



**“Wonderfully Supportive”  
and Corporate Governance**

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**NASDAQ OMX<sup>SM</sup>**



# *Corporate Governance and Public Companies*

- There are 2 'listing' exchanges in the US
  - NASDAQ
  - "other"
- Each exchange sets its own rules
  - Rules approved by SEC
  - Most recent and wide sweeping changes affecting Corporate Governance went into effect in 2004
- SOX – A US Federal Law enacted in 2002
  - Largely accounting related, but covers aspects of corporate governance
- Enforcement - Exchanges and the SEC enforce Corporate Governance



*Problem*



*Solution*



# *SOX is the Corporate Governance Benchmark*

- The Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley") is an assortment of reforms designed to protect investors by imposing financial reporting, disclosure and corporate governance requirements on public companies

Some sections directly related to **corporate governance**

## Section 301

Establish procedures for the receipt, retention, and treatment of complaints—including confidential and anonymous submissions by employee.

## Section 406

Institute a code of ethics for senior financial officers.

## Section 806

“Whistleblower protections” for individuals who provide information or assist in investigations related to suspected unlawful behavior within the company.



## *The direct and indirect impacts of SOX on private companies*

- **Corporate Governance Requirements which are applicable to private companies-**
- ***Criminal Liability for Document Destruction.*** Sarbanes-Oxley provides criminal penalties for anyone who intentionally destroys, alters or falsifies records or documents with the intent to impede or otherwise influence a federal agency investigation
- ***Liability for Retaliation Against Whistleblowers.*** Sarbanes-Oxley makes it a crime punishable by a fine and prison to knowingly retaliate against any person who provides a law enforcement officer truthful information relating illegal activities.
- ***Increased Penalties for White Collar Crime.*** Sarbanes-Oxley increases the monetary penalties and prison sentence for fraudulent violations.
- ***Securities Fraud.*** Sarbanes-Oxley extends the statute of limitations for investors to file a private securities action for securities fraud .

