



**Testimony of Nelson Griggs
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Before the Senate Banking, Housing and Urban Affairs Committee
Subcommittee on Securities, Insurance and Investments
Venture Exchanges and Small Cap Stocks
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Thank you Chairman Crapo and Ranking Member Warner. I deeply appreciate the opportunity to share Nasdaq's experience and views on the important subject of "Venture Exchanges and Small Cap Companies."

Nasdaq owns 24 securities markets spanning the globe, including eighteen that trade equities. Our First North Markets in Stockholm, Copenhagen and Helsinki are venture exchanges that list emerging growth companies in Europe. Seventy exchanges in 50 countries trust our trading technology to run their markets while at the same time, markets in 26 countries rely on our surveillance technology to protect investors - together driving growth in emerging and developed economies.

Upon the launch of its first initial public offering in 1971, Nasdaq created the modern IPO and has become the destination of choice for emerging, high growth companies. Nasdaq brought to the capital markets a trusted listings venue and a new view that companies could go public earlier in their growth cycle. We broke the Wall Street mold that kept companies from exchange listings -- for example, there were rules that required companies to be profitable for three years and applied revenue hurdles that ruled out small companies. Nasdaq recognized that most companies need capital, and investors want access to ownership when companies are at earlier stages of growth. Around Nasdaq has emerged a diverse ecosystem of brokers, investors, legal advisors, and analysts that give growth companies unprecedented access to capital. Companies who go public on Nasdaq -- such as Apple, Microsoft, Google, Intel, Staples, Biogen and Gilead Sciences -- use that capital to make the cutting edge products and medical breakthroughs that enhance our daily lives. As public companies they grow rapidly and sustainably, and their growth drives the U.S. economy forward and ultimately creates jobs for millions of Americans. It is our unique heritage that drives our support of a renewed marketplace that supports and empowers cutting-edge, high growth companies.

However, changes to the regulatory landscape in recent years have reduced Nasdaq's ability to facilitate stable, reliable and cost-effective capital formation for many emerging companies. Importantly, the one-size-fits-all approach of our regulatory regime has had unexpected and serious negative consequences for smaller companies -- even as it has effected revolutionary



improvements around more actively traded companies. While the 2012 JOBS Act did ease the disclosure burden on companies going public, the extent of that relief hasn't reached small, venture size, companies. The disclosure and governance requirements for these small companies need to be further tailored to the financial realities and distinct challenges they face.

The continued aversion of small companies to public markets has created a sense among many that there is a need for a brand new type of market, a separate "venture market." From Nasdaq's point of view, this notion is somewhat misplaced: what's needed – whether in a separate exchange or within the small cap listing tiers of existing exchanges like Nasdaq - are simple reforms to make the market structure attractive again for growth companies. Nasdaq's approach to reform has two paths:

- First, change certain trading rules and listing requirements within a small company market tier to encourage and facilitate the ability for growth companies to raise capital on the public markets and thrive as publicly listed and traded companies – this includes the need for Nasdaq and other exchanges to evaluate and adjust their own listing standards and corporate governance standards to better serve venture companies.
- Second, further leverage the Jumpstart Our Business Startups Act (JOBS Act) from which Nasdaq has built and is operating a growth platform for companies wishing to stay private – the Nasdaq Private Market.

If Congress seeks to reinvigorate the already robust and vibrant US capital infrastructure to support small companies, we respectfully suggest the following regulatory and legislative policy changes:

- Exempt certain growth stocks from the "tick price" provision of Regulation NMS and delegate the authority to define tick sizes to the listing exchange: The tick size is a surprisingly important – and extremely sensitive – variable in trading quality. Too wide and trading costs become burdensome to investors; too small and volatility becomes rampant. It is our view that the listing exchange is in the best position to optimize tick size policy, and to do so in a way that is responsive to the ever-changing needs of listed companies. Since exchanges do not benefit from wide spreads which large tick sizes can impose, they can impartially assess the tradeoffs and protect the interest of investors and listed companies.
- Modify the definition of a "penny stock" in Rule 3a51-1: In 2004, the SEC essentially froze exchange listing standards as they then existed by defining any security not meeting those requirements to be a penny stock. This has inhibited innovation in listing requirements in the last decade. We believe that the SEC should reconsider this definition to allow exchanges greater flexibility to adopt novel listing standards for

growth companies. Moreover, if we hope to attract new growth companies to our markets, beyond those already on exchange tiers for smaller companies, we will need to adjust the listing standards so they can qualify without being subject to burdensome penny stock and blue sky requirements.

