



THE NASDAQ OMX GROUP

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January 5, 2012

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

Re: Covered Securities Pursuant to Section 18 of the Securities Act of 1933  
File No. S7-31-11

Dear Ms. Murphy:

The NASDAQ Stock Market LLC ("NASDAQ") appreciates this opportunity to comment on the above captioned proposed rule, which would designate certain securities listed on BATS Exchange, Inc. ("BATS") as covered securities for purposes of Section 18 of the Securities Act of 1933.<sup>1</sup>

Section 18 exempts covered securities from state registration requirements and defines a "covered security" as any security listed on the NASDAQ Global Market, NYSE, NYSE Amex (collectively, the "Named Markets") or any national securities exchange determined by the Commission to have substantially similar listing standards to those of the Named Markets.<sup>2</sup> The Commission has interpreted the "substantially similar" standard to require listing standards at least as comprehensive as those of the Named Markets.<sup>3</sup>

In the Proposing Release, the Commission preliminarily concluded that BATS' qualitative listing standards are substantially similar to those of the NASDAQ Global Market, and that BATS' quantitative listing standards for primary equity securities are substantially similar to those of the NASDAQ Global Market, in the case of Tier I securities, and NYSE Amex, in the case of Tier II securities.<sup>4</sup> However, following publication of the Proposing Release, both NASDAQ and NYSE Amex have adopted additional requirements applicable to the listing of companies that become

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<sup>1</sup> Securities Act Release No. 9251 (August 8, 2011), 76 FR 49698 (August 11, 2011) ("Proposing Release").

<sup>2</sup> 15 U.S.C. 77r. See also Proposing Release at footnotes 1-5 and accompanying text, 76 FR 49698.

<sup>3</sup> Id. at 49699 (text at footnote 21), citing Securities Act Release No. 7494 (January 13, 1998), 63 FR 3032 (January 21, 1998).

<sup>4</sup> Id. at 49699-700.

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an Exchange Act reporting company by combining with a public shell (a "Reverse Merger").<sup>5</sup> In approving NASDAQ's Reverse Merger rule, the Commission noted "it is important to assure that the Exchanges develop consistent and effective enhancements to their listing standards, to best address the serious concerns that have arisen with respect to the listing of Reverse Merger companies."<sup>6</sup>

BATS has not adopted requirements comparable to the NASDAQ and NYSE Amex Reverse Merger rules and thus has no consistent provision to address the serious concerns that have arisen with respect to the listing of Reverse Merger companies. Until BATS does so, NASDAQ believes that the listing requirements of BATS are not as comprehensive as, or substantially similar to, those of the Named Markets and that the Commission should not approve the proposed rule.

If you have any questions concerning this submission, please feel free to contact me at (301) 978-8075.

Very truly yours,



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<sup>5</sup> Securities Exchange Act Release No. 65708 (November 8, 2011), 76 FR 70799 (November 15, 2011) (approving SR-NASDAQ-2011-073); Securities Exchange Act Release No. 65710 (November 8, 2011), 76 FR 70790 (November 15, 2011) (approving SR-NYSEAmex-2011-55).

<sup>6</sup> Securities Exchange Act Release No. 65708, supra at 70803.