TESTIMONY OF
NEW YORK STOCK EXCHANGE PRESIDENT THOMAS W. FARLEY
BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES CAPITAL MARKETS, SECURITIES, AND INVESTMENT SUBCOMMITTEE
JULY 18, 2017

Chairman Huizenga, Ranking Member Maloney and members of the Subcommittee, we appreciate your interest in the issues public companies face, including the Sarbanes-Oxley Act of 2002 (SOX), federal corporate governance mandates, as well as other factors that may impact a company's decision to go or remain public. My name is Tom Farley and I am President of the New York Stock Exchange (NYSE). I am here today on behalf of the 2300 companies that list on the NYSE. Our listed companies are responsible for many of the most impactful innovations in American business over the last 225 years. These innovations have improved the lives of Americans and global citizens and embody the U.S. entrepreneurial spirit.

Robust U.S. Capital Markets Benefit the Entire U.S. Economy

Today, the New York Stock Exchange is the world's largest with total listed company market capitalization of more than $25 trillion representing nearly one-third of the world's total market value. The U.S. capital markets are the destination of choice for investors and companies as they provide unparalleled access to capital, liquidity, and trusted regulation. Robust U.S. capital markets benefit the entire U.S. economy.

We cannot, however, take for granted the fact that the U.S. will always be the world's premier destination for capital-raising, job growth, and innovation. The regulatory environment for public companies over the past 15 years has grown increasingly difficult to navigate -- threatening the tradition of public shareholders fostering innovation. The number of public companies in this country is down by half over the past 15 years. By choosing to remain private and not access the public markets for capital and liquidity, a company may severely limit its opportunity for economic growth, hiring, and wealth creation, and the American public is deprived of investment choice.

Despite the many benefits of being a public company, the cumulative effect of layers upon layers of regulation is lessening the attractiveness of the public markets. Public companies must meet significantly more complex regulatory requirements than their private counterparts, both during the IPO process and after a company goes public. While NYSE applauds smart regulation to ensure the protection of issuers and their investors, we also believe in a regulatory environment that supports a healthy, robust pipeline of companies that seek to become and remain public, which in turn will benefit job growth all across the nation, on Main Street, in pension funds, 401ks, savings vehicles of all kinds, and will contribute to the U.S. economy as a whole.

NYSE supports the stated goal of SOX to foster the accuracy of financial reporting. We also believe that it is important -- as this Subcommittee is doing -- to take a detailed look at the regulatory systems in place -- and SOX specifically -- and how they affect a company's decision to enter or not enter the public U.S. capital markets system. We believe it is possible to both protect public confidence in the integrity of U.S. capital markets, and to make those markets more accessible to an innovator, a CEO, or any of our sons and daughters -- the next great generation of business leaders -- to grow a business and create jobs.

Key Impacts of SOX

NYSE is proud to be the home of the world's greatest public companies, and we take our responsibilities to the marketplace and to our issuers and their investors very seriously. NYSE supports efforts to ensure that investors have the utmost confidence when investing in public companies. That is why NYSE values transparency above all else, and that is why NYSE's markets have the most stringent regulatory listing requirements that exist in the capital markets space.

SOX was adopted and signed into law by the Bush Administration in July 2002 on an overwhelmingly bipartisan basis. Though it has significant costs and shortcomings, SOX institutionalized transparency in financial reporting and, at the time of its adoption, boosted investor confidence in the public markets. SOX also provided a blueprint for the NYSE to revise and augment our listing requirements, further enhancing our ability to regulate the markets we operate.

While costs associated with becoming a public company have always been significant, compliance with certain provisions of SOX today sets considerably higher barriers -- not just financially for public companies -- but also for entry into public markets for private companies, particularly for small and midsize private companies. For public companies, compliance with SOX requires dedicated personnel, significant financial resources, outside consultants, auditing and law firms. Compliance with SOX Section 404 specifically has proven to be a significant hurdle: designing, implementing, and maintaining complex systems required to satisfy SOX's internal controls over financial reporting requirements can command millions of dollars in outside consultant, legal, and auditing fees, in addition to other internal costs. Public companies are devoting more time and resources than ever to grapple with administrative procedures and controls mandated by SOX Section 404, which disproportionately affect small and midsize companies.

Improving the Environment for Public Companies and Private Companies Considering an IPO

The burdens of SOX are but one aspect of being a public company today. In recent years, as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,[1] through the SEC's rulemaking agenda, and in response to calls from the investor community, public companies are engaged more than ever before in evaluating corporate disclosures and demonstrating compliance with a myriad of new and enhanced regulatory requirements. The increasingly difficult class-action litigation environment for public companies today amplifies these concerns across the board.

Disclosure Effectiveness

The SEC disclosure regime requires that publicly held companies disclose exposure to material risks regarding known trends, events and uncertainties that are reasonably likely to have material effects on the company's business, financial position or results of operations. The length and complexity of these disclosures continue to increase, while the readability of these documents is at an all-time low. These disclosures cover situations that relate to material corporate governance matters, including those known colloquially as "environmental, social, governance" or "ESG" matters. Investing based on environmental, social and governance ideas is rapidly gaining momentum, fueled by concern about policy issues and focusing on

[1] Pub.L. 111–203, H.R. 4173

corporations both as a source of irritation (e.g., CEO pay) and a source of hope (e.g., reduction of greenhouse gas emissions). NYSE supports the SEC's 2016 "Disclosure Effectiveness Review" Concept Release[2] and the Commission's report on ways to modernize and simplify Regulation S-K[3] as an appropriate starting point for considering refinements to existing disclosure mandates and addressing the materiality of ESG matters. The SEC should continue to revisit ways to streamline existing disclosure requirements by completing its "Disclosure Effectiveness Review."

