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Abstract

Speech given at Session 1: The Global Capital Market: What's Next. Mr. Yassukovich spoke about EASDAQ, which is an entirely new venture which has been going only six months. He tried to put it into the context of some of the issues that were discussed at the conference.

EASDAQ: EUROPE'S STOCK MARKET FOR GROWTH COMPANIES

*Stanislas Yassukovich**

Well, Chairman, representing, as I do here, the world's youngest and timeliest exchange, you may think that you are about to go from the sublime to the ridiculous. Clearly, EASDAQ is an entirely new venture which has been going only six months, and therefore I am going to be very brief in talking about it. But I will try to put it into the context of some of the issues that we are discussing today.

I think what is happening — or not happening, as the case may be — in the European capital markets is of significance to the global trends that we are discussing here today because Europe, as the middle time zone, is inevitably seeing an increasing concentration of the international operations of the world's major commercial banks, securities houses, and asset allocators in the defense of the investment management community. This is not unnatural, given the fact that we are in a global market and the middle-time-zone advantage is of increasing value.

More than one U.S. house has now located its head of global equities in London, and of course we know that some of the major U.S. investment management houses are managing their ex-U.S., or global portfolios, increasingly out of London.

But, if I say to you that EASDAQ is the first pan-European stock exchange, it's the first exchange to be solely focused on the entrepreneurial high-growth sector, it's the first exchange in Europe to meet Group Thirty recommendations on settlement time by offering T+3 trading, it's the first stock exchange in Europe to be investor-owned as opposed to being a members' cooperative — if I make those claims, you will realize just how far we are in Europe from the creation of a single market, particularly for equity capital formation.

The macroeconomic context in which the EASDAQ project was born is one that will be highly recognizable in this country: the future growth of the European economies — and, indeed, the growth in employment — is not going to come from the

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mature companies, from the blue chips. They are consolidating; they are subject to global competition; they are losing employment; and they are handing capital back to their shareholders, they're not raising fresh capital anymore. Even the recently privatized utilities in the United Kingdom are handing back capital through their share buyback programs.

So the contention is that the growth in our economy, and, in particular, the growth in employment in Europe will come from the new, entrepreneurial, high-growth companies, mostly focused on the new sciences, information technology, biomedical, and so on. That is a phenomenon that is very well understood in this market, where the Fortune 500 companies have been losing employment over the last few years and the companies, for example, that make up the NASDAQ list fortunately have been adding new jobs at a faster rate. They have, in fact, been very much bound up with the renewal of the U.S. economy. The thought is that it is possible to do the same in Europe. It is, indeed, absolutely indispensable to do the same in Europe.

Now, early-stage financing for the entrepreneurial, high-growth company sector has developed quite rapidly in recent years in Europe. It is absolutely a blip on the screen in comparison with the development of the venture and development capital industry in the United States, but nevertheless venture money invested in Europe is doubling every three years and shows no signs of stopping its growth.

Penetration of the time zone, which obviously up to now was heavily concentrated in the U.K., and the venture capitalists need an exit in order to be able to recycle their investment in further early-stage investment, and until recently, there has not been a market platform that was specifically designed to provide venture capitalists with an exit and provide growth companies with an access to public equity capital. That is what is behind the EASDAQ project.

It is being made possible, from a regulatory point of view, by three Directives, as part of the European Commission's harmonization program for the capital markets: the Prospectus Directive,[1] which allows for recognition of a prospectus accepted by

1. Council Directive No. 80/390, O.J. L 100/1 (1980). The current version of the Prospectus Directive is the result of amendments made in 1987 by Council Directive 87/345, O.J. L 185/81 (1987), 1990 by Council Directive No. 90/211, O.J. L 112/24

one competent authority in one Member State to be automatically accepted in the others; and, of course, the single-passport concept which was bound up in the second Banking Directive,[2] and the Investment Services Directive ("ISD").[3]

The Investment Services Directive didn't actually contemplate the concept of a pan-European exchange, and therefore we had to find a Member State that would recognize EASDAQ as a regulated stock market. We decided to go to Belgium. We wanted to avoid getting bound up in the sometimes politically charged competitive battle between the three principal financial centers in Europe — London, Paris, and Frankfurt — and so we went to a more neutral place. We were also somewhat inspired by the fact that NASDAQ is Washington-headquartered.

