MEMORANDUM

TO: File Nos. S7-02-10, 4-604, and SR-NASDAQ-2011-010
FROM: Michael E. Coe
       Office of Commissioner Luis A. Aguilar
DATE: July 25, 2011
SUBJECT: Meeting with The NASDAQ OMX Group

On July 21, 2011, Commissioner Aguilar, along with Michael Coe, Counsel to the
Commissioner, met with the following representatives of The NASDAQ OMX Group:

- Ed Knight, Executive Vice President and General Counsel; and
- Eric Noll, Executive Vice President, Transaction Services.

The discussion included, among other things, the Commission’s Concept Release on Equity
Market Structure; The NASDAQ Stock Market’s request for rulemaking to allow the NASDAQ
Capital Market to adopt initial listing price requirements identical to the NYSE Amex; and The
NASDAQ Stock Market’s Proposed Rule Change to Link Market Data Fees and Transaction
Execution Fees.

The NASDAQ representatives also provided a copy of the attached document entitled, “Market
Update July 2011.”
Market Update
July 2011
July headed for weak volume month despite increasing volatility

- Consolidated volume in equities has been declining since the peak of the financial crisis along with volatility.

- Volatility is generally reflected in equities volume and this chart shows few exceptions. Volatility and volume have both been trending up slightly over the past three months. However, July currently projects as a down month for volume while volatility is up.

- July 2011 is on pace for the weakest July in the last five years. Increased volatility this month might ultimately alter this outcome by month’s end, but not dramatically so.

*Projected based on trading data through July 18

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Volume in 2nd Quarter lowest since 2007

- Volume for Q2 2011 shows similar patterns to July 2011.
- Q2 2011 was 12.7% below the five year 2nd quarter average. With volatility at its lowest quarterly average since 2007, consolidated volume this quarter is not surprisingly lower than 2008-2010.
- Increased volatility last year in the wake of May 6th led to a big volume month in May 2010, providing a boost to Q2 volume.

<table>
<thead>
<tr>
<th>Year</th>
<th>Rank</th>
<th>Consolidated Volume</th>
<th>Diff. from Average</th>
<th>VIX</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>5</td>
<td>357,213,176,359</td>
<td>(31.2%)</td>
<td>14.5</td>
</tr>
<tr>
<td>2008</td>
<td>3</td>
<td>460,529,328,609</td>
<td>(11.3%)</td>
<td>20.9</td>
</tr>
<tr>
<td>2009</td>
<td>1</td>
<td>673,128,657,276</td>
<td>29.7%</td>
<td>30.6</td>
</tr>
<tr>
<td>2010</td>
<td>2</td>
<td>650,975,708,079</td>
<td>25.4%</td>
<td>29.6</td>
</tr>
<tr>
<td>2011</td>
<td>4</td>
<td>452,803,036,840</td>
<td>(12.7%)</td>
<td>15.6</td>
</tr>
<tr>
<td>Average</td>
<td></td>
<td>518,929,981,433</td>
<td></td>
<td>22.2</td>
</tr>
</tbody>
</table>
Options contracts on pace for most active July since 2008

- Unlike cash equities volume, consolidated volume in options has been consistently rising for the past five years.
- Over the past six to twelve months, contracts have been traded in high numbers despite decreasing volatility.
- With the exception of the four months during the peak of the financial crisis, when options volume actually fell relative to the prior three months, options volume has been largely unaffected by declining volatility as technology and market structure enhancements have propelled trading interest and market growth.

*Projected based on trading data through July 15
Recent trends in Global IPOs - Capital

- Following on the best year since 2008, global capital raised YTD 2011 is up 12%.
- Global capital raised is up 12% from $100B to $112B year-on-year, and deals are larger on average.
  - The average size is $164M compared to $160M.
  - Increase in average capital raised largely driven by 174% US growth year-on-year.
  - The size of BRIC IPOs is down 8% year-on-year.
- Of 42 countries with activity in both years, 19 exhibited year-on-year growth in average capital raised. Of these, only 3 (US, Malaysia, and Taiwan) had more than 10 IPOs in both years.
- Europe is off to a substantially worse start than 2010 due to uncertainty affecting the Euro-zone countries.

