Green Paper of the European Commission on Long-Term Financing of the Economy

Reply of NASDAQ OMX

The NASDAQ OMX Group, Inc. delivers trading, exchange technology and public company services across six continents, with more than 3,600 listed companies. NASDAQ OMX offers multiple capital raising solutions to companies around the globe, including its U.S. listings market, NASDAQ OMX Nordic, NASDAQ OMX Baltic, NASDAQ OMX First North, and the U.S. 144A sector. In the U.S. and Europe, NASDAQ OMX owns and operates 24 markets, 3 clearinghouses and 5 central securities depositories supporting equities, options, fixed income, derivatives, commodities, futures and structured products. NASDAQ OMX technology supports the operations of over 70 exchanges, clearing organizations and central securities depositories in more than 50 countries. NASDAQ OMX Nordic and NASDAQ OMX Baltic are not legal entities but describe the common offering from NASDAQ OMX exchanges in Helsinki, Copenhagen, Stockholm, Iceland, Tallinn, Riga, and Vilnius.

In view of its activities, NASDAQ OMX welcomes the opportunity to comment on the Green Paper of the European Commission on Long-Term Financing of the Economy, which deals with issues of intrinsic interest and key concern for our company.

Executive Summary:

The value of public markets for growth and prosperity in the EU should be recognized and the functioning of such model should not be undermined in future EU legislation. Public markets need a balanced regulatory framework that does not discourage candidate listed companies due to the burden they have to support. This is crucial to ensure a level playing field for equity and debt financing and create “fast and simple tracks” for SMEs to have access to public markets.

General comments:

Contribution of exchanges, in particular NASDAQ OMX, to the financing of the economy

First and foremost, NASDAQ OMX wishes to underline the crucial role of exchanges in the long-term financing of the economy as they channel savings into productive investment, offering companies the possibility to tap investors for the long-term. Some investors seek short-term returns while others make
long term investments and the public markets allow for these different views to coexist and complement one another. When listed, companies have a long term relationship with investors and can tap the market again when needed.

In contrast with what the Green Paper states\(^1\), exchanges are not mostly secondary markets, NASDAQ OMX and other exchanges provide financing capabilities to large and small enterprises. The financing possibilities include initial public offerings as well as share issuance by existing listed companies and also by way of acquisition of already listed companies. All these financing modes allow for companies to finance their development and growth in the long-term. In 2012, 18 new companies were listed on NASDAQ OMX Nordic markets, including 6 IPOs whereas, in the first 5\(^{th}\) months of 2013, 12 new companies were listed on NASDAQ OMX Nordic markets, which included 3 IPOs. It is correct that in view of the financial crisis and its economic consequences, the appetite for IPOs is currently limited. However, it is not the only issue: the hesitation from companies to become public is also triggered by a number of disincentives that are highlighted below.

Public markets, run by NASDAQ OMX and other exchanges, make companies in search of capital meet investors both private and institutional. They provide pricing and visibility for their shares to issuers and fair treatment to investors by ensuring that financial and other key information on the shares are disclosed to all investors.

In addition to its main markets open to larger companies, NASDAQ OMX offers capital raising solutions to growth companies by a listing service on the growth markets First North. NASDAQ OMX presently operates First North markets across the Nordic and Baltic countries. First North is a MTF tailored for companies that are interested in taking advantage of the financial market, but that may not have that possibility on the main market of the Nordic and Baltic Exchanges. On First North, the absence of a common EU regime has allowed the maintaining of a market regulated regime that combines the local flavor with appropriate international standards, taking into account the needs of the issuers and investors. Also, this has enabled the introduction of a segment, especially modeled for those companies that are about to take the step up to the regulated market. First North attracts a steady flow of new listings and most importantly, the number of companies moving up from First North to the regulated market has remained steady throughout the financial crisis. This must be taken as evidence that this model works well.

