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By Electronic Mail Only

May 31, 2018

MSCI Inc. ("MSCI")  
7 World Trade Center  
250 Greenwich Street, 49th Floor  
New York, New York 10007  
Email: clientservice@msci.com

Re: MSCI's Consultation on the Treatment of Unequal Voting Structures in the MSCI Equity Indexes, January 2018 (the "Consultation")

Dear Sir or Madam:

Nasdaq, Inc. ("Nasdaq")<sup>1</sup> appreciates the opportunity to comment on the Consultation. We thank MSCI for soliciting our views and the views of the investing public. We respond as a home to public companies of all kinds and investors of all types. We strive to operate our markets consistent with the highest regulatory standards to protect investors and the public interest, and we have a unique lens on the issues facing global companies and their investors in today's marketplace.

I. Background

In 2017, MSCI conducted a consultation on the treatment of non-voting shares in certain of its equity indexes. The consultation was launched on June 12, 2017 with a proposal to exclude non-voting shares from certain MSCI equity indexes in cases where the "company voting power"<sup>2</sup> of listed shares is less than 25%. On November 2, 2017, MSCI announced its intention to broaden that consultation to include a discussion on all types of differential voting structures.

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<sup>1</sup> Nasdaq is a leading global provider of trading, clearing, exchange technology, listing, information and public company services. Through its diverse portfolio of solutions, Nasdaq enables customers to plan, optimize and execute their business vision with confidence, using proven technologies that provide transparency and insight for navigating today's global capital markets. As the creator of the world's first electronic stock market, its technology powers more than 90 marketplaces in 50 countries, and 1 in 10 of the world's securities transactions. Nasdaq is home to approximately 3,900 total listings with a market value of approximately \$13 trillion. To learn more, visit [business.nasdaq.com](http://business.nasdaq.com).

<sup>2</sup> MSCI defines "company voting power" as the proportion of a company's total votes held by non-strategic shareholders of listed securities.

On January 31, 2018, MSCI launched the Consultation with a revised proposal on the treatment of stocks with differential voting rights. In connection with the launch, MSCI released a discussion paper<sup>3</sup> and a consultation document<sup>4</sup> providing details on the revised proposal and the potential implementation. Under MSCI's revised proposal, it would continue to include stocks with differential voting rights in the MSCI equity indexes, but would adjust the weights of those stocks to reflect both their free float and their listed voting power. MSCI would exclude stocks with zero listed voting power from the MSCI equity indexes altogether. MSCI also would apply certain exceptions, including in cases where a share class imposes partial restrictions on the election of directors. In the Consultation Paper, MSCI stated that its proposal offered a "balanced approach" that would ensure the MSCI equity indexes "continue to offer extensive coverage of the entire investable equity opportunity set" while recognizing "the importance of voting rights to many investors." MSCI sought feedback from the investment community on the revised proposal.

## II. Continued Inclusion of Stocks with Differential Voting Rights

Nasdaq released a report, entitled "The Promise of Market Reform: Reigniting America's Economic Engine" (the "Revitalize Report"), which notes that the continued strength of U.S. financial markets is far from certain and issues a call to action to revitalize those markets.<sup>5</sup> Among its many recommendations in the report, Nasdaq expressed its continued support for differential class structures in appropriate situations. Consistent with that support, Nasdaq commends MSCI's proposal to continue to include stocks with differential voting rights in the MSCI equity indexes.

As stated in the Revitalize Report, Nasdaq understands and respects that there are many investing strategies, and we believe that this mix of approaches helps ensure vibrant markets. However, in recent years, market dynamics have started to disfavor long-term investors and long-term corporate strategies. Market participants and the investing community have become less patient with corporate management, boards of directors and their overarching strategies to deliver shareholder returns. Nasdaq advocates for policies that help public companies plan and execute for long-term growth, job creation and innovation, and ensure that long-term investors are able to participate in wealth creation on a level playing field with those who focus on the short term.

One such policy is permitting a company to determine the class structure that is most appropriate for it, so long as this structure is fully transparent and disclosed up-front so that investors have complete

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<sup>3</sup> "Should Equity Indexes Include Stocks of Companies with Share Classes Having Unequal Voting Rights?," issued January 31, 2018, available at: [https://www.msci.com/documents/1296102/8328554/Discussion+Paper\\_Voting+rights.pdf/d3ba68f1-856a-4e76-85b6-af580c5420d7](https://www.msci.com/documents/1296102/8328554/Discussion+Paper_Voting+rights.pdf/d3ba68f1-856a-4e76-85b6-af580c5420d7) (the "Discussion Paper").

