



THE NASDAQ STOCK MARKET
ONE LIBERTY PLAZA, 50TH FLOOR
NEW YORK, NY 10006

April 3, 2006

Ms. Nancy M. Morris
Federal Advisory Committee Management Officer
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. 265-23, Exposure Draft of Final Report of Advisory Committee on
Smaller Public Companies

Dear Ms. Morris:

Attached please find an editorial by Robert Greifeld, President and CEO of the Nasdaq Stock Market, Inc. ("NASDAQ"), which recently appeared in The Wall Street Journal. NASDAQ respectfully submits this editorial as a comment to the Exposure Draft of the Final Report of the Advisory Committee on Smaller Public Companies.

In this editorial, Mr. Greifeld voices support for the Advisory Committee's recommendations to provide exemptions to smaller public companies from certain of the provisions of Section 404 of the Sarbanes-Oxley Act of 2002. As noted in the editorial, we believe these proposed changes address the legitimate problems associated with Section 404 without diminishing the important reforms that have helped rebuild investor confidence and make American markets the envy of the world.

If the SEC staff has any questions concerning our submission, please feel free to contact me at (301) 978-8480.

Very truly yours,

A handwritten signature in black ink that reads "Edward S. Knight".

Edward S. Knight
Executive Vice President and General Counsel

THE WALL STREET JOURNAL.

MONDAY, MARCH 6, 2006

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It's Time To Pull Up Our SOX

By Bob Greifeld

I have been a sometimes lonely but consistent supporter of the principles of Sarbanes-Oxley, despite the crescendo of corporate criticism it has engendered. I have supported SOX for two basic reasons. First, it is a tough but essential step toward restoring investor confidence through greater transparency, accountability and improved corporate governance. Second, based on our experience at Nasdaq, I was convinced that, after the initial legislative shock wore off - particularly regarding the costs of Section 404 that the benefits of SOX would prove compelling and unassailable. I expected that its onerous reputation would diminish with time.

I was dead wrong on the second point. Anguish over SOX in this country is not abating; if anything, sentiment has hardened and the perception gap abroad is now wider than ever. As the CEO of a U.S. stock market, I am in frequent contact with a broad spectrum of business leaders, many of whom list on our exchange. When it comes to SOX, their message is clear: The burden of compliance is onerous, the cost is significant, and it falls disproportionately on smaller companies that are least able to pay. Our research has shown that the burden on small companies, on a percentage of revenue basis, is 11 times that of large companies.

That is only part of the problem. In my travels to countries like China, India and Israel, I meet with the new generation of international entrepreneurs who are building businesses and dreaming of the day they can take their companies public. The constant refrain I hear is that when it comes time to do an IPO, they will be reluctant to list on American markets. They will look elsewhere to raise capital, and the main reason they cite is SOX. Indeed, a recent piece in these pages suggested that 90% of international small companies intending to go public are choosing to list abroad because of SOX costs and concerns. Despite the compelling advantages of listing with the world's most efficient markets and having access to our vast pool of sophisticated investors, many of these companies

are likely to follow the line of least resistance and list abroad.

Ironically, by setting the bar so high in the U.S., SOX has had the unintended consequence of triggering a "race to the bottom" by stock markets and companies seeking advantage via less jeopardy, less regulation, less cost and less hassle. International business clearly perceives a "problem" with U.S. markets today, and the perception of burdensome, costly regulation has become an article of faith. This entrenched perception exists outside the bounds of reality. It is a heavy, and unnecessary, price to pay for the important benefits and welcome reforms that have resulted from SOX.

How do we deal with the serious issues created by SOX without diminishing the advances in transparency and corporate governance it brings to the marketplace? We start with the realization that a "race to the bottom" can only be self-defeating. We know that markets that fail to deal with the issues addressed by SOX will experience the same trauma, scandal and plunging investor confidence that triggered legislation in this country. It is not a matter of whether; it is simply a question of when.

Our answer is that we believe in the enduring value of the American marketplace. We also believe in the power and creativity of companies, markets and investors to bring new solutions to bear on business issues. As the global governance debate advances, we are inviting companies and worldwide capital markets to help make the race to the top a reasoned, intelligent one. If we can self-initiate such a contest, we can avoid over-reaching regulation that constricts business and stifles initiative.

There is ample precedent for the complaints we hear today about SOX. Back in 1983, when the SEC tightened up the 12(g) 3-2b exemption, ADRs fled the American market in droves, seeking greener pastures with gentler regulators. Over the years we have also seen major U.S. companies experiment with listing on overseas exchanges, only to be disappointed in the results. The real lesson of the '80s is not how many companies fled from regulation, but how many came back. And the basic reason they did so is

the power and magic of the American market. There is nothing like it anywhere in the world.

We believe the best regulation and the best solutions are internally initiated, not externally imposed. We don't need legislation to prod us. After receiving SEC recognition as an exchange last month, one of Nasdaq's first initiatives was to announce the creation of a new market tier with the highest listing standards on the planet. Global Select is our self-generated answer to the imprecise instrument of imposed regulation and legislation.

SOX is important; by and large, it works. We have had three years to assess its strengths and problems. Perhaps 90% of complaints have their genesis in 20 lines of text. We lay the widespread misperception about the cost and difficulty of compliance at the feet of the famous Section 404. So the time has come to address those 404 concerns without diluting the essential investor protections that are the true legacy of SOX. Specifically, we should adopt the recommendations of the SEC's Advisory Committee on Smaller Public Companies, which has proposed an exemption from 404 for companies with less than \$128 million in market cap and revenues under \$125 million. Companies with up to \$787 million in market cap, as long as they had revenues less than \$250 million, would receive partial exemption. The companies exempted account for only 6% of U.S. market cap, which means 404 would still apply fully to 94% of equity market capitalization.

Nasdaq strongly supports the committee proposals for smaller public companies. We believe they address the legitimate problems associated with Section 404 without diminishing the important reforms that have helped rebuild investor confidence and make American markets the envy of the world. A demonstrated willingness to be flexible, to make minor changes to solve major problems, will also give us a bully pulpit to respond to growing international perception about the cost and jeopardy of participation in American markets.

Mr. Greifeld is president and CEO of Nasdaq.