NASDAQ OMX has also diversified the financing capabilities offered to corporations by creating a corporate bond market in its junior market First North. This service aims at offering small and medium sized enterprises (SMEs) a possibility to cheaply and swiftly raise funds. Access to finance by SMEs is problematic especially as a consequence of the deleveraging imposed on banks by measures aimed at containing the financial crisis, in particular as a result of the new capital requirement rules. Also, the implementation of the Solvency II Directive as well as the Capital Requirement Directive (CRD IV) will reduce the availability of investable capital for private equity and venture capital funds and thus onward flows to SMEs. These difficulties have specifically been underlined by the ESMA Securities and Markets Stakeholder Group’s report of October 2012 on Helping Small and Medium Sized Companies Access

\(^{1}\) The Green Paper states in section 3.2: “In parallel, market windows for IPOs have become smaller than ever, limiting companies’ access to capital and European stock exchanges increasingly play a role as providers of liquidity, rather than fresh capital”.
Funding. With this in mind and, as recognized by the Commission Green Paper, it is important to foster other financing possibilities and in particular IPOs on junior markets. In this respect, it would be important to create incentives for SMEs to turn to equity as a way to finance their growth.

**Measures to be examined**

In the light of the above, we believe that the following measures should be examined:

*Investment in companies listed on MTFs*

UCITS funds should be allowed to invest more in companies listed on MTFs (such as NASDAQ OMX First North market) so that collective investment is in part channeled towards the financing of SMEs which represent the key factor for growth and employment. Certain countries, like the UK, have interpreted the EU provisions on UCITS investment as allowing investments on regulated markets and MTFs alike. NASDAQ OMX believes that this interpretation should be extended in all EU Member States and that enforcement be harmonized.

*Tax incentives / Tax disincentives*

Although we are aware that the European Commission has limited influence on tax measures that remain largely at the level of individual Member States, assistance to Member States in designing tax policies consistent with the aim of fostering access to finance would be useful. Bank financing benefits currently of certain tax incentives like the deduction of interests on loans. Similar tax incentives should be provided to those companies using public markets as a way to finance their growth. Some of the costs related to the use of equity markets should be made tax deductible (e.g. listing cost). This measure would be important both for SMEs and larger companies. More generally, there should be a thorough analysis of the tax framework and the tax incentives that could be available to foster investment in growth companies, such as lower tax rates to investments returns in SMEs.

In addition, in order to foster long-term investment, it is important that all kinds of disincentives to public offerings and access to public markets are reviewed and eliminated. For instance, since 2005, Finland has had different taxation rules for dividends from listed companies and those from privately held companies. As a result, domestic owners of listed companies pay a higher tax on their dividends than owners of companies that are not listed. Moreover, there is currently a government proposal to even increase this difference to the detriment of owners of listed companies. This kind of disincentives to invest in public companies should not exist and be removed.

*Measures imposed on listed companies for political or social reasons*

Equally detrimental are the measures imposed on listed companies for political or social reasons although such measures have very little to do with the fact that the companies are publically held. In fact, they are imposed on listed companies only because such companies are easier to control and discipline than privately held companies. Rules aimed at ensuring fair and equal treatment of all investors in public companies as well as allowing investors to make an informed investment decision are of the essence in respect of the listed companies. On the contrary, rules imposed only on listed
companies, but that have nothing to do with safeguarding public investment create disincentives to public offerings and by extension long-term financing as they limit channeling savings into productive investment. This is for instance the case of gender quotas on boards. There must be a thorough assessment and a prioritization of the reforms introduced and in this prioritization, measures having the potential to undermine growth and long-term financing should be postponed or abandoned.

Current EU proposals that can undermine long-term financing

There are two examples of measures currently pursued by the European Commission which have the potential to seriously undermine long-term financing and more generally growth. These measures are the proposed introduction of a financial transaction tax (FTT) and the creation of a new venue for executing transactions on equity instruments i.e. the establishment under MIFID II of organised trading facilities for equity -OTFs.

