

August 18, 2010

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Facilitating Shareholder Director Nominations (File S7-10-09)

Dear Ms. Murphy:

The NASDAQ OMX Group, Inc. (“NASDAQ OMX”) appreciates the opportunity to comment on the Securities and Exchange Commission’s proposed rulemaking related to shareholders’ rights to nominate and elect directors to company boards of directors. This is an issue of vital importance to public companies and their shareholders and NASDAQ OMX supports the shareholders’ ability to participate fully in the nomination and election process. However, we are concerned that the thresholds for proxy access set forth in proposed Rule 14a-11 would provide a disproportionate voice to certain small and short-term holders.

As proposed, Rule 14a-11 would allow a shareholder, or a group of shareholders, the ability to include director nominees in the company’s proxy materials if the shareholders own at least 1% (in the case of a large accelerated filer), 3% (in the case of an accelerated filer), or 5% (in the case of a non-accelerated filer) of the company’s securities that are entitled to vote on the election of directors for at least one year. In describing these thresholds, the Commission indicated that it attempted to limit reliance on the proposed rule to “holders of a significant, long-term interest in a company.”

NASDAQ OMX believes that the proposed ownership levels for large accelerated filers and accelerated filers are too low and would allow, and even encourage, special interest groups to aggregate their shares to pursue their own narrow agendas, rather than the creation of long-term shareholder value. Simply put a 1%, or even a 3%, ownership interest is not a significant economic interest for a group of shareholders. Similarly, we are concerned that the proposed holding period of one year is too short and could lead to a culture of short-term focus on the part of companies and their boards. Thus, we do not believe the proposed thresholds will empower significant, long-term holders, but rather special interest groups and short-term holders, resulting in an increase in the number of costly, distracting proxy contests by holders whose interests are not aligned with most shareholders.

For these reasons, we urge the Commission to modify the proposed rules to require, in all cases, a 5% ownership threshold and a two year holding period. Further, the Commission should modify the proposed rules to assure that only holders of a true economic stake in the company, aligned with that of other long-term shareholders, should be permitted access to the company's proxy materials. As proposed, a shareholder who has borrowed shares, and thus would profit from a decline in the share price, would have access to the company's proxy materials to nominate the directors of their choice. The Commission should, instead, allow access to the company's proxy only for "long" holders of the company's securities.

Finally, we note that Section 971 of the Dodd-Frank Wall Street Reform and Consumer Protection Act permits the Commission to make exemptions to the proxy access rules, and, in determining whether to make an exemption, requires the Commission to consider whether the rules disproportionately burden small issuers. In that regard, we encourage the Commission to consider an exemption to these rules for smaller companies, where it would be easier for activist shareholders to obtain the necessary ownership stake and who are least well equipped to devote time and limited resources to proxy contests against holders whose interests are not aligned with their other shareholders.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bob Greifeld". The signature is written in a cursive style with a large initial "B".

cc: The Honorable Mary Schapiro, Chairman
The Honorable Luis Aguilar, Commissioner
The Honorable Kathleen Casey, Commissioner
The Honorable Troy Paredes, Commissioner
The Honorable Elisse Walter, Commissioner