

**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

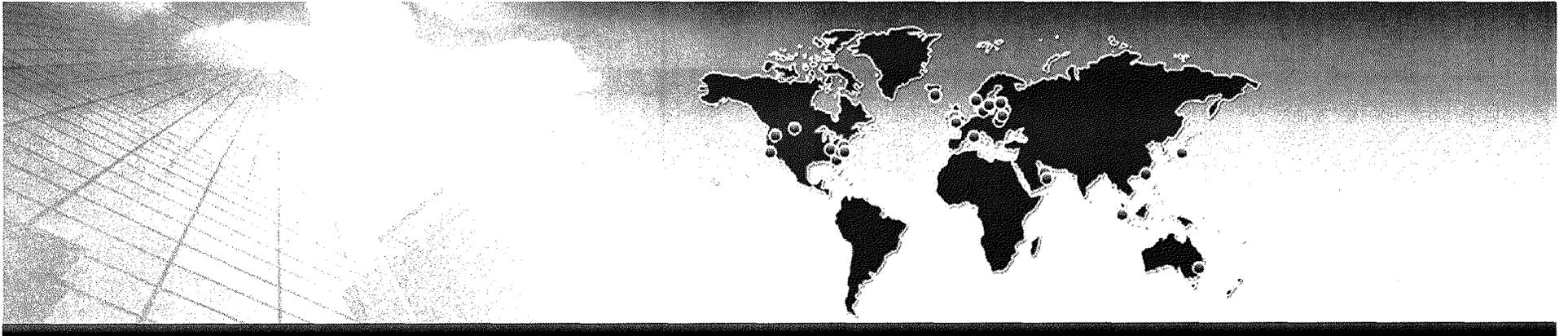
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On July 21, 2011, Commissioner Aguilar, along with Michael Coe, Counsel to the Commissioner, met with the following representatives of The NASDAQ OMX Group:

- 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."

