COMMITTEE ON SECURITIES REGULATION

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Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Via email to rule-comments@sec.gov

Re: File No. SR-NASDAQ-2016-013; Release No. 34-77481
Request for Comment on Proposed Rule Change to Require Listed Companies to Publicly Disclose Compensation or Other Payments by Third Parties to Board of Directors Members or Nominees

Ladies and Gentlemen:

This letter is submitted on behalf of the Securities Regulation Committee of the Association of the Bar of the City of New York (the "Committee"). The Committee includes a wide range of practitioners whose areas of interest and expertise include the Federal securities laws and U.S. capital markets regulation. We are responding to the request of the Securities and Exchange Commission (the "Commission") for comment regarding the above-referenced proposed rule change filed with the Commission by The NASDAQ Stock Market LLC ("Nasdaq").

The Committee respectfully requests that the proposed rules **not** be adopted. The Committee believes that the Commission should instead determine whether existing SEC disclosure requirements already address the disclosures covered in the proposed Nasdaq rule change. It would seem more effective and appropriate to address any proposed new disclosure requirements through the SEC's Disclosure Effectiveness Project, in order to promote desirable uniformity in the nature of required disclosures to investors about director compensation arrangements at public companies, without differentiation based on the exchange on which a company's securities are listed.

The Federal securities laws contain comprehensive rules requiring disclosure of director compensation matters, *including compensation from third parties*. For example, Regulation S-K, Item 402(a)(2) –"All Compensation Covered," requires "disclosure of all plan and non-plan compensation awarded to, earned by, or paid to …. directors covered by paragraph (k) of this Item, by *any person* for all services rendered in all capacities to the registrant and its subsidiaries, unless otherwise specifically excluded from disclosure in this Item" (emphasis added). Similarly, the specific provision requiring director compensation disclosure – Item 402(k) – does <u>not</u> contain language limiting the disclosure to director compensation paid by the registrant. In addition, Form 8-K, Item 5.02(d)(2) requires disclosure of "any arrangement or understanding between the new director and *any other persons*, naming such person, pursuant to which such director was selected as a director" (emphasis added). Likewise, Item 401(a) requires such disclosure about any such arrangements or understanding between a director *and any other person* pursuant to which the director was or is to be selected as a director or nominee.

This is obviously not a comprehensive or exhaustive analysis of the SEC provisions that are relevant to the subject matter of the Nasdaq proposal. If the determination is made that the issues addressed by this Nasdaq proposal are not adequately covered by existing SEC rules, and the SEC decides that they should be – we believe that the better approach would be for the SEC to consider these matters as part of the SEC's Disclosure Effectiveness Project. Such an approach is consistent with Chair White's indication that the staff would proceed systematically through the entire disclosure regime and consider and solicit input on compensation and governance information required in proxy statements at a future date through its rule-making process. This approach would provide an appropriate forum for this discussion, which deserves meaningful input from the wide range of stakeholders that could be impacted. Moreover, investors reading the proxy statements for NYSE- or Nasdaq-listed companies would continue to receive uniform, comparable information concerning director compensation matters.

We thank you for the opportunity to comment on this important matter. Members of our committee would be happy to discuss any aspect of this letter with the Commission staff.

Respectfully submitted,

Marc M. Rossell, Chair
Securities Regulation Committee