With respect to the FTT, we consider that such a tax will not deliver on the intended objectives which include raising revenues in the long-term, curbing speculation, making markets safer and making those responsible for the crisis contribute to the post-crisis costs. We believe that such a tax will on the contrary, discourage investment and undermine growth and employment. In fact, the European Commission itself in its Impact Assessment study estimates, with all due reservation, that at 0.1%, a transaction tax on securities could reduce future GDP growth in the long run by 1.76% of GDP and could have negative impacts on employment of -0.20%. Given these facts, it seems clear to us this measure is not supporting long-term financing but on the contrary undermining it.

Large companies always start small and local. Unless we allow for local ecosystems to exist and nurture small companies, we will lose the possibility to have large companies in the future. Moreover, it is SMEs that provide the vast majority of employment in Europe. Local ecosystems have been undermined by European policies aimed at modeling financial markets only around the trading of large capitalizations and concentration of financial centers. This has favored a few large players but has seriously undermined the financing of the broader economy. It is the local banks and markets that finance the SMEs, not the global players. We therefore believe that EU legislation should take good care of such local players and avoid putting them at a disadvantage compared with global players. One example of measures that go against local ecosystems is the creation of an OTF category for equity where discretion in executing trades will be permitted unlike on public markets. This will allow global players running such venues to disintermediate local ones as clients of the latter (e.g. local funds) will not be executed if they access the OTF through a local intermediary but may have a chance to be executed if they access it directly. Such a measure will undermine further local players and the local ecosystem around them making more difficult for SMEs to get financing not available to them through global players. It is therefore important that the Commission’s impact assessment of any proposal always evaluates the impact of proposed measures on the long-term financing. Had this been done for the OTF category for equity, it would not have passed this test.
Facilitating new listings and additional public offers

It appears also important to assess whether the existing flexibilities in EU law intended to minimize costs of listing, without jeopardizing investor protection, have been effective as well as to watch for new forms of raising capital while ensuring appropriate protective measures for investors. Having a fresh look at some of the provisions applying to small public offers of securities with a view to ease access of smaller business to such a source of financing would be particularly important. A review of the provisions aimed at easing additional public offers by companies already listed would be equally useful.

In this respect, language requirements imposed on companies going public is an area where improvement would be welcome. For instance, some companies may elect to use English as their language for prospectus and on-going information disclosure when they are admitted to trading on an MTF, for instance because they have their main investor pool in countries where English is commonly used. However if and when they move to a regulated market, in the same jurisdiction, the language regime is reassessed and such companies may be forced to communicate in the local language if the national regulator decides so. We believe that the choice of the language regime should be made more flexible and should take into account specific situations, in particular companies’ investor pools or targets. The current language regime of the Prospectus and Transparency Directives can be improved, clarified and made more adequate to meet the needs of companies.

More harmonised corporate bond markets

NASDAQ OMX is also diversifying its offer of services with respect to funding possibilities for companies in particular corporate bond markets which can become a substantial source of financing for companies. With the right transparency provisions such markets can attract investment from both institutional and individual investors. The rules applying to bond markets are currently being revised in the context of the MIFID review but chiefly in terms of transparency. It appears crucial to us that bond markets become more harmonized at European level in order to foster investment in them and take the full dimension of the single market.

Replies to specific questions

3.1. The capacity of financial institutions to channel long-term finance

3) Given the evolving nature of the banking sector, going forward, what role do you see for banks in the channeling of financing to long-term investments?

While we acknowledge the key role of banks in financing the economy, the deleveraging imposed on them by measures aimed at containing the financial crisis require that other financing possibilities are developed further. This is in particular the case of capital markets and the possibility for companies to tap public markets where retail and institutional investors’ investment appetite can meet the need of companies for capital.
5) Are there other public policy tools and frameworks that can support the financing of long-term investment?

It is crucial that local banks are able to continue to provide funding to SMEs. With this in mind EU legislation should stop to put such local players at a disadvantage compared with global players. One example is the creation of an OTF category for equity where discretion in executing trades will be permitted unlike on public markets. This will allow global players running such venues to disintermediate local ones as clients of the latter (e.g. local funds) will not be executed if they access the OTF through a local intermediary but may have a chance to be executed if they access it directly. Such a measure will undermine further local players and the local ecosystem around them making more difficult for SMEs to get financing.