At the NYSE, we interact with the best companies in the world and serve as a meeting place for the exchange of ideas. In that role, as a hub for best practices and innovation, we have a strong appreciation for the importance of corporate responsibility including efforts across the environmental, social and governance space. Many of our listed companies have implemented innovative and impactful initiatives that exemplify what it means to be a good corporate citizen, including those devoted to ESG.

Enhancing the JOBS Act

The Jumpstart Our Business Startups (JOBS) Act of 2012[4] was an excellent starting point in bringing innovation to the public markets, but there is more to be done. At the NYSE, we recently completed the *first* Regulation A+ IPO on a major exchange, something that would have been impossible prior to the JOBS Act, bringing to market an incredible company -- Myomo, Inc. -- that is changing the world for Americans with neurological disorders so that they can work and live independently.[5] These and other innovations born out of the JOBS Act need further support and enhancement from Congress and the SEC.

For example, NYSE supports raising the annual gross revenue threshold ceiling for companies to remain an Emerging Growth Company ("EGC") to above $1 billion (thereby permitting more companies to benefit from the protections afforded under the JOBS Act). We also support providing additional protections for "low revenue issuers" to qualify as EGCs because their business involves a significant amount of research and development (for example, those

[2] Concept Release Available at: https://www.sec.gov/news/pressrelease/2016-70.html
[3] SEC Division of Corporation Finance, "Report on Modernization and Simplification of Regulation S-K" (November 23, 2016), available at https://sec.gov/files/sec-fast-act-report-2016.pdf. This report was required by Section 72003 of the Fixing America's Surface Transportation Act, Pub. L. No. 114-94, 129 Stat. 1312 (2015).
[4] The Jumpstart Our Business Startups Act, Pub. L. 112-106, H.R. 3606.
[5] http://myomo.com/myomo-inc-trades-new-york-stock-exchange-mkt/

companies in the biotech sector of the market). And we believe EGCs and companies with less than $250 million in gross revenue should be exempted from the SEC's costly financial statement format requirements -- known as XBRL format. All newly public companies, especially EGCs, should also have the opportunity to choose to have their stock only trade on a single nationally-registered stock exchange until their stock liquidity meets a minimum threshold level.

NYSE applauds the recent action by the SEC's Division of Corporate Finance to extend the process for confidential submission of draft registration statements, currently available only for IPOs of EGCs, to IPOs of companies that are not EGCs, as well as for most follow-on offerings made in the first year after going public. This sensible change will make the public offering process more time-and cost-efficient, without adversely impacting the quality of public disclosure available to investors.

Regulating Gatekeepers

With the adoption of SOX in July 2002, so came the founding of the Public Company Accounting Oversight Board (PCAOB). Born out of a desire to restore investor confidence in the independence and integrity of public companies' auditors, Congress gave the PCAOB broad authority to establish rules to the extent it determines may be necessary or appropriate in the public interest or for the protection of investors.[6] In carrying out Congress' mandate, the PCAOB regulates gatekeepers for public company internal controls and disclosures (i.e., public accounting and auditor firms).

Our listed companies are deeply committed to setting high standards for management and the audit profession for financial reporting and corporate audit functions. Over the past several years, however, our listed companies are increasingly concerned that the PCAOB's regulatory agenda is expanding the organization's footprint beyond the originally intended scope by virtue of the PCAOB inspection process and corresponding changes to issuer internal control systems. In many cases, the cost of *demonstrating* compliance for purposes of supporting an audit review or PCAOB inspection, in addition to actual costs of compliance with the underlying regulatory requirement, is rising steeply. This is an unforeseen consequence of PCAOB

[6] H. Rep. No. 107-414, at 16-17 (2002).

regulation that is unnecessarily increasing costs and burdens for public companies, and the Commission should address it promptly. NYSE wholeheartedly supports the recent remarks of SEC Chairman Clayton that, when creating or approving rules the Commission should consider compliance costs and should "have a realistic vision for how rules will be implemented as well as how the Commission' and others intend to examine for compliance."[7]

Conclusion

In the last 15 years, compliance and administrative costs for public companies have adversely affected the U.S. IPO market. Analysis shows that smaller private firms' are increasingly incentivized to seek acquisition instead of listing their shares on public markets. No one wins when companies of all sizes -- both public and private -- are forced to shoulder regulatory and administrative burdens that impose steep costs without clear benefits, thereby hindering economic growth, expansion, hiring, and capital-raising.

As regulators, as businesspeople, and as Americans, we must prioritize a regulatory environment that incentivizes companies at home and abroad to grow, to hire, and to enhance our economy. Regulation that skews decision-making away from growth, away from hiring and expansion, and that limits the public's ability to access capital and to invest in their futures must be evaluated very carefully and critically.

[7] SEC Chairman Jay Clayton remarks available at https://www.sec.gov/news/speech/remarks-economic-club-new-york