# Market Turmoil

Problem

Result

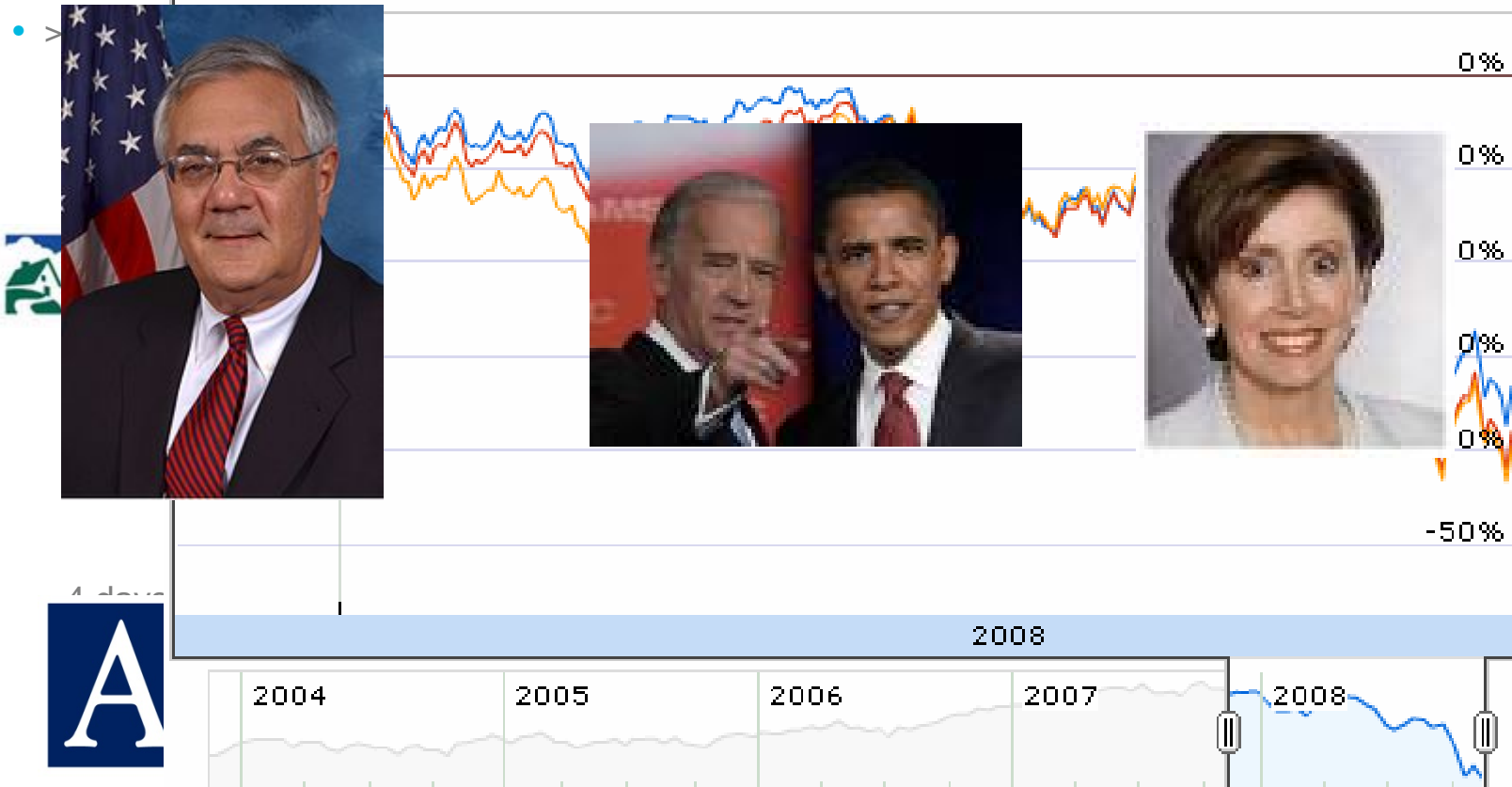
Solution

A financial

Zoom: [1m](#) [3m](#) [6m](#) [YTD](#) [1y](#) [5y](#) [10y](#) [Max](#)

Nov 15, 2007 - Nov 14, 2008

● Dow -34.85% ● S&P500 -39.86% ● Nasd -41.60%



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# *The Investment Impact*

## Future Deal Structures

- Easy credit is over, won't return
- Capital is scarce
  - Capital will only go to the best prepared, most financially sound and structurally solid
- Investments will take longer & Investors will be more demanding
- Due diligence will go beyond the financials and business plan
- Not only will financials and business plan be assessed, but:
  - the board
  - their corporate governance methodologies
  - their decisions
  - their risk knowledge will be assessed

**“Having a corporate governance plan in place certainly enhances the image and reputation of a company, and will make it more attractive to investors”** Dr. Constantine Konstans, executive director of the Institute for Excellence in Corporate Governance at the University of Texas at Dallas School of Management