Capital Raised from IPOs by Country

Source: Thomson
1 Figures exclude closed-end funds and deals of less than $1 M.
YTD through June 30, 2011.
NASDAQ Tech IPOs Winning in Performance

- Although 2009 was a tough year for IPOs with only 67 total in the U.S., the 12 technology IPOs have generally performed well over the past two years.
- NASDAQ’s 23 technology IPOs in 2010, up over 40%, have also performed well on a value-weighted basis.

<table>
<thead>
<tr>
<th>Issue Date</th>
<th>Issuer</th>
<th>Ticker Symbol</th>
<th>Domicile Nation Name</th>
<th>Exchange Where Issue Will Be Listed</th>
<th>Proceeds Amt inc. Over Sold - sum of all Mkts ($ m)</th>
<th>Offer Price</th>
<th>6/27 Last Price</th>
<th>Market Cap</th>
<th>% Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>05/21/2009</td>
<td>OpenTable Inc</td>
<td>OPEN</td>
<td>United States</td>
<td>NASDQ</td>
<td>$60.00</td>
<td>$20.00</td>
<td>$78.49</td>
<td>$1,959,827,968.00</td>
<td>292.45%</td>
</tr>
<tr>
<td>11/04/2009</td>
<td>Ancestry.com Inc</td>
<td>ACOM</td>
<td>United States</td>
<td>NASDQ</td>
<td>$100.00</td>
<td>$13.50</td>
<td>$40.84</td>
<td>$1,896,877,952.00</td>
<td>202.52%</td>
</tr>
<tr>
<td>04/01/2009</td>
<td>Changyou.com Ltd</td>
<td>CYOU</td>
<td>China</td>
<td>NASDQ</td>
<td>$138.00</td>
<td>$16.00</td>
<td>$40.70</td>
<td>$2,305,846,064.00</td>
<td>154.38%</td>
</tr>
<tr>
<td>06/30/2009</td>
<td>LogMeIn Inc</td>
<td>LOGM</td>
<td>United States</td>
<td>NASDQ</td>
<td>$122.67</td>
<td>$16.00</td>
<td>$38.27</td>
<td>$930,331,712.00</td>
<td>139.19%</td>
</tr>
<tr>
<td>08/05/2009</td>
<td>Avago Technologies Ltd</td>
<td>AVGO</td>
<td>United States</td>
<td>NASDQ</td>
<td>$745.20</td>
<td>$15.00</td>
<td>$9,408,276,480.00</td>
<td>136.33%</td>
<td></td>
</tr>
<tr>
<td>11/17/2009</td>
<td>Fortinet Inc</td>
<td>FTNT</td>
<td>United States</td>
<td>NASDQ</td>
<td>$179.69</td>
<td>$12.50</td>
<td>$26.01</td>
<td>$4,131,913,984.00</td>
<td>108.08%</td>
</tr>
<tr>
<td>05/19/2009</td>
<td>SolarWinds Inc</td>
<td>SWI</td>
<td>United States</td>
<td>NYSE</td>
<td>$174.17</td>
<td>$12.50</td>
<td>$25.11</td>
<td>$1,901,127,040.00</td>
<td>100.88%</td>
</tr>
<tr>
<td>10/01/2009</td>
<td>Echo Global Logistics Inc</td>
<td>ECHO</td>
<td>United States</td>
<td>NASDQ</td>
<td>$79.80</td>
<td>$14.00</td>
<td>$16.75</td>
<td>$394,807,808.00</td>
<td>19.64%</td>
</tr>
<tr>
<td>04/15/2009</td>
<td>Rosetta Stone Inc</td>
<td>RST</td>
<td>United States</td>
<td>NYSE</td>
<td>$129.38</td>
<td>$18.00</td>
<td>$15.11</td>
<td>$330,213,504.00</td>
<td>-16.00%</td>
</tr>
<tr>
<td>09/24/2009</td>
<td>Shanda Games Ltd</td>
<td>GAME</td>
<td>China</td>
<td>NASDQ</td>
<td>$1,043.75</td>
<td>$12.50</td>
<td>$6.08</td>
<td>$1,878,860,064.00</td>
<td>-51.36%</td>
</tr>
<tr>
<td>08/05/2009</td>
<td>CDC Software Corp</td>
<td>CDCS</td>
<td>Hong Kong</td>
<td>NASDQ</td>
<td>$57.60</td>
<td>$12.00</td>
<td>$4.87</td>
<td>$148,727,104.00</td>
<td>-59.42%</td>
</tr>
<tr>
<td>10/20/2009</td>
<td>ZST Digital Networks Inc</td>
<td>ZSTN</td>
<td>China</td>
<td>NASDQ</td>
<td>$25.00</td>
<td>$8.00</td>
<td>$2.71</td>
<td>$30,005,900.00</td>
<td>-66.13%</td>
</tr>
</tbody>
</table>
Dark Trading Trends