<sup>4</sup> "Consultation on the Treatment of Unequal Voting Structures in the MSCI Equity Indexes," issued January 31, 2018, available at: [https://www.msci.com/documents/1296102/8328554/Consultation\\_Voting+Rights.pdf/15d99336-9346-4e42-9cd3-a4a03ecff339](https://www.msci.com/documents/1296102/8328554/Consultation_Voting+Rights.pdf/15d99336-9346-4e42-9cd3-a4a03ecff339) (the "Consultation Document").

<sup>5</sup> "The Promise of Market Reform: Reigniting America's Economic Engine," issued May 4, 2017, available at: <http://business.nasdaq.com/revitalize>. The report, which is based on extensive research and insights, is a blueprint for reform designed to create a dialogue and facilitate common sense action steps that help reignite America's economic engine by modernizing market structure, reconstructing the regulatory framework and reorienting to a longer term view.

visibility into the company. While differential class structures have existed for some time, they have risen in prominence recently as companies are using them as a method to facilitate long-term thinking. In differential class structures, different classes of stock have different voting rights, with founders and/or early investors typically having more voting rights than other investors. These structures can benefit the company, shareholders and employees by facilitating long term value creation. For example, these structures may: provide protection against short termers, raiders and activists looking to promote their own agenda, such as stock buybacks or an untimely company sale; reduce pressure on companies to achieve short-term earnings targets at the expense of long-term growth; and allow companies to pursue opportunities with longer time horizons but significant upside potential.

In the United States, securities exchanges prohibit any action that disenfranchises existing shareholders.<sup>6</sup> For this reason, differential class structures are generally adopted only when a company first goes public, ensuring that the structure is disclosed in advance to all public investors. Accordingly, differential voting classes are transparent from the outset, and the market prices any economic impact of differential voting structures into the stock.

In order to ensure the long-term success of the American economy, we need to be careful about assuming that a “one-size-fits-all” voting structure is appropriate for all companies. Differential class structures allow Main Street investors to invest in innovative and high-growth companies, enjoying the financial benefits of these companies’ success. While some Main Street investors certainly direct their own investments, most participate in the public markets through stocks in their 401(k) plans that track indexes. If indexes exclude companies with differential class structures, they will deprive Main Street investors of the opportunity to share in the growth of those companies. To provide an example of such growth, MSCI Research recently released a study concluding “that unequal voting stocks in aggregate outperformed the market over the period from November 2007 to August 2017, and that excluding them from market indexes would have reduced the indexes’ total returns by approximately 30 basis points per year over [the] sample period.”<sup>7</sup>

Similarly, index inclusion often is an incentive for companies to go public in the first place. As Nasdaq stated in the Revitalize Report, we have reached a point where companies increasingly question whether the benefits of public ownership are worth the burdens. If not addressed, this could ultimately represent an existential threat to our markets. Excluding differential class companies from indexes would be yet another deterrent for companies to access the public markets. If companies decide not to go public, Main Street investors again are denied these opportunities to share in wealth creation.

Therefore, Nasdaq supports MSCI’s decision to continue to include stocks with differential voting rights in the MSCI equity indexes.

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<sup>6</sup> See, e.g., Nasdaq Listing Rule 5640, which provides that voting rights of existing shareholders of publicly traded common stock cannot be disparately reduced or restricted through any corporate action or issuance.

<sup>7</sup> Dmitris Melas, “Putting the Spotlight on Spotify: Why have Stocks with Unequal Voting Right Outperformed?” MSCI Research, April 3, 2018, available at: <https://www.msci.com/www/blog-posts/putting-the-spotlight-on/0898078592>.

### III. Adjustment of Security Weights for Voting Power

At the same time, Nasdaq discourages MSCI from adjusting the index weights of differential class securities in, and excluding securities with zero listed voting power from, the MSCI equity indexes for many of the same reasons stated above.

In addition, in Nasdaq's view, indexes that are intended to be broad-based market indexes should provide a representative sample to track the performance of the overall stock market. Indeed, as MSCI stated in the Discussion Paper, "equity indexes aim to achieve comprehensive coverage of the underlying opportunity set by including all investable equity securities listed in the markets they seek to represent." Since public securities with differential voting rights are investable securities, adjusting their weight in, or excluding them from, indexes would skew the index's representation of the overall market. It is reasonable to adjust index weights for public float, as MSCI and other index providers typically do, because a company's public float represents the company's shares that actually trade in the public markets. However, it is not reasonable or intuitive to adjust index weights for voting rights because share classes with lower or no voting rights still trade in the public markets. Nasdaq recognizes that there are many well-regarded, traditional ways to weight broad-based indexes, such as by market capitalization or price. Reasonable people can disagree on the advantages and disadvantages of each accurately measuring the broader economy. With that said, there is no intuitive link between a governance-weighted index and the performance of the overall market. Nasdaq, by the way, fully supports indexes that seek to capture particular governance standards when such indexes are intended to be topic-focused, rather than broad-based representatives of the economy as a whole.

