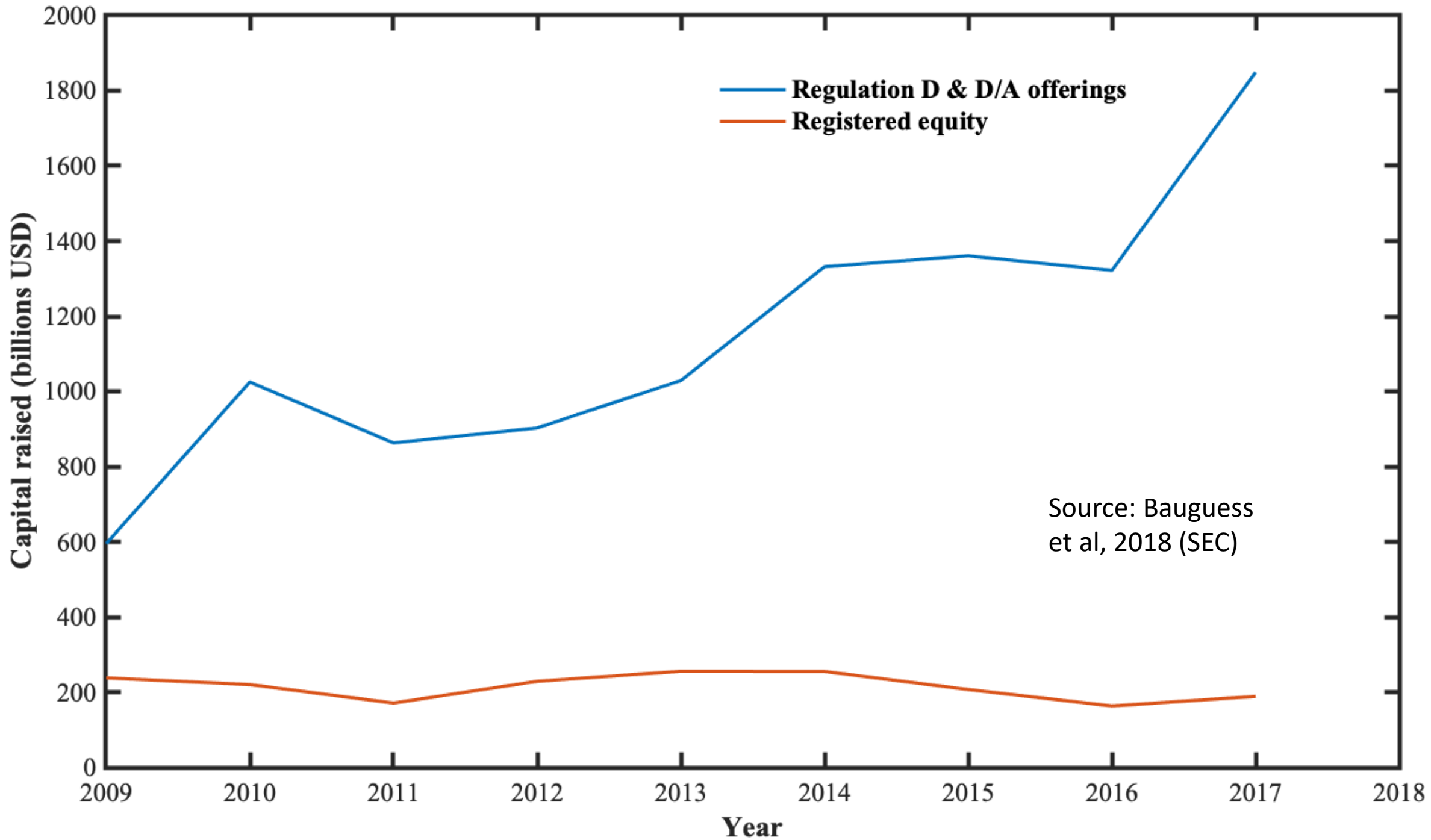


# The New Public/Private Equilibrium

Elisabeth de Fontenay

March 2, 2023

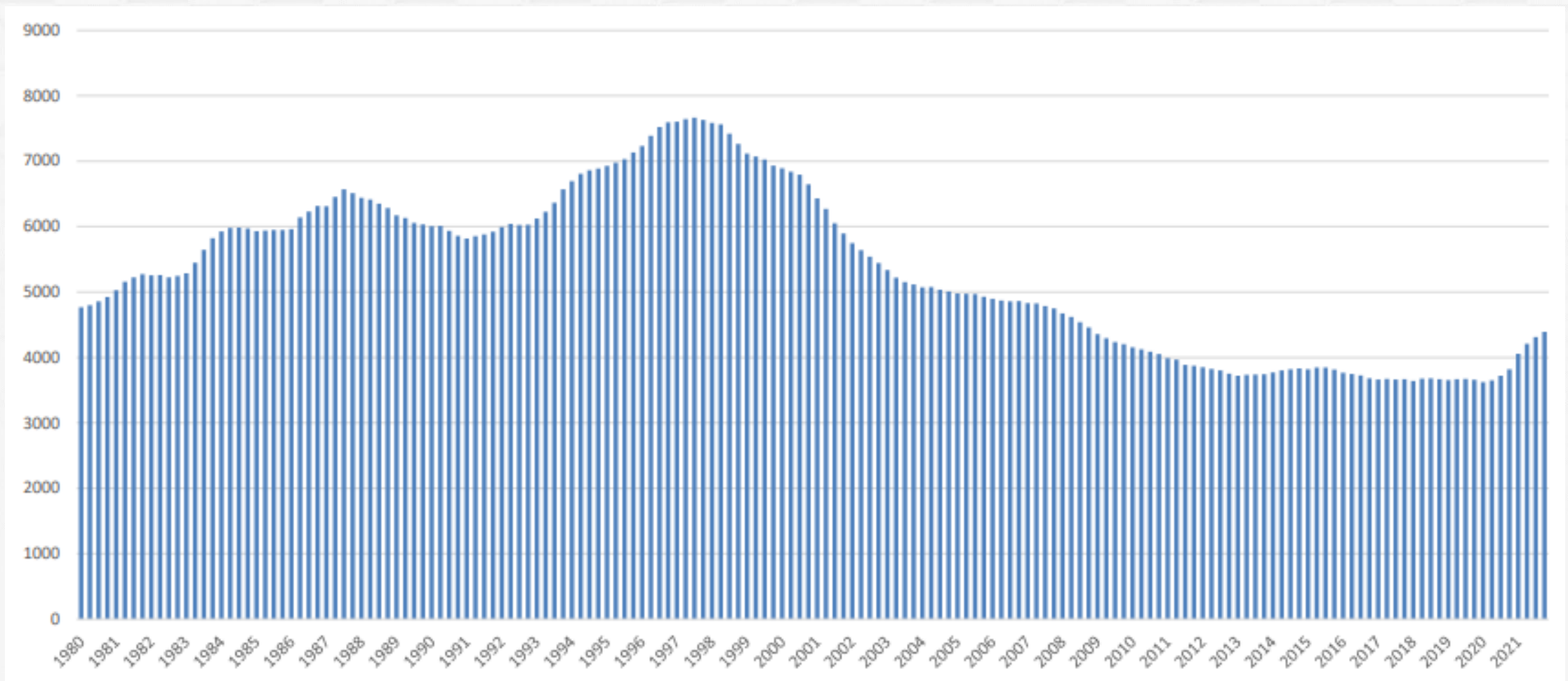
**DUKE LAW**



# S&P 500 Index (1980-2022)



# Number of U.S. Listed Companies (1980-2021)



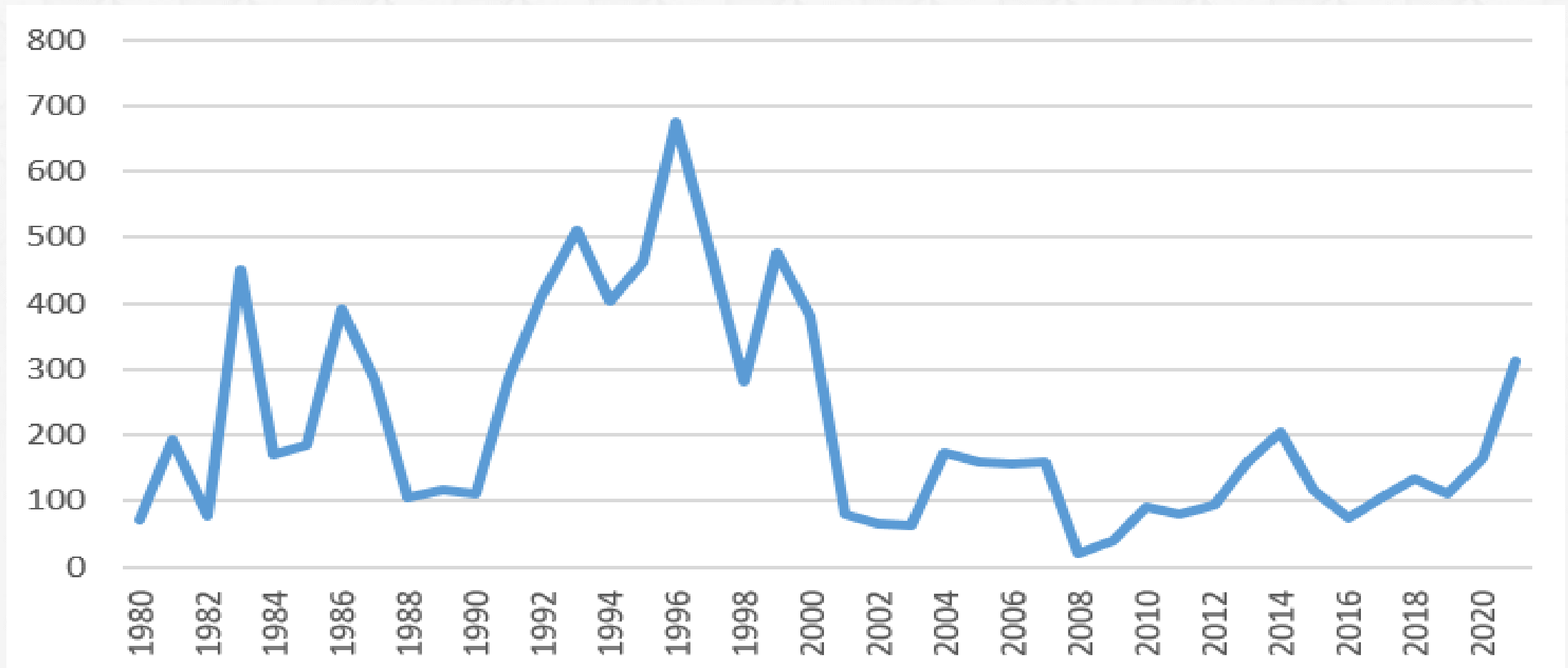
Note: Operating companies only

**DUKE LAW**

Source: Jay Ritter

<https://site.warrington.ufl.edu/ritter/ipo-data/>

# Number of U.S. IPOs (1980-2021)



# Changing Public Equities

Characteristics of U.S. Stock Market	1976	1996	2016
Number of publicly listed companies	4,796	7,322	3,671
Average market capitalization (in 2016 USD millions)	\$620	\$1,683	\$6,893
Average age of a listed company (years)	10.9	12.2	18.4
Average individual direct ownership	50.0%	27.2%	21.5%

Source: Credit Suisse, *The Incredible Shrinking Universe of Stocks* (2017)

# Public and Private Markets Both Matter

- ~4,000 public companies
- ~6 million private companies
- Each accounts for about half of total sales, pretax profits, non-residential fixed investment, and employment

# Explanations for the Decline?

- **Supply:**

- 1) Increased regulation of public companies (e.g., Sarbanes-Oxley)
- **2) Deregulation of private capital**
- 3) Founder/manager preferences
- 4) Technology and globalization (Gao, Ritter & Zhu, 2013)

- **Demand:**

- 1) Liquidity barriers for smaller public companies
- 2) Mutual-fund preferences (Bartlett et al., 2016)