- Expand availability of confidential filings: The ability to submit a confidential draft registration statement to the SEC is one of the most widely used provisions of the JOBS Act and is heralded with encouraging a large number of companies to go public, making their securities available to public investors. We believe that this ability will also be useful to smaller companies once they are listed, allowing these companies to prepare for a potential secondary offering without facing reputational risk and business uncertainty if they determine not to proceed with a registered offering.
- Adopt limited short selling regulations: We would encourage tailored rules to prevent aggressive short selling (selling at or below the best bid) of smaller companies, which lack resources to combat manipulative short selling and are consequently more vulnerable. We also recommend consideration of disclosures of short positions in smaller companies that are similar to the disclosures required of long positions, providing companies and other investors with transparency.
- Issuer choice to suspend “unlisted trading privileges” for certain growth companies: the purpose of the regulatory changes in US equity markets over the past several decades was to encourage multiple markets to compete with each other. This revolutionized trading in many liquid securities, in particular by enabling innovative new technologies, dramatically increasing the speed and throughput of exchange systems, and by encouraging price competition. Unfortunately, these benefits are not meaningful to small, illiquid companies. As the SEC itself points out in a 2005 rulemaking:

“...[C]ompetition among multiple markets trading the same stocks can detract from the most vigorous competition among orders in an individual stock, thereby impeding efficient price discovery for orders of all sizes...Impaired price discovery could cause market prices to deviate from fundamental values, reduce market depth and liquidity, and create excessive short-term volatility that is harmful to long-term investors and listed companies.” –Securities Exchange Commission, Release No. 34-51808; File No. S7-10-04.

Affording certain growth companies issuers with input into their market structure through the option to suspend unlisted trading privileges in their stock would refocus competition among orders in that stock by placing them all on a single platform. To the extent that this competition

results in improved spreads and deeper liquidity, growth companies electing this option could enjoy many benefits, including reduced capital costs.

- Permit market maker support programs: Currently, Nasdaq allows ETF issuers to establish a fund to subsidize market makers who enhance liquidity in those shares. We believe that such support programs would also help growth companies. Market quality incentive programs of this kind have successfully enhanced liquidity and market quality for investors in Europe for several decades.
- Eliminate certain requirements for shareholder approval for smaller companies: Over the last decade, the SEC has made strides to reduce the time necessary for public companies to register and sell securities by allowing shelf registrations. However, the requirements Nasdaq imposes on its listed companies for obtaining shareholder approval of certain financing transactions have not followed suit. As a result, these approval requirements now can delay many transactions, causing companies to consider less favorable structures to avoid these requirements. This can be especially onerous for smaller companies that have an ongoing need to raise capital to fund their businesses. We are examining these requirements and hope that any proposal we present to the U.S. Securities and Exchange Commission to address this will be met with an understanding that rules applied to the world's largest companies may not be appropriate to apply equally to emerging growth companies.

NASDAQ PRIVATE MARKET IS A VENTURE MARKET:

There are improvements that can be made in the world of private companies as well. The JOBS Act, passed by Congress and signed by the President in 2012, allows companies to remain private longer. In light of the growing demand for liquidity in these companies' shares (especially by their employees) we created the Nasdaq Private Market to help private companies provide selective liquidity in their equity securities. Nasdaq Private Market uses technology solutions to serve the unique needs of private companies within the legal framework set forth by the securities laws using Nasdaq's established competence to help ensure transparency and investor protection. The platform has had encouraging success in the short time that it has been operational. It has a growing universe of companies and continues to build out a robust toolkit specifically designed for private companies. However, from a legislative standpoint, private markets such as our own still need assistance to make them robust capital markets for companies wishing to stay private.

The JOBS Act and prior laws make very clear that companies can sell shares to accredited investors without registering the transaction. In theory, this category of investor does not need the protections that registration requirements afford – due to their net worth, income and



sophistication. However, the subsequent sale of shares from an existing shareholder to an accredited investor does not enjoy the same legal status, notwithstanding the fact that the policy rationale for an exemption is similar to that for issuer transactions. Due to a lack of certainty concerning the legal requirements for exempt secondary transactions, a range of market practices have developed. As a result, these transactions often do not occur, and, when they do, they take place amidst uncertainty and risk, as companies and their investors shoulder unnecessary legal and regulatory costs to facilitate such transactions. The time has come to provide clear guidance for secondary transactions where accredited investors – who are already deemed not to need registration level protection – are the purchasers. For these reasons, we encourage you to pass legislation exempting from registration transactions where an existing shareholder in a private company sells shares to an accredited investor. The SEC should further be encouraged to consider changes to the accredited investor definition, so that an investor can establish their sophistication through means other than their net worth and income. Regardless of any future modifications, antifraud provisions must remain in effect for both issuer and non-issuer transactions, whether registered or exempt.

Thank you again for inviting Nasdaq to testify on this important issue. We believe that Nasdaq is uniquely positioned to help more companies go public, provide investors with access to companies earlier in their growth phase, employ the higher risk/reward inherent in venture companies and bring our deep experience and competencies of market transparency, quality and surveillance to these markets. We believe that our approach to reforming the public and private markets is the best road forward for venture-class companies. Thank you and I am happy to answer your questions.