While Nasdaq understands and appreciates that MSCI is trying to forge a compromise that satisfies both sides of the debate on differential share classes, it is unclear that the formula MSCI has proposed to adjust the index weights is appropriate. Specifically, it is unclear that the formula provides an adequate proxy for any perceived economic cost of reduced voting power. It is also particularly troubling that the formula could reduce the index exposure (and therefore the ability of Main Street investors to participate in the growth) of some of the world's most well-known and innovative companies, particularly technology companies. Specifically, the five U.S. companies with the largest market capitalization are listed on The Nasdaq Stock Market, and two of those companies have differential class structures. If MSCI reduces the weight of these companies in its equity indexes, it will deprive investors of the significant opportunity to share fully in these companies' performance.

In the Consultation Document, MSCI suggests that "the proposal avoids the use of arbitrary voting power thresholds for index inclusion (e.g., 25%, 50%)."<sup>8</sup> However, the current proposal still produces an arbitrary outcome for companies with similar governance structures. Thus, under the proposal, a company whose securities carry zero company voting power would be deleted from the MSCI equity indexes. At the same time, a company whose public shareholders have an aggregate vote of less than 40% will receive a reduced, but greater than zero, weight in the index. Finally, a company whose public shareholders appoint only 25% of the company's directors will receive a full weight in the index.<sup>9</sup>

Along these lines, it is also concerning that MSCI proposes to exclude stocks with zero company voting power entirely from its equity indexes. From strictly a corporate governance perspective, stocks

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<sup>8</sup> See the Consultation Document, at page 8.

<sup>9</sup> See the Consultation Document, at page 25.

that provide investors some, rather than no, voting rights may deliver a more appropriate structure because they allow shareholders some voice in governance matters and offer the Board some feedback from shareholders. However, regardless of a company's governance structure, investors should have the ability, based on full upfront disclosure, to enjoy "economic ownership" of the company and participate in the company's growth even if the company has chosen to concentrate "governance ownership" to a subset of owners, such as the founders. As a result, Nasdaq does not believe that stocks with no voting rights should be excluded from MSCI's equity indexes as long as the voting structure is fully disclosed upon the company's initial listing.

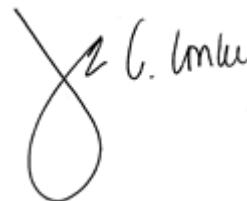
Finally, Nasdaq concurs with BlackRock, one of the world's leading asset management firms, that policymakers, not index providers, should set corporate governance standards.<sup>10</sup> As stated above, the role of index providers is to reflect the investable universe that the index seeks to represent, not to influence corporate governance decisions, which are best left to a company, its board of directors and its shareholders. By limiting the weight of, or excluding entirely, differential class securities, MSCI risks setting dangerous precedent that could be extended in the future to other corporate governance or other topics. In addition, MSCI, like other index providers, offers a variety of index products, some of which are intended to provide representative samples of the whole market, and others of which are intended to focus on custom themes, such as: geographic regions; certain investment strategies; particular return factors, such as volatility or yield; and environmental, social and governance topics. It is more appropriate for MSCI to address the topic of differential class securities through custom indexes, rather than through broad-based indexes intended to address the entire market.

As a result, Nasdaq asks MSCI to reconsider and reject its proposal to adjust the index weights of differential class securities in, and exclude securities with zero listed voting power from, the MSCI equity indexes.

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Thank you for your consideration of our comments. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Joan C. Conley". The signature is stylized, with a large loop at the bottom and a flourish at the top.

Joan C. Conley  
Senior Vice President and Corporate  
Secretary

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<sup>10</sup> See open letter from Ms. Barbara Novick, Vice Chairman, BlackRock, Inc., to Mr. Baer Pettit, President, MSCI, Inc., dated April 19, 2018, regarding the Consultation, available at: <https://www.blackrock.com/corporate/literature/publication/open-letter-treatment-of-unequal-voting-structures-msci-equity-indexes-041918.pdf>.