

BRENNA BIRD
ATTORNEY GENERAL



1305 E. WALNUT ST.
DES MOINES, IA 50319
515-281-5164
www.iowaattorneygeneral.gov

IOWA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

Adena T. Friedman
Chair and Chief Executive Officer
Nasdaq
151 West 42nd Street
New York, New York 10036

Dear Chair Friedman:

When one member of the effective duopoly of listing companies in the United States embraces a policy that may conflict with both State and federal anti-discrimination laws, law enforcement notices. We, the Attorneys General of Iowa, Alabama, Arkansas, Florida, Georgia, Kansas, Idaho, Indiana, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Ohio, Oklahoma, South Carolina, Texas, Utah, Virginia, West Virginia, and Wyoming write to inquire about Nasdaq's commitment to ensuring federal and State anti-discrimination laws are followed.

In December 2020, Nasdaq [announced](#) a proposed rule that “would require most Nasdaq-listed companies to have, or explain why they do not have, at least two diverse directors, including one who self-identifies as female and one who self-identifies as either an underrepresented minority or LGBTQ+.” [Many immediately](#) recognized Nasdaq's proposal as a quota for corporate boards. As part of that [quota](#), “all companies will be expected to have one diverse director within two years of the SEC's approval of the listing rule.” Companies listed on Nasdaq's global markets “will be expected to have two diverse directors within four years of the SEC's approval of the listing rule.” Nasdaq [celebrated its board quota](#) as advancing its “purpose . . . to champion inclusive growth and prosperity to power stronger economies.” *Id.*

Confronted with well-founded objections that its policy violated anti-discrimination laws, Nasdaq [reframed](#) its board quota to the U.S. Securities and Exchange Commission as “aspirational and not mandatory.” In litigation before the Fifth Circuit, Nasdaq pivoted again, relabeling its illegal board quota as simply a “disclosure-based framework” by a private company not subject to constitutional restrictions. The case remains [pending](#) after the Fifth Circuit heard en banc arguments in May. A coalition of [19 States](#) and then [24 States](#) joined amicus briefs

in that litigation before the Fifth Circuit panel and the en banc court opposing the proposed race- and gender-based quotas.

For more than three years, Nasdaq has defended as something other than a quota a policy that looks like a quota and acts like a quota. During that time, the Supreme Court of the United States [held unconstitutional](#) university race-based admissions policies and reaffirmed “the absolute equality of all citizens of the United States politically and civilly before their own laws.” The Court was clear: “Eliminating racial discrimination means eliminating all of it.”

Nevertheless, Nasdaq insists on continuing down the wrong path. Nasdaq’s defense of its board quota revolves around its claim that constitutional and statutory discrimination prohibitions do not apply to it. Its litigation strategy raises questions about Nasdaq’s commitment to following state and federal anti-discrimination laws. Given Nasdaq’s zealous desire to impose quotas on companies, several of which are headquartered in our states, we are interested in learning what policies Nasdaq has in place to ensure its listed companies are following federal and State anti-discrimination laws.

Our [concerns](#) with the rule’s legality are well documented. But we require assurances that you have in place policies that ensure State and federal anti-discrimination law are followed. Please provide us with a summary and specific documentation of Nasdaq’s rules and policies requiring its listed companies to follow federal and State anti-discrimination laws and any legal analysis explaining how those laws comport with Nasdaq’s purportedly aspirational quotas by October 23, 2024.

We await your response.

Sincerely,

A handwritten signature in cursive script that reads "Brenna Bird".

Brenna Bird
Attorney General of Iowa



Steve Marshall
Attorney General of Alabama



Liz Murrill
Attorney General of Louisiana



Tim Griffin
Attorney General of Arkansas




Lynn Fitch
Attorney General of Mississippi



Ashley Moody
Attorney General of Florida



Andrew T. Bailey
Attorney General of Missouri



Chris Carr
Attorney General of Georgia



Austin Knudsen
Attorney General of Montana



Raúl R. Labrador
Attorney General of Idaho



Mike Hilgers
Attorney General of Nebraska



Todd Rokita
Attorney General of Indiana



John Formella
Attorney General of New Hampshire



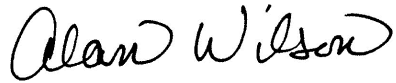
Kris Kobach
Attorney General of Kansas



Dave Yost
Attorney General of Ohio



Gentner Drummond
Attorney General of Oklahoma



Alan Wilson
Attorney General of South Carolina



Ken Paxton
Attorney General of Texas



Sean D. Reyes
Attorney General of Utah



Jason S. Miyares
Attorney General of Virginia



Patrick Morrissey
Attorney General of West Virginia



Bridget Hill
Attorney General of Wyoming