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NASDAQ & SHARESPOST TO LAUNCH PRIVATE COMPANY STOCK EXCHANGE

NASDAQ OMX Group, Inc. and [SharesPost](#), an online private capital marketplace, recently announced plans to launch "NASDAQ Private Markets," an online stock exchange for privately-held start-up companies. The joint venture aims to combine NASDAQ's market experience and expertise with SharesPost's online trading platform for private company stock. NASDAQ and SharesPost expect to launch NASDAQ Private Markets later in 2013, pending regulatory approval.

JOBS Act a "Game-Changer"

NASDAQ cited the signing of the "[Jumpstart Our Business Startups](#)" Act ("JOBS Act") in April 2012 as a driving factor in its decision to launch NASDAQ Private Markets. The JOBS Act made several important changes to federal securities laws with the goal of improving access to capital markets for start-up and emerging growth companies. For example, the JOBS Act increased the number of stockholders a company could have before triggering the requirement to register with the Securities and Exchange Commission ("SEC") from 500 to 2,000 (subject to certain restrictions). The JOBS Act, according to NASDAQ Executive Vice President Bruce Aust, was a game-changer for private trading.

NASDAQ Private Markets will rival [SecondMarket](#), another online platform providing liquidity to private company stockholders. Both SharesPost and SecondMarket were major players in the private trading of Facebook stock prior to the social media company's May 2012 IPO.

Private Stock Trading and Securities Laws

Notwithstanding the passage of the JOBS Act and the "buzz" surrounding the private trading market, the ability to offer and sell securities of private companies continues to be constrained by federal and state securities laws. Facebook's IPO in May 2012 and pre-IPO private trading prompted several SEC investigations and more than 40 civil lawsuits alleging that Facebook violated securities laws or breached its fiduciary duties to its stockholders. In its annual report filed February 1, 2013, Facebook stated its belief that these claims were without merit, but it anticipates that it will continue to defend similar cases. The legal challenges surrounding Facebook's IPO and pre-IPO trading demonstrates why it is critical that start-up and early-stage companies and their stockholders seek legal advice from experienced securities counsel before offering or selling securities, including grants or sales of stock to employees, family and friends.

Jones Walker is committed to fostering a strong entrepreneurial community in the Gulf South by providing legal services throughout a company's life cycle. We are a proud supporter of The Idea Village, New Orleans Entrepreneur Week and the New Orleans BioInnovation Center. We have provided in-kind donations of corporate, securities, labor and employment, tax and intellectual property services to more than 30 early-stage companies participating in the programs sponsored by The Idea Village and the New Orleans BioInnovation Center. Our attorneys also represent both emerging companies and mature issuers with respect to these and other legal matters.



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If you would like more information about private capital markets, the JOBS Act or federal and state securities laws, please do not hesitate to contact your Jones Walker attorney, or ask to speak to one of us at [The Idea Village's New Orleans Entrepreneur Week, which will be held in New Orleans this week, March 18-22.](#)

— [Carl C. Hanemann](#), [Asher J. Friend](#), [Nathan R. List](#) and [Brooke L. Longon](#)

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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