



**Edward S. Knight, Executive Vice President and General Counsel, at the
Council of Institutional Investors - Washington, D.C. - March 30, 2006**

Thank you for that kind introduction and for the opportunity to address the Council of Institutional Investors on behalf of NASDAQ.

I recently read an article about the hazards of being a general counsel at a public company in America today; it was entitled and advised "Speak Truth to Power."

To the best of my ability that's what I intend to do. And the immense power of institutional investors today, whose voices are heard at the highest levels in corporate America and public policy making, is directly attributable to the efforts of the CII.

One of my former bosses, Bob Rubin, was no stranger to bruising public policy debates. Bob would frequently say that he didn't mind the slings and arrows, because that was a small price to pay for the kind of frank, open debate that almost always resulted in better public policy.

The Council has contributed greatly to raising the quality of the debate on markets and economic policy in America. In the process you have empowered the investor community – and for that NASDAQ salutes you.

We may not agree with you on each and every issue, but we honor your efforts across the board and we want to work with you.

Anne set two conditions for my talk this morning that are very difficult for any self-respecting attorney: she asked me to speak in plain English and she admonished me to be brief.

So I'd like to use our time together to address three key questions:

1. What are the elements of quality regulation?
2. What do NASDAQ's recent acquisitions mean for investors?
3. And how do we view SOX and in particular 404?

First, what are the critical elements of quality regulation in today's stock exchanges? At NASDAQ we recognize that each market has its own history and traditions. We realize and welcome the need for diversity in approach – as long as it does not impair transparency, diminish investor protections, or impair investor confidence.

We are determined to set the pace for world markets and lead a race to the top. We see no alternative to setting the bar higher and higher. Due in a large part to organizations like CII, investors and companies worldwide are demanding and receiving the very best in regulation and transparency from exchanges today.

At NASDAQ, we have a lot of hands-on experience with investors, large and small, in this country and abroad. We know they are increasingly well informed, sophisticated and demanding. And we also understand that any market that dares to compromise on standards or integrity is doomed to lose investor trust and eventually fail.

What is NASDAQ doing to deliver on our promise to offer investors the fairest market and the best regulation in the world? For starters, we are a market with a proud record of innovation, and we never rest in the search for a better way. We are well aware that economies are evolving, technology is improving, and the schemes of those who would prey on unwary investors are growing more sophisticated.

We work to stay a step ahead on every front. Our approach is to focus on three objectives: independence in structure, transparency in operations, and limiting the exercise of staff discretion. Then we always apply a final test: Does this make sense? Is it rational?

For several years we have been focusing on getting our structure right. Specifically, we wanted to establish legal separation of the regulator from the market – especially in the key area of disciplining the members of our exchange.

We simply do not believe that a market regulator should also be selling members of an exchange on the need to send order flow. Sooner or later, that kind of inherently contradictory relationship undermines investor confidence and eventually erodes standards and trust.

That is why we applied to break with past practice and operate NASDAQ as an exchange, separate from our market regulator – the NASD. In January the SEC approved our application for exchange status, and we will complete the separation from NASD in just a few weeks.

Sounds technical, but why is it important for investors? Because, for the first time, the NASD, a completely separate, not-for-profit organization with a separate board and no overlapping board members, will be NASDAQ's truly, indisputably independent market regulator. The NASD is well funded and will have no economic interest in NASDAQ. It is well led. It is the gold standard of market regulation – and we believe our investors deserve no less.

Our listing and delisting function is housed in our regulatory group outside the business of NASDAQ. It is overseen by the Listing Council, a standing, 11-person committee independent of NASDAQ that is appointed by our Board, and by the Regulatory Oversight Committee of the Board.

You may know that our Listing Council includes people like Peter Clapman, formerly with TIAA-CREF. Until recently, Mary Jo White, the former U.S. Attorney for the Southern District of New York, was part of our Board regulatory oversight process.

Underscoring the independence of this structure are critical facts: In the last five years over 1000 companies have been delisted from NASDAQ for regulatory reasons.

We think our system works well and has worked to maintain high standards for all our companies. And our most recent listing standards action shows we take the regulatory race to the top seriously.

After receiving exchange status from the SEC, one of our very first initiatives was to establish a new market tier with the highest listing standards on the planet. NASDAQ's Global Select is our latest effort to raise market standards worldwide. We invite other markets to follow our lead.

Transparency has also been a constant theme in our regulatory operations. NASDAQ pioneered many aspects of today's electronic markets. We believe they are inherently more transparent in concept and in practice. For one thing, everyone gets the same information at the same time.

In addition, the records of an electronic transaction leave fingerprints that cannot be erased and are immediately available – in real time – for regulators to immediately scrutinize. We found that people tend to be on their best behavior when they know their actions are being recorded.

