evidence also indicates that these aptly named "zombie directors" are rarely, if ever, retained for what many investors and other market participants might consider legitimate reasons, such as to maintain compliance with securities regulations, avoid a violation of a contractual provision, or avoid a violation of state law or of a provision of the company's governing documents.[7]

The basis for a majority voting standard is consistent with the stated objectives of the NASDAQ listing rules to "maintain the quality and public confidence in its market . . . and to protect investors and the public interest."[8] The SBA urges the NASDAQ to demonstrate its commitment to meaningful investor voting rights and improved board accountability by proposing a revision to its listing rules that would require a majority voting standard in uncontested elections of directors with a requirement that incumbent directors who do not receive a majority of votes promptly resign from the board. Specifically, SBA staff supports the proposed amendments to the listing rules recommended by the Council of Institutional Investors. Such a proposal would strengthen investor confidence in the NASDAQ and the capital markets.

We thank you for your consideration. If you have any questions, please contact Michael McCauley, Senior Officer—Investment Programs and Governance, at (850) 413-1252, or governance@sbafla.com.

Sincerely,

Ashbel C. Williams
Executive Director & CIO

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[3] Claudia H. Allen, Study of Majority Voting in Director Elections, Neal, Geber & Eisenberg LLP 1 (last updated Nov. 12, 2007), http://www.ngelaw.com/files/Uploads/Documents/majoritystudy111207.pdf ("when this Study was initially published in February 2006, only 16% of the companies in the S&P 500 were known to have adopted a form of majority voting").

[4] Ernst & Young, Governance Trends and Practices at US Companies: A review of Small-and Mid-sized Companies 10 (May 2013), http://www.ey.com/Publication/vwLUAssets/Governance_trends_practices_at_US_companies/$FILE/Governance_trends_practices_at_US_companies.pdf.

[5] Institutional Shareholder Services, Voting Results Database (last visited June 13, 2013) (on file with CII).

[6] IRRC Institute & GMI Ratings, The Election of Corporate Directors: What Happens When Shareowners Withhold a Majority of Votes from Director Nominees? 2 (Aug. 2012), http://www.irrcinstitute.org/pdf/Final%20Election%20of%20Directors%20GMI%20Aug%202012.pdf.

[7] Id.

[8] NASDAQ Listing Rules § 5101. Preamble to the Rule 5100 Series (amended June 16, 2009); http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F4%5F3&manual=%2Fnasdaq%2Fmain%2Fnasdaq%2Dequityrules%2F; BX Venture Market Listing Rules § 5101. Preamble to the Rule 5100 Series (adopted May 6, 2011), http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBXTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F1%5F7&manual=%2FNASDAQOMXBX%2Fmain%2Fbx%2Deq%2Drules%2F.