# Securities-Law Landmarks

- **Regulation:**

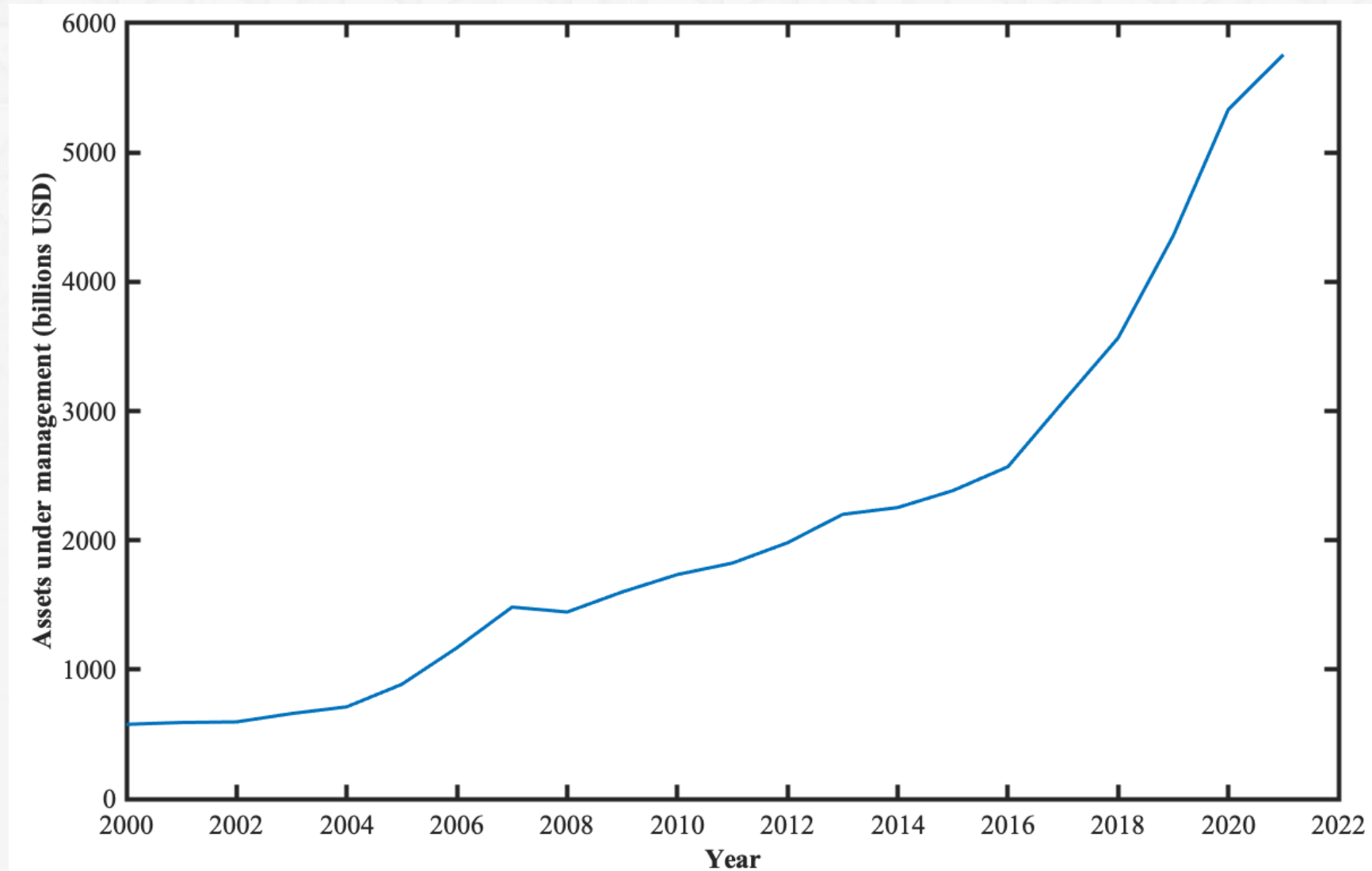
- Securities Act of 1933; Securities Exchange Act of 1934
- 1964 amendments
- Sarbanes-Oxley (2002)
- Dodd-Frank (2010)

- **...and deregulation:**

- Reg. D (1982)
- Rule 144A (1990)
- NSMIA (1996) (incl. ICA sec. 3(c)(7))
- JOBS Act (2012)



# Growth of Private Equity (2000-2021)



# Public/Private Divide in Securities Regulation

## HISTORICALLY

- **Public companies**
  - Access to cheap capital
  - Major regulatory burden
- **Private companies**
  - Very limited access to capital
  - Light/no regulatory burden

→ Companies go public based on **size/capital needs**

## TODAY

- **Public companies**
  - Do not need more equity capital
  - Major regulatory burden
- **Private companies**
  - Can raise unlimited capital
  - Light/no regulatory burden

→ Companies go public based on **idiosyncratic issuer choice**

# Is this a Problem?

- Future of the public markets
- Coherence of public-company regulation
- Retail investor returns?

# Policy Options

- Force more companies to go public (Sec. 12(g))?
- Increase retail investor access to private markets?
- **Reduce regulatory gap between public and private companies**