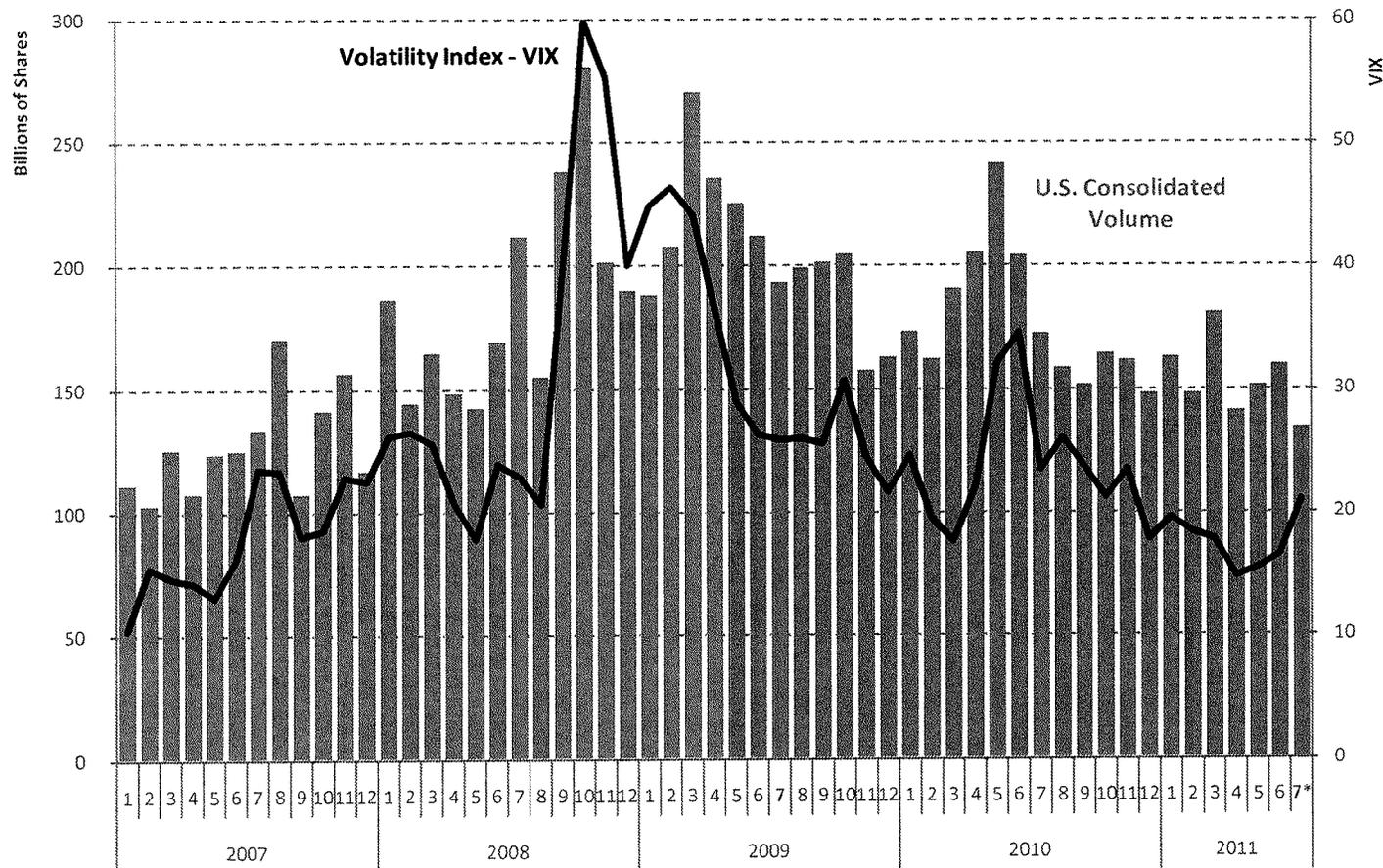


# Market Update

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

## Volume in 2<sup>nd</sup> Quarter lowest since 2007

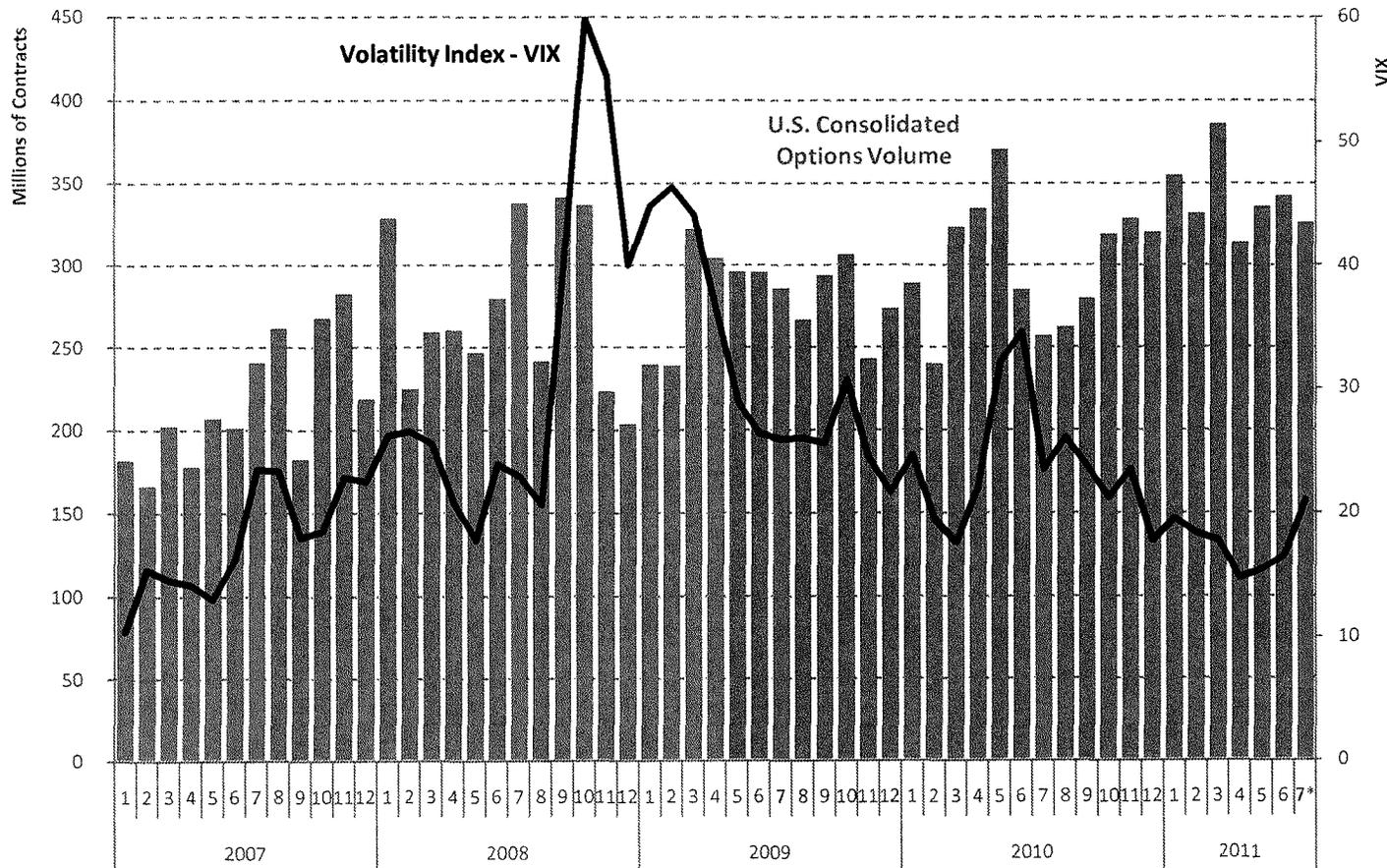
- Volume for Q2 2011 shows similar patterns to July 2011.
- Q2 2011 was 12.7% below the five year 2<sup>nd</sup> quarter average. With volatility at its lowest quarterly average since 2007, consolidated volume this quarter is not surprisingly lower than 2008-2010.
- Increased volatility last year in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