6) To what extent and how can institutional investors play a greater role in the changing landscape of long-term financing?

UCITS funds should be allowed to invest more in companies listed on MTFs so that collective investment is in part channeled towards the financing of SMEs.

Institutional investors need to be encouraged to invest in SMEs. Eliminating tax disincentives and putting in place tax incentives could make them play a greater role with respect to long-term financing.

8) What are the barriers to creating pooled investment vehicles? Could platforms be developed at the EU level?

We believe that pooled investment have at present the option to “package” as a company that can be listed, either on the MTF or the RM. Incentives (in particular tax incentives) could be offered to develop further this option. In this respect, it is useful to note the benefits of maintaining a flexible regulatory framework around the MTFs as it allows to tailor and to segment - for instance - for pooled investment vehicles.

10) Are there any cumulative impacts of current and planned prudential reforms on the level and cyclicality of aggregate long-term investment and how significant are they? How could any impact be best addressed?

It would be important that the impact assessment of prudential reforms always takes into account the consequences on equity holdings with a view to ensure that equity holdings are not discouraged.

3.2. The efficiency and effectiveness of financial markets to offer long-term financing instruments

11) How could capital market financing of long-term investment be improved in Europe?

The proposed introduction of a financial transaction tax (FTT) and the creation of a new venue for executing transactions on equity instruments i.e. the establishment under MIFID II of organised trading facilities for equity –OTFs have the potential to seriously undermine long-term financing due to their negative consequences on growth and local eco systems.
12) How can capital markets help fill the equity gap in Europe? What should change in the way market-based intermediation operates to ensure that the financing can better flow to long-term investments, better support the financing of long-term investment in economically-, socially- and environmentally-sustainable growth and ensuring adequate protection for investors and consumers?

See reply to question 11 above.

13) What are the pros and cons of developing a more harmonised framework for covered bonds? What elements could compose this framework?

It appears crucial to us that bond markets become more harmonized at European level in order to foster investment in them and take the full dimension of the single market.

3.3 Cross-cutting factors enabling long-term saving and financing

16) What type of CIT reforms could improve investment conditions by removing distortions between debt and equity?

All kinds of disincentives to public offerings and access to public markets should be reviewed and eliminated. For instance, different taxation rules for dividends from listed companies and those from privately held companies are not appropriate. The same apply to measures imposed only on listed companies as opposed to all companies, but that have nothing to do with safeguarding public investment. Such rules create disincentives to public offerings and by extension long-term financing (e.g. gender quotas on boards).

17) What considerations should be taken into account for setting the right incentives at national level for long-term saving? In particular, how should tax incentives be used to encourage long-term saving in a balanced way?

Tax incentives should be provided to those companies using public markets as a way to finance their growth. Some of the costs related to the use of equity markets should be made tax deductible (e.g. listing cost).

19) Would deeper tax coordination in the EU support the financing of long-term investment?

Yes, on removing disincentives and creating incentives.

24) To what extent can increased integration of financial and non-financial information help provide a clearer overview of a company’s long-term performance, and contribute to better investment decision-making?

We are not sure that there is a need for more integration in this field. For SME in particular, local practices and use of code of conducts achieve better results than forcing harmonization through legislation.

25) Is there a need to develop specific long-term benchmarks?
We consider that there is a very competitive and innovative benchmark business in Europe and long-term benchmarks will develop in response to demand.

3.4 The ease of SMEs to access bank and non-bank financing

26) What further steps could be envisaged, in terms of EU regulation or other reforms, to facilitate SME access to alternative sources of finance?

It is important to assess whether the existing flexibilities in EU law intended to minimize costs of listing, without jeopardizing investor protection, have been effective as well as to watch for new forms of raising capital while ensuring appropriate protective measures for investors. Having a fresh look at some of the provisions applying to small public offers of securities with a view to ease access of smaller business to such a source of financing would be particularly important. A review of the provisions aimed at easing additional public offers of companies already listed would be equally useful. Areas that need reassessing include also the language regime for the prospectus and on-going information disclosure.