- Over the last 8 months, the percent of U.S. equities volume traded in the dark has ranged from 30-34%. Since early 2009, off-exchange trading has grown by approximately 50% from 20% of market share to 30% today.

- Dark pool market share is heading towards 15%. However, the growth in dark pools is concentrated in only one type of dark pool: dark ECNS.

- Dark ECNs, systems with multiple market participants acting as liquidity providers, account for 9% of U.S. market share.

- Ping destinations, systems with a single market participant acting as the liquidity provider, along with block crossing networks, account for an additional 3% of U.S. market share.
Importance of Sub-pennies to Dark Trading

- There is widespread use of sub-penny pricing, exclusive of mid-point crosses.

- While wholesalers and ping destinations would be expected to frequently offer sub-penny price improvement, the range of different sub-pennies used for stocks priced above $1 is surprising.

- Dark ECNs use full pennies 62% of the time and half-pennies 28% of the time. Occasionally, other sub-penny price points are used, generally in increments of $0.0005.

- In April 2010, NASDAQ and other exchanges submitted a petition to the Commission to approve a pilot program allowing sub-penny quoting for certain low-priced liquid securities. To date, no action has been taken.
Anti-competitive NYSE Amex Listing Advantage

Initial Listing

- Due to a "grandfather" provision in the Commission's Penny Stock Rules, NYSE Amex can initially list companies at $2 and $3, whereas NASDAQ must maintain a minimum $4 price, even though all other NASDAQ Capital Market quantitative standards meet or exceed those of NYSE Amex.

<table>
<thead>
<tr>
<th></th>
<th>NYSE Amex</th>
<th></th>
<th>NASDAQ Capital Market</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standard 1</td>
<td>Standard 2</td>
<td>Standard 3</td>
</tr>
<tr>
<td>Minimum price</td>
<td>$3</td>
<td>$3</td>
<td>$2</td>
</tr>
<tr>
<td>Pre-tax income</td>
<td>$750,000</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Shareholders' equity</td>
<td>$4 million</td>
<td>$4 million</td>
<td>$4 million</td>
</tr>
<tr>
<td>Market capitalization</td>
<td>N/A</td>
<td>N/A</td>
<td>$50 million</td>
</tr>
</tbody>
</table>

- In May 2010, NASDAQ filed a petition asking the Commission to eliminate this unfair, anti-competitive disparity by either:
  - Granting an exception to the Penny Stock Rules that would allow NASDAQ to list companies using the identical price standards as NYSE Amex; or
  - Amending the Penny Stock Rules to eliminate the grandfather that permits NYSE Amex to list companies below $4.

- While Staff has informally expressed agreement with our proposal to require NYSE Amex to increase its price, to date no action has been taken on the petition.
Anti-competitive NYSE Amex Listing Advantage

**Continued Listing**

- In addition, NYSE Amex has no continued listing price requirement and approximately 11% (51 out of 471) of the common stock (or equivalent) issues on NYSE Amex were recently trading below $1.

- In 2006, the Commission encouraged NYSE Amex to adopt a minimum continued listing price requirement.\(^1\) In the 5+ years since that statement, NYSE Amex has not acted on the Commission’s statement.

- In conversations with Trading and Market’s Staff about the BX Venture Market, Staff stressed the importance of including some minimum price requirement in the proposed listing standards, even though securities traded on that market would not be exempt from State Blue Sky laws and would be subject to the Penny Stock Act and Rules.

- Nonetheless, NYSE Amex, which has an exemption from both the State Blue Sky laws and the Penny Stock Act and Rules, continues to have no continued listing price requirement.