### 2nd Quarter

Year	Rank	Consolidated Volume	Diff. from Average	VIX
2007	5	357,213,176,359	(31.2%)	14.5
2008	3	460,529,328,609	(11.3%)	20.9
2009	1	673,128,657,276	29.7%	30.6
2010	2	650,975,708,079	25.4%	29.6
2011	4	452,803,036,840	(12.7%)	15.6
<b>Average</b>		<b>518,929,981,433</b>		<b>22.2</b>

## Options contracts on pace for most active July since 2008

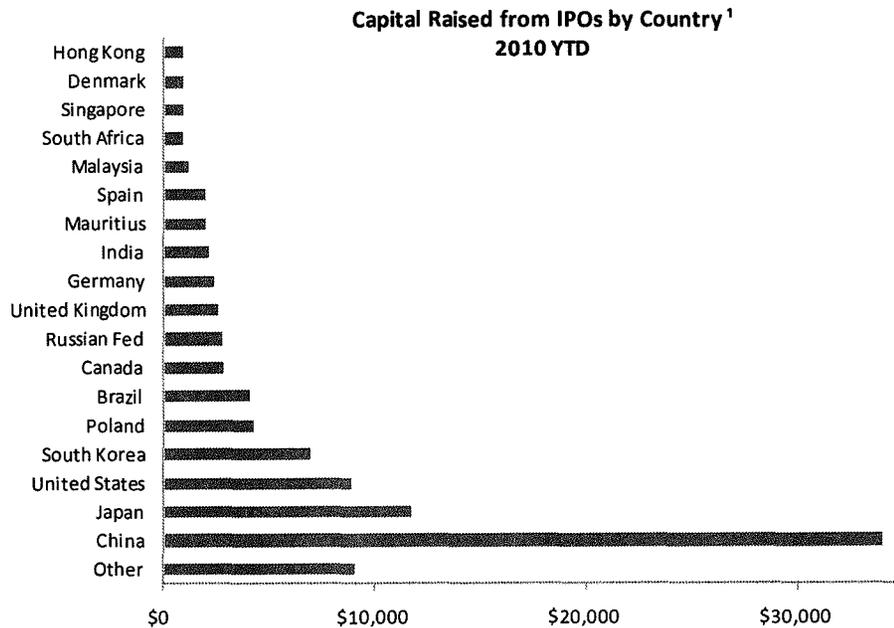
- Unlike cash equities volume, consolidated volume in options has been consistently rising for the past five years.
- Over the past six to twelve months, contracts have been traded in high numbers despite decreasing volatility.
- With the exception of the four months during the peak of the financial 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.



