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Securities and Exchange Commission
100 F St. NW
Washington, DC 20549-9303
Rule-comments@sec.gov

File: SR-NASDAQ-2012-043

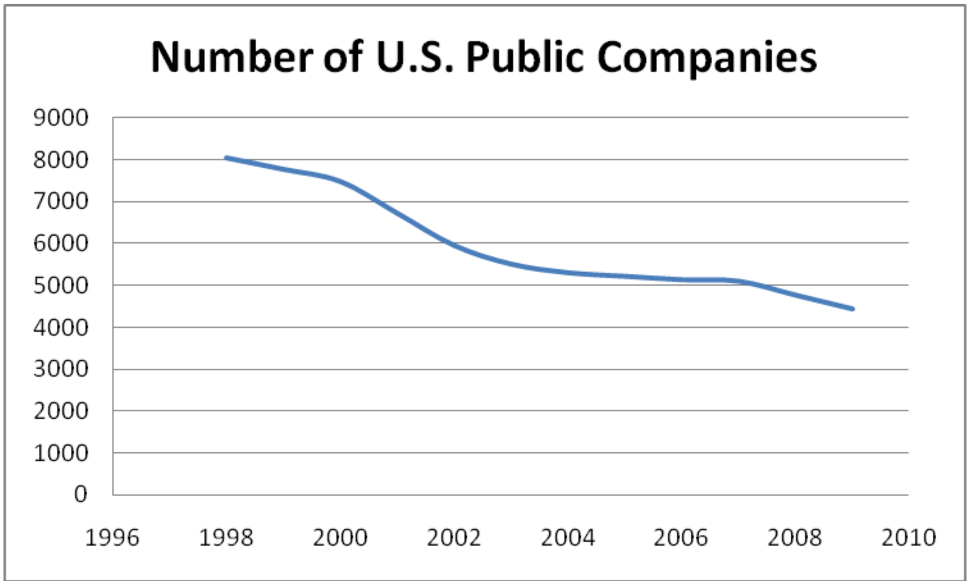
Re: Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Establish the Market Quality Program
Dear Securities and Exchange Commission:

Here are my comments regarding this matter:

The declining number of US exchange listed companies is a crisis in capital formation.

The United States is facing a crisis in our public capital markets. The number of public US exchange-listed companies is now roughly half what it was 20 years ago. Quite simply, fewer US companies are going public now to offset delistings from going private transactions, bankruptcies, and mergers.

[1] I am also an independent member of the boards of directors of the EDGA and EDGX stock exchanges. My comments are strictly my own and don't necessarily represent those of Georgetown University, EDGX, EDGA, or anyone else for that matter.



Our public capital markets have become much less welcoming to smaller companies. The public capital market window is effectively closed for many smaller companies. This has serious implications for capital formation and thus economic growth. With the public capital markets effectively closed, smaller companies have no alternative for raising capital other than higher cost private equity or to sell out to a larger enterprise. Venture capitalists who desire to harvest their investments have fewer opportunities for exit. Fewer exit opportunities imply lower valuations, and thus less of an incentive to risk venture capital in the first place. Less incentive means less investment, resulting in fewer jobs and less economic growth.

There are several reasons for this decline in U.S. public exchange listed companies. Our country has placed many burdens on public companies not experienced by their private brethren. These include such examples of regulatory overkill as the unnecessarily expensive implementation of Sarbanes Oxley Section 404 and the well-meaning but expensive and ineffective conflict minerals disclosures mandated by Dodd-Frank.[2] The litigation risks facing public companies are also a deterrent to going public.

Market structure also plays a role in the decline. Small companies on Nasdaq in the United States used to be traded with a very different market structure than the large companies on the NYSE. However, changes in technology and regulation have effectively eliminated those differences and we now have a "one size fits all" market that does a great job of trading large cap stocks like Intel and IBM. However, smaller companies have trouble attracting attention in the crowded marketplace.

Congress has responded with the JOBS act, which basically calls for relaxation of some of the more burdensome requirements on smaller public companies, and also some studies on market-structure related areas such as tick size.

[2] See my comment letter on SarbOx at http://www.sec.gov/comments/s7-24-06/s72406-188.pdf.

<u>The SEC should listen to the message Congress is sending in the JOBS Act.</u>

The JOBS Act is Congress' way of telling the SEC to improve the market for smaller companies, and to be open to different ways of doing things. The SEC should listen to this message and permit the exchanges to engage in market structure experiments that may help the market.

If the SEC does not get this message, then it is likely that Congress will step in again later in its own crude and clumsy way to try to do something to fix the public capital markets. It would be much better for all concerned for the SEC to be proactive and actually use its broad authority to take the steps to help capital formation BEFORE Congress steps in.

<u>Market maker incentive programs work well in other countries.</u>

I concur with the recommendations that Professors Anand and Weaver make in their eloquent comment letters. Other countries permit issuers to compensate liquidity providers without problem, so there is no reason that such programs cannot work effectively here. NasdaqOMX has extensive experience operating exchanges in those countries, so they clearly have the relevant expertise to administer such programs in this country in such a manner as to prevent harm to market participants.

<u>Let exchanges experiment.</u>

NASDAQ, like all exchanges, should have the commercial flexibility to experiment with different market structures. Under US regulation, exchanges allegedly operate as Self-Regulatory Organizations (SROs). The SEC should follow the spirit of this law and allow SROs to actually use their professional judgment to innovate as they see fit. The SEC has broad power to abrogate and amend SRO rules later if any problems arise.

<u>The SEC should permit other experiments.</u>

The old Nasdaq system provided financial incentives for both market makers and brokerage firms to nurture smaller companies. Smaller companies consciously and rationally chose to list on the old Nasdaq despite the lower bid-ask spreads on the Amex because those wide bid-ask spreads provided incentives for brokerage firms to conduct research and otherwise market those firms. In a market with thousands of public companies, small companies need for there to be credible third parties to provide information to investors.

Those wide spreads are gone, and so are the incentives for market makers and brokers to nurture smaller companies. However, there are other ways to provide those incentives. Permitting issuers of all securities, not just ETFs, to compensate market makers would be a good idea. Another way would be to permit issuers to levy a 12b-1 style marketing fee on each trade (collected like the section 31 fees) that could be used to pay for market making and independent research.

If you have any questions, feel free to email me at angelj@georgetown.edu or call me at (202) 687-3765.

Respectfully submitted,

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