

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57761; File No. SR-NASDAQ-2008-035)

May 1, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend the By-Laws of The NASDAQ OMX Group, Inc. in Connection with Acquisitions of Boston Stock Exchange, Incorporated and Philadelphia Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 21, 2008, The NASDAQ Stock Market LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes changes to the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. (“NASDAQ OMX”). The proposed changes will be implemented upon approval by the Commission. The text of the proposed rule change is available at the Exchange’s Web site at <http://nasdaq.complinet.com>, the Exchange’s principal office, and the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On October 2, 2007, The Nasdaq Stock Market, Inc. announced that it had entered into an agreement with Boston Stock Exchange, Incorporated ("BSE") pursuant to which NASDAQ OMX will acquire all of the outstanding membership interests in BSE, and BSE will be merged with