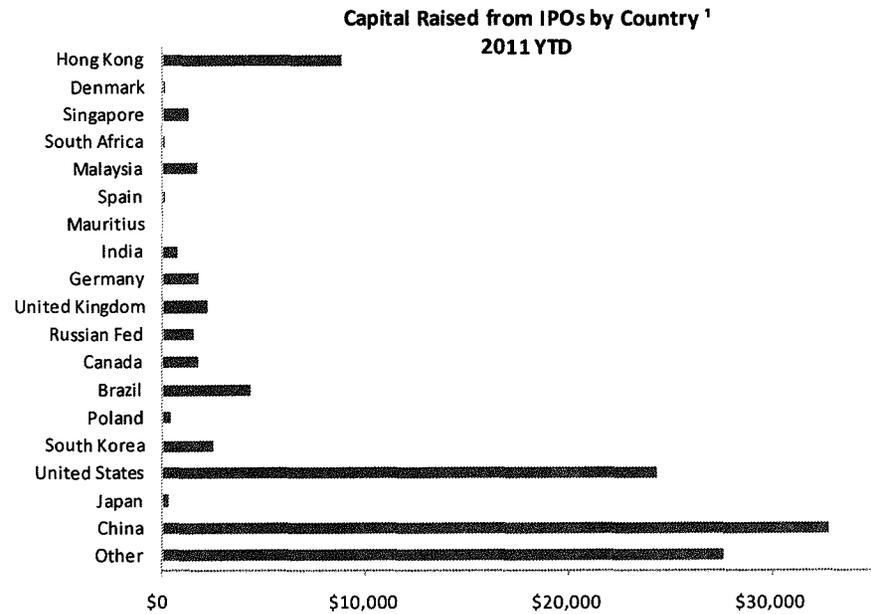
\*Projected based on trading data through July 15

## 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.



Source: Thomson  
<sup>1</sup> Figures exclude closed-end funds and deals of less than \$1 M.  
 YTD through June 30, 2011.



