

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62010; File No. SR-SCCP-2010-01)

April 30, 2010

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Amendments to the By-Laws of The NASDAQ OMX Group, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on April 9, 2010, the Stock Clearing Corporation of Philadelphia (“SCCP”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by SCCP. SCCP filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(6)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

SCCP is filing the proposed rule change relating to amendments to the By-Laws of its parent corporation The NASDAQ OMX Group, Inc. (“NASDAQ OMX”).<sup>4</sup>

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> Article Eighth, Paragraph B of the Restated Certificate of Incorporation of NASDAQ OMX and Section 11.3 of the By-Laws provides that proposed amendments to the By-Laws are to be reviewed by the Board of Directors of each regulatory subsidiary of NASDAQ OMX and under certain circumstances be filed with the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>5</sup>

(A) **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

1. **Purpose**

NASDAQ OMX has proposed making certain amendments to its By-Laws to make improvements in its governance. In SR-NASDAQ-2010-025, The NASDAQ Stock Market LLC (“NASDAQ Exchange”) sought and received Commission approval to adopt these By-Laws changes as part of the rules of NASDAQ Exchange.<sup>6</sup> SCCP is now submitting this filing regarding these By-Law changes. The text of the changes to the By-Laws of NASDAQ OMX can be viewed at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/pdf/sccp-filings/2010/SR-SCCP-2010-01.pdf>.

The NASDAQ OMX By-Laws previously provided that each director receiving a plurality of the votes at any election of directors at which a quorum was present was duly elected to the board of directors (“Board”). Under Corporate Governance Guidelines adopted by the Board, however, any director in an uncontested election who received a greater number of votes “withheld” from his or her election than votes “for” such election was required to tender his or

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<sup>5</sup> The Commission has modified the text of the summaries prepared by SCCP.

<sup>6</sup> Securities Exchange Act Release No. 61876 (April 8, 2010), 75 FR 19436 (April 14, 2010) (SR-NASDAQ-2010-025).

her resignation promptly following receipt of the certification of the stockholder vote. The NASDAQ OMX Nominating & Governance Committee (“Nominating & Governance Committee”) then considered the resignation offer and recommended to the Board whether or not to accept it. Within 90 days after the certification of the election results, the Board determined whether to accept or reject the resignation. Promptly thereafter, the Board announced its decision by means of a press release. In a contested election (*i.e.*, where the number of nominees exceeded the number of directors to be elected), the unqualified plurality standard controlled.

*Uncontested Election*

NASDAQ OMX recently amended its by-laws to adopt a majority vote standard. Specifically By-Law Article IV, Section 4.4 was amended to provide that in an uncontested election, directors shall be elected by holders of a majority of the votes cast at any meeting for the election of directors at which a quorum is present.<sup>7</sup> Under the majority voting standard, a nominee who fails to receive the requisite vote will not be duly elected to the Board. The By-Laws also now require that any incumbent director nominee, as a condition to his or her nomination for reelection to the Board, must submit in writing an irrevocable resignation, the effectiveness of which is conditioned upon the director's failure to receive the requisite vote in any uncontested election and the Board's acceptance of the resignation. Acceptance of the resignation by the Board shall be in accordance with the policies and procedures adopted by the Board for such purpose.

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<sup>7</sup> NASDAQ OMX also amended its Corporate Governance Guidelines to reflect the majority vote standard for uncontested director elections.

*Contested Election*

NASDAQ OMX codified its process for a contested election. The directors will continue to be elected by a plurality vote in a contested election. There is no change to the process for contested elections because if a majority voting standard were to apply in a contested election, the likelihood of a “failed election” (*i.e.*, a situation in which no director receives the requisite vote) would be more pronounced. Moreover, the rationale underpinning the majority voting policy does not apply in contested elections where stockholders are offered a choice among competing candidates. Directors are elected by a plurality of votes present in person or represented by proxy at a meeting convened for that purpose. The directors who receive the greatest number of votes cast will be elected.

*General Election Requirements*

The following requirements apply to elections of directors and were not amended. Each share of common stock has one vote,<sup>8</sup> subject to the voting limitation in NASDAQ OMX’s certificate of incorporation that generally prohibits a holder from voting in excess of 5% of the total voting power of NASDAQ OMX.<sup>9</sup> In addition, each note holder is entitled to the number of votes equal to the number of shares of common stock into which such note could be converted on the record date, subject to the 5% voting limitation contained in the certificate of incorporation.

At a meeting to elect directors, the presence of holders of a majority (greater than 50%) of NASDAQ OMX voting securities constitutes a quorum. Presence may be in-person or by proxy. Any securities not voted will not impact the vote.

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<sup>8</sup> NASDAQ OMX Certificate of Incorporation at Article IV, C.1(a).

<sup>9</sup> NASDAQ OMX Certificate of Incorporation at Article IV, C.1(b)2.

**2. Statutory Basis**

SCCP believes that the proposed rule change is consistent with Section 17A of the Act,<sup>10</sup> as amended, and with Section 17A(b)(3)(A) of the Act,<sup>11</sup> in particular, because it is designed to ensure that SCCP is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and to enforce compliance by its participants with the rules of the clearing agency.

**(B) Self-Regulatory Organization's Statement on Burden on Competition**

SCCP does not believe that the proposed rule change will have any impact or impose any burden on competition.

**(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Written comments relating to the proposed rule change were not and are not intended to be solicited or received. SCCP will notify the Commission of any written comments received by SCCP.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and Rule 19b-4(f)(6)<sup>13</sup> thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) does not

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<sup>10</sup> 15 U.S.C. 78q-1.

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(A).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-SCCP-2010-01 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Elizabeth M. Murphy, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-SCCP-2010-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications

relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings also will be available for inspection and copying at the principal office of SCCP and on SCCP's Web site at

<http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/pdf/sccp-filings/2010/SR-SCCP-2010-01.pdf>.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-SCCP-2010-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).