Clearly, the EASDAQ market is very much — I would say almost entirely — inspired by the NASDAQ phenomenon, adapted obviously to suit the different conditions that prevail in Europe.

It is a phenomenon also bound up with another, very curious you may say, fundamental difficulty that we have in terms of creating a single capital market in Europe. We have something like fifteen equity exchanges in the European time zone. Now, the GDP of Greater Europe — that is to say, the EU plus Switzerland and Norway — is not a great deal different from the GDP of the United States. The United States seems to get by with only three main markets. In Europe, we have to have fifteen. It is curious to some people that a number of countries are prepared to consider consolidating their currencies but they are not prepared to consider consolidating their stock exchanges.

As a result, we have significant fragmentation, a whole variety of different listing requirements, a variety of different regulatory requirements, different presentations, making it increasingly difficult for analysts to make secular comparisons in a marketplace where the asset allocators are less and less concerned with the actual domicile of a company and more concerned with asset allocation according to sectors.

(1990), and 1994 by Council Directive No. 94/18, O.J. L 135/1 (1994). *See* Giovanni Nardulli & Antonio Segni, *EU Cross-Border Securities Offerings: An Overview*, 19 FORDHAM INT'L L.J. 887, 891 (1996) (discussing Prospectus Directive and amendments to it).

2. Council Directive No. 77/780, O.J. L 89/646 (1989).

3. Council Directive No. 93/22, O.J. L 141/27 (1993).

EASDAQ was conceived to set a fundamentally exceptionally high standard, on the grounds that high-growth companies are obviously, by definition, riskier than the sure and established companies, and therefore they require an even greater degree of transparency and every greater quality-of-admission procedure than would be normal for established companies. We are the first exchange, therefore, to require quarterly reporting.

We created something of a virtual diplomatic incident in Brussels by establishing that the only two accounting standards we would permit for companies listed on EASDAQ is either U.S. GAAP or IAS.[4] Since there has been a long-running negotiation between Europe and the United States in the attempt to get IAS recognized in the United States for European companies selling their securities here, we were somewhat criticized for letting U.S. GAAP in through the back door, so to speak. But, nevertheless, it's interesting that the first eight companies that chose to list on EASDAQ all equally chose to go straight to U.S. GAAP.

There are nine companies listed on it as of this moment, and probably another five or six in the pipeline. The companies so far have all chosen to go straight to U.S. GAAP. The way we resolved this little diplomatic incident is that we agreed to include in our listing application form a question with a box next to it which said, "Do you intend in the reasonable future to seek access to the U.S. capital market? If you check the box Yes, you can go straight to U.S. GAAP." It was seen as an appropriate diplomatic resolution of the problem.

Regarding transparency, which was mentioned earlier, EASDAQ does permit delayed reporting on large block trades. This permitted thirty-minute delay, however, is not consistent with transparency. But, as you know, it is market maker-based, and just as in London, there has been controversy going on for years as to whether immediate publication should be permitted. It's only now, four years after "Big Bang" and the start of the discussion, that steps are being taken to create a greater degree of immediate publication requirement for large trades in London.

The perception has been — I believe it to be wrong, and when I was the Deputy Chairman of the Stock Exchange in

4. *See* Pat McConnell, *Practical Company Experience in Entering U.S. Markets: Significant Issues and Hurdles from the Advisor's Perspective*, 17 FORDHAM INT'L L.J. S120, S127-28 (1994) (discussing creation of International Accounting Standards).

London I argued vigorously in favor of immediate publication and total transparency; and I was shouted down by the market-maker interests. The perception was that capital and liquidity needed a degree of protection. Unfortunately, the London market in particular, and other exchanges, have refused to be guided by the systems in use in the United States and by the fact that in the United States they have an order management concept which is significantly different from the traditional jobbing market-maker concept that has prevailed for many years in London.

We have not achieved anything like the degree of trade publication immediacy, which of course is common practice in the United States, but the intention is to move in that direction. Those of us who are involved in the EASDAQ project take the position that one of our main missions is to create a standard which will be as similar to the standards that have been long established in this country as possible, for the very simple reason that it is the existence of those standards, the existence of that degree of transparency, of quality of information, the regularity of information flow, that has produced the unique American phenomenon of equity capital formation, and if European economies are to develop along the same lines, they must be prepared to achieve the same standard. But, that standard is not achievable overnight. And, indeed, we are widely criticized by some of the established exchange interests for excessively imitating the American pattern.

On the other hand, I think that what is significant at the political level in all of this is that, for reasons which one can either agree with or not, there is a growing feeling in Europe that it must retain, to a large extent, control of its own equity capital formation process, and that if it does not do something about that, then it will be perfectly obvious — and perfectly correct — that Mr. Grasso's exchange becomes the single European stock exchange. I am sure that he would love that to happen and that many of his members would find that perfectly natural, because so many of his members now have very extensive securities operations within the European time zone. But politically — I think Mr. Grasso would also probably agree — politically it is difficult to see the European authorities allowing that to happen.

But, as I say, very little progress has been made, even in the implementation of the Prospectus Directive, for example, which, in theory, should create a single public offering market in Europe. Several countries have either been slow to implement it, or have implemented it in a way that still preserves some degree of protectionist local regulation.

Germany, which is the economy in Europe that has the least-developed equity capital formation system in relation to its GDP, because of their appreciation of that deficiency, is perhaps the most protective, and has been the least quick to actually implement the ISD and the Prospectus Directive. They have not even actually nominated a competent authority yet. So we are finding the penetration of that market made difficult by a continuing degree of protectionism.

Nevertheless, there are, I think, some serious forces behind the EASDAQ project. We have some ninety institutional shareholders who own EASDAQ. Some ninety institutions, which are a mix of pure investment institutions, venture capital firms, banks, and securities houses. A good proportion of the shareholders are also members of the exchange either directly or through affiliates. But, equally, some twenty or thirty percent are not; they're investment institutions. About twenty percent are French; about twenty-five percent are British or U.K.-located, which of course does not mean British anymore; and the balance are spread in Benelux, throughout Europe, with some pure U.S. institutions also as shareholders.

Given that group, and those who are concerned with the exchange, we structured it in a way which, unconsciously I think, anticipated aspects of the SEC's settlement with NASDAQ. We have a very strict separation between the governance of the exchange from a commercial point of view, which is in the hands of the Board, and the regulatory functions, which are in the hands of the market authority. The market authority is appointed by the Board and has to be approved by the Belgian Banking and Finance Commission and by the Minister of Finance. It makes all of its regulatory decisions entirely independently of the Board. The appeal process to the decisions that the market authority makes is to an international commission of appeal, the members of which are also to be approved by the Belgian Banking and Finance Commission. So we have a total separation between the exchange's regulatory functions and the commercial exploitation.

Because EASDAQ is itself a commercial company designed to be a growth company and designed to make a profit for its shareholders, we believe that to have a commercial ethos is correct, in terms of serving the constituencies that we serve.

But, in the context of the globalization of financial markets, there is no question that the existing fragmentation of the stock exchange community in Europe is a serious drawback to the further evolution of the European economies, and it is a very curious one in view of the political commitment to achieve a greater degree of integration at the monetary level and at various other commercial levels. This is lagging behind, and one can only assume that it is because of certain vested interests.

So personally, I welcome the competitive thrust which we see coming from obviously the Big Board here, but also from NASDAQ, in offering the U.S. market as an attractive alternative for European companies seeking to broaden their access to the wider shareholder base, because I think that competitive pressure will also force the hand of a great many interests in Europe that must, I believe, take measures to create a single market for capital raising if the whole concept of the European Union in economic terms is to be realized.

Thank you.