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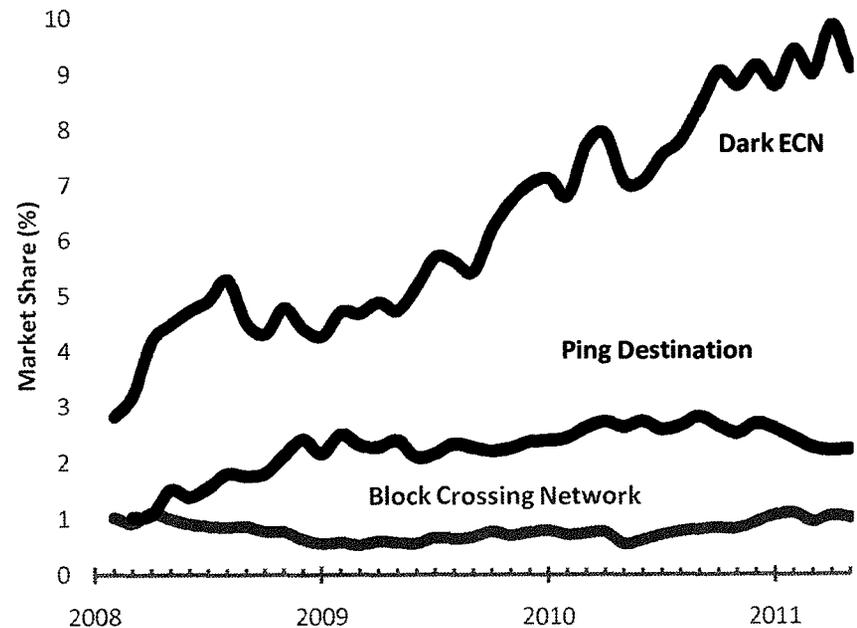
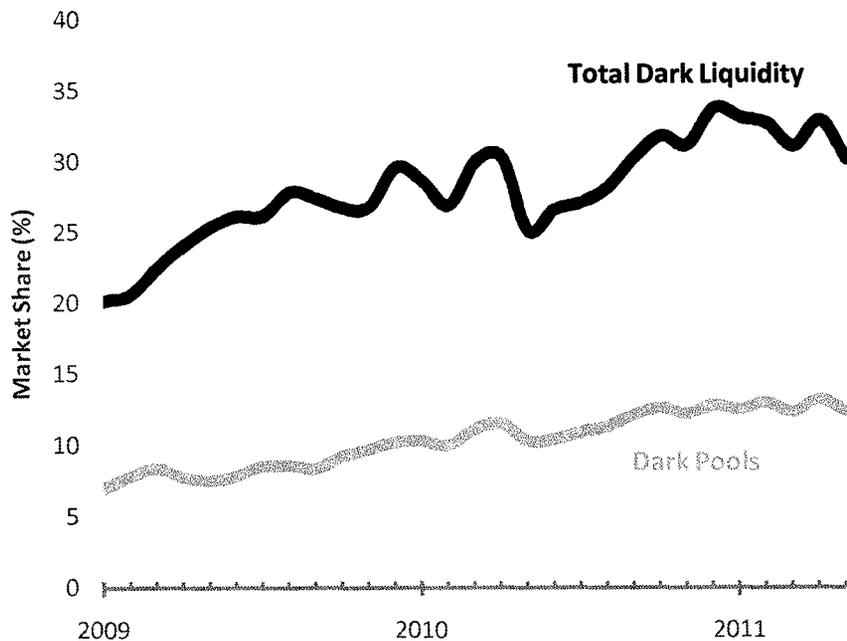
## NASDAQ Tech IPOs Winning in Performance

- 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.

Issue Date	Issuer	Ticker Symbol	Domicile Nation Name	Exchange Where Issue Will Be Listed	Proceeds Amt inc. Over Sold - sum of all Mkts (\$ mil)	Offer Price	6/27 Last Price	Market Cap	% Difference
05/21/2009	OpenTable Inc	OPEN	United States	NASDAQ	\$69.00	\$20.00	\$78.49	\$1,959,827,968.00	292.45%
11/04/2009	Ancestry.com Inc	ACOM	United States	NASDAQ	\$100.00	\$13.50	\$40.84	\$1,896,877,952.00	202.52%
04/01/2009	Changyou.com Ltd	CYOU	China	NASDAQ	\$138.00	\$16.00	\$40.70	\$2,305,848,064.00	154.38%
06/30/2009	LogMein Inc	LOGM	United States	NASDAQ	\$122.67	\$16.00	\$38.27	\$930,331,712.00	139.19%
08/05/2009	Avago Technologies Ltd	AVGO	United States	NASDAQ	\$745.20	\$15.00	\$35.45	\$9,408,276,480.00	136.33%
11/17/2009	Fortinet Inc	FTNT	United States	NASDAQ	\$179.69	\$12.50	\$26.01	\$4,131,913,984.00	108.08%
05/19/2009	SolarWinds Inc	SWI	United States	NYSE	\$174.17	\$12.50	\$25.11	\$1,901,127,040.00	100.88%
10/01/2009	Echo Global Logistics Inc	ECHO	United States	NASDAQ	\$79.80	\$14.00	\$16.75	\$394,807,808.00	19.64%
04/15/2009	Rosetta Stone Inc	RST	United States	NYSE	\$129.38	\$18.00	\$15.11	\$330,213,504.00	-16.06%
09/24/2009	Shanda Games Ltd	GAME	China	NASDAQ	\$1,043.75	\$12.50	\$6.08	\$1,878,360,064.00	-51.36%
08/05/2009	CDC Software Corp	CDCS	Hong Kong	NASDAQ	\$57.60	\$12.00	\$4.87	\$148,727,104.00	-59.42%
10/20/2009	ZST Digital Networks Inc	ZSTN	China	NASDAQ	\$25.00	\$8.00	\$2.71	\$30,005,900.00	-66.13%