## *Sound Corporate Governance Protects*

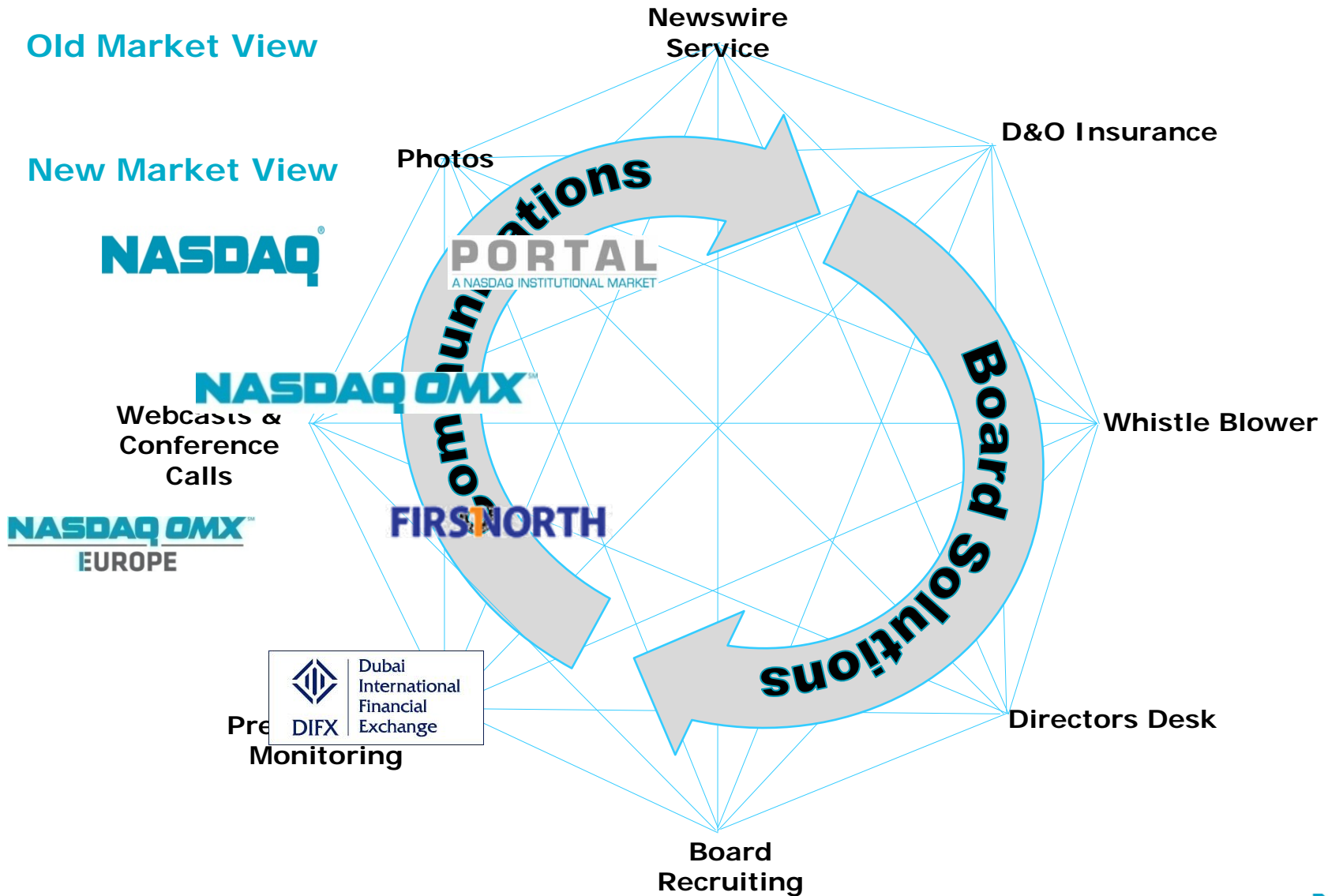
- Risk becomes the new mantra
  - The Board will need to see risk differently, approach risk differently and pursue risk differently
  - May not impact the bottom line, but can save it
- Enhancing a Corporate Governance is not that costly
  - CEO and CFO – attestation
  - Whistleblower
  - Ethics survey
  - Cultural Assessment
  - Proactive Oversight
  - Independent Director (s)
  - Committees and Board level

“Having a system of accountability is critically important to the health of a company, even if that company is private and does not have to answer to its shareholders or to the SEC.”

# NASDAQ's role

Old Market View

New Market View



## Summary

New administration, new changes, new framework

- Think larger than the issue
- Go beyond best practices and current metrics
- Prepare for tomorrow

A good Board will always ask “At what risk”

Is the board of directors guarding the interests of the company or are they simply “Wonderfully Supportive”?

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