There are no secret laws or special pleadings at NASDAQ. We have over 240 FAQs and over 50 written interpretations of our listing standards on our website. We believe that NASDAQ – not the companies that list with us – should interpret those rules. And we do it in a transparent, objective manner.

Last year, we had over 1.2 million hits on our legal/compliance webpages, reflecting the practical benefits of transparency.

At NASDAQ we also made voluntary and material changes to limit our subjective discretion in the day-to-day regulation of the market. These changes have been applauded by the SEC and copied by other markets.

Specifically, in the last few months we clearly identified when staff can accept a plan of compliance to cure listing deficiencies. Most importantly, we put time limits on how long any company can remain out of compliance. For example, companies cannot drone on, year after year, without a current SEC financial disclosure and still be listed on NASDAQ. Companies that are filing delinquent are immediately subject to delisting on NASDAQ.

Where we do allow subjectivity is to deny listing to a qualified company based on subjective public interest standards. For example, even though a company meets our listing standards and other markets will list the company, we have said no to companies based on the regulatory history of an officer or director.

We also are voluntarily narrowing our discretion to break trades. For example, we are amending our rules to make clear that in the event of that rare circumstance of a market wide technology failure we will exercise limited discretion. In other words, the industry will retain strong incentives to maintain high quality technological systems because we will limit those instances when human beings will step in and break trades. Nevertheless, participants who file to break trades can appeal staff decisions to an independent committee to ensure impartial consideration.

To complement these rules we have developed proprietary software that allows us to quickly collect and analyze information that might indicate errors in the inputs we have received from the computers talking to our computers.

I mentioned earlier that in addition to the three goals of independence, transparency and limited staff discretion we always apply one more test: Does this make sense? Is it rational?

In our opinion the glaring inefficiency of the dual regulation of firms that are members of both the NYSE and the NASD fails the rationality test. And this inefficiency is paid for by the people in this room and the investors you represent.

There are approximately 200 firms with dual rulebooks; dual examinations, interpretations and enforcement; and dual fees. With the NYSE's current restructuring, the number of dually regulated firms may increase substantially. Why? Because the NYSE has chosen to require that every firm that desires a trading license must submit not only to market, but also full member regulation by the NYSE.

We believe that the best solution would be an agreement between the NYSE and the NASD regarding the regulation of the firms that are members of both organizations. We would like to see firms regulated under one rulebook instead of two. They would have only one examination and enforcement staff to deal with, lowering their compliance costs – and passing these savings on to investors.

The second question I would like to address concerns NASDAQ's recent acquisitions. What do they mean for investors? As a Wall Street Journal editorial recently pointed out, competition among exchanges has made the markets more efficient and this "has been a boon for investors, who are gaining more access to more financial products and tools at cheaper prices, than at any other time in the history of the markets."

In NASDAQ's case, the acquisition of the INET technology, when fully integrated later this year, will enhance the speed and flexibility of the NASDAQ systems. It will also position us better to compete with the NYSE for order flow in the trading of NY listed securities. This competition will benefit all investors.

Another acquisition we made last year, the West Coast insurance broker Carpenter and Moore, allows us to offer often hard to find D and O insurance to listed companies. The acquisition of Shareholder.com this year allows us to help public companies enhance technology-driven investor relations services, serving the investor protection goal of transparency.

The final issue I want to discuss this morning is Section 404 of Sarbanes, an issue addressed recently by our CEO, Bob Greifeld, in a Wall Street Journal editorial. I realize this is an issue on which CII and NASDAQ do not necessarily agree.

We have supported Sarbanes-Oxley, despite the bitter criticism it has engendered among our listed companies, for two reasons: it is a tough but essential step toward restoring investor confidence through greater transparency, accountability, and improved corporate governance. Second, we felt that, with time, the benefits would become more apparent and the costs of Section 404 would become less onerous.

We have seen no lessening of concern among our member companies with Section 404; if anything, it is growing. The burden of compliance is onerous, the cost is significant, and it falls disproportionately on smaller companies that are least able to pay. Our research shows that the burden on small companies, on a percentage of revenue basis, is 11 times that of large companies.

Sarbanes Oxley is also a major issue for companies abroad planning to go public; many are shunning American markets, despite their obvious advantages, and the reason they cite, over and over again, is Sarbanes Oxley.

So NASDAQ supports the small company exemption proposed by the SEC's Advisory Committee. And we note that the companies exempted would account for only 6% of U.S. market cap – which means that Section 404 would still apply fully to 94% of our equity market capitalization. Simply stated, we believe it is possible to address the legitimate problems associated with Section 404 without diminishing the important reforms that have helped rebuild investor confidence and make American markets the envy of the world.

I want to thank you for the opportunity to visit with you this morning and explain some of what NASDAQ is doing strengthen investor confidence and build better markets. We look forward to continuing this dialog with the CII membership.