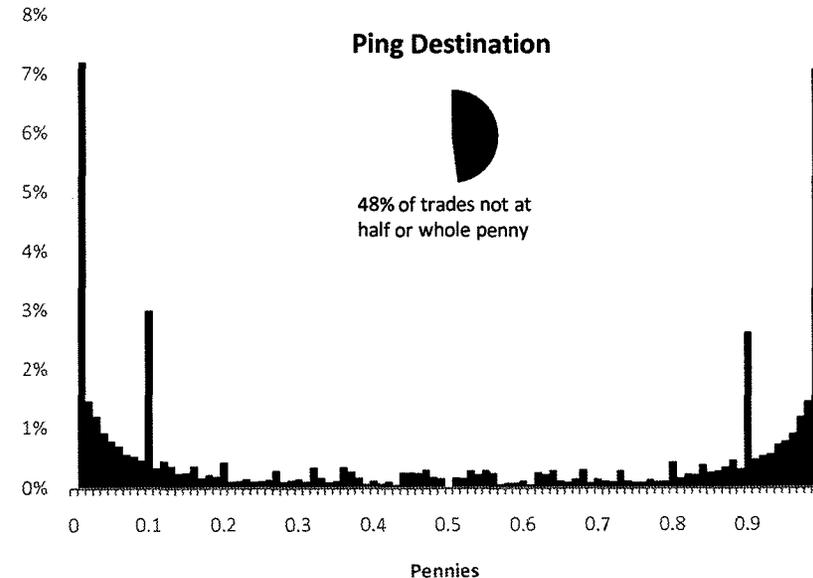
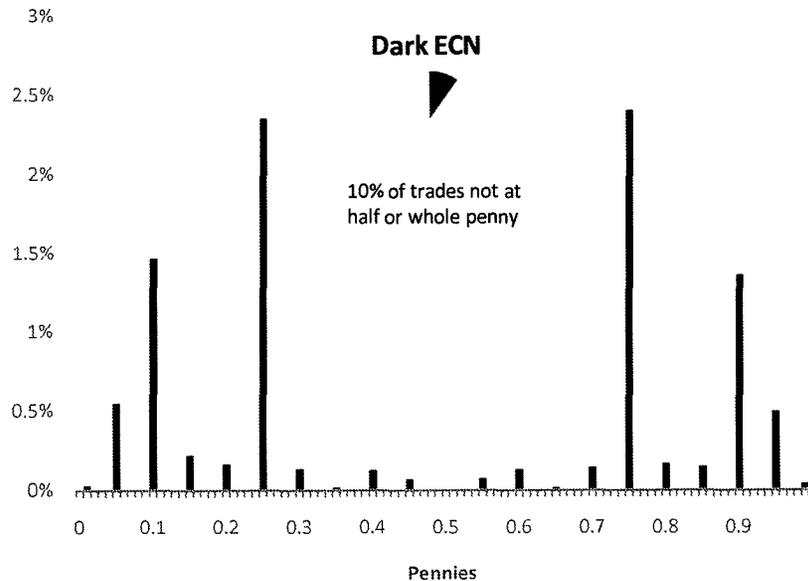
## Dark Trading Trends

- 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.

NYSE Amex				NASDAQ Capital Market			
	Standard 1	Standard 2	Standard 3	Net Income Standard	Equity Standard	MVLS Standard	
<b>Minimum price</b>	\$3	\$3	\$2	\$4	\$4	\$4	
<b>Pre-tax income</b>	\$750,000	N/A	N/A	\$750,000	N/A	N/A	
<b>Shareholders' equity</b>	\$4 million	\$4 million	\$4 million	\$4 million	\$5 million	\$4 million	
<b>Market capitalization</b>	N/A	N/A	\$50 million	N/A	N/A	\$50 million	

- 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.<sup>1</sup> 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.

<sup>1</sup> Exchange Act Release No. 53050 (January 3, 2006), 71 FR 1580 (January 10, 2006) (footnote 11).