Nasdaq

PRELIMINARY VIEWS REGARDING U.S. TREASURY EQUITY CAPITAL MARKETS RECOMMENDATIONS

OCTOBER 8, 2017

INTRODUCTION

- On October 6th, 2017, in response to Executive Order 13772, the U.S. Treasury Department published a report titled "A Financial System That Creates Economic Opportunities – Capital Markets"
- The report provides recommendations for the **U.S. Equity Capital Markets** for the Administration and its independent agencies to consider and address through their individual administrative processes.
- Nasdaq applauds the US Treasury Department ("Treasury") for the proposal that they have set forth to strengthen the US capital markets for the benefit of all investors
- Many of the recommendations are consistent with Nasdaq's published Revitalize Blueprint: The Promise of Market Reform – Reigniting America's Economic Engine, released in May 2017.
  - *http://business.nasdaq.com/revitalize*
- The following provides Nasdaq's preliminary views on a number of the subjects contained in the report, which are directly applicable to our Revitalize Blueprint, as well as other public commentary, including:
  - Promoting Access to Capital and Investment Opportunities
  - Fostering Robust Markets for Businesses and Investors

TREASURY EQUITY CAPITAL FORMATION RECOMMENDATIONS:

EXAMPLES OF ALIGNMENT WITH NASDAQ'S BLUEPRINT

- **Corporate Disclosure Obligations:** Treasury supports eliminating specific, politically motivated disclosure obligations, including conflict minerals, pay ratio, and mine safety disclosures for all companies. Ahead of legislative action, Treasury recommends that the SEC exempt smaller companies from the obligations. This recommendation is entirely consistent with Nasdaq's Blueprint recommendation, both in terms of eliminating unnecessary disclosures as well as the need to lessen the disclosure burdens on small-to-medium companies.

- **Testing the Waters:** Treasury recommends allowing all private companies to test the waters before officially launching an IPO process to gauge investor reaction. Nasdaq fully supports that proposal as consistent with our Blueprint recommendations to extend the benefits of the Jobs Act to all private companies.

- **Proxy Access Thresholds:** Treasury recommends revisiting the $2,000 threshold for investor access to the proxy to increase the ownership requirement in order to enable companies to manage the burden and expense of shareholder proposals. Nasdaq specifically recommended a higher ownership threshold in the Blueprint after pointing to facts that demonstrate that today's burden to companies is disproportionate to the benefit of shareholder access.

- **Proxy Advisory Firms:** Treasury recommends a review of the oversight obligations applicable to proxy advisory firms to eliminate potential conflicts of interest that exist today, fully in line with Nasdaq's Blueprint recommendations.

- **Litigation Reform:** Treasury recommends corporate litigation reform, including the concept of arbitration to settle shareholder disputes. Again, as part of the Blueprint Nasdaq recommends changes to the litigation laws to enable companies to use arbitration.

TREASURY EQUITY MARKET STRUCTURE PROPOSALS:

EXAMPLES OF ALIGNMENT WITH NASDAQ BLUEPRINT

- **UTP for SME Markets:** Treasury recommends the possibility of limiting Unlisted Trading Privileges for exchanges that provide centralized trading for small-to-medium companies, a proposal that is entirely consistent with Nasdaq's Blueprint proposal.

- **ATS Disclosures:** Treasury recommends improved information and disclosures related to ATS operations to regulatory agencies and to the public. The goal is to create a more level-playing field for exchanges and ATS providers in SEC-mandated investor disclosures. Nasdaq has a long record of supporting enhanced disclosures to regulatory agencies.

- **PFOF:** Treasury recommends that broker-dealers provide further disclosures to clients related to payment for order flow arrangements. Nasdaq supports the SEC's existing proposal to improve order handling disclosures.

- **Access Fee Pilot:** Treasury recommends a study of access fees and payment for order flow, and it also recommends considering the impact on smaller, less liquid securities before enacting new rules. Nasdaq, consistent with recent public statements, joins Treasury in its concerns regarding the potential impact of an access fee pilot for smaller, less liquid stocks, and encourages the SEC to review the goals of a pilot before moving forward.

EQUITY MARKET DATA RECOMMENDATION:

CONSISTENT WITH CURRENT LAW AND PRECEDENTS

- **SIP Data & Best Execution:** Treasury reiterates existing SEC guidelines that establish the SIP data feeds as the standard for best execution obligations. Treasury's proposal is consistent with current SEC language from 2008 that states: "The Commission does not believe that broker-dealers are required to purchase depth-of-book order data… to meet their duty of best execution." Nasdaq fully supports the SIP as the regulatory standard for best execution.

- **SEC Review Standards for Market Data Fee Filings:** Treasury reiterates the existing SEC standards of review for SIP and proprietary data fee filings.

    - Specifically, SEC currently reviews all market data fee filings, both SIP-feeds and proprietary feeds, to determine if they are "reasonable," "not unreasonably discriminatory," and reflect an "equitable allocation." We see no change to that standard in the Treasury proposal.

    - The standards cited in the Treasury recommendations have been applied consistently by the SEC. Specifically, with regard to the competitive forces associated with proprietary data feeds, in 2016, an Administrative Law Judge stated: "Under the standards articulated by the Commission and D.C. Circuit, the Exchanges have shown that they are subject to significant competitive forces in setting fees for depth-of-book data." The judge also stated: "The SRO rules at issue make available valuable proprietary information to anyone on the basis that is not unreasonably discriminatory from the sources that are under no obligation to provide it. The Exchanges' pricing for depth-of-book data is uniformly provided to similar-situated subscribers."

- **Multiple Consolidators:** Treasury recommends the potential for a multiple-consolidator system for the provision of SIP-feeds. Nasdaq has not opposed such a system so long as the SEC can demonstrate that it will not impose new burdens on broker-dealers or the exchanges themselves to create such a system. Additionally, we would expect an articulation to support the specific economic benefits to investors before embarking on a proposal to create a multiple-consolidator model.

CONCLUSION

- Nasdaq is very pleased to find many of our recommendations related to equity capital formation and equity market structure included in the U.S. Treasury Report.
- The recommendations related to market data work within a framework of current law and precedents.
- If fully implemented over the coming years, the report would not only reach treasury's public policy goals, which we share, but also complement our business model. Therefore, we are confident in maintaining our medium-term revenue growth targets across our businesses.
- We look forward to engaging with the industry as well as with the SEC, CFTC and other regulators as they review the report and consider the recommendations that the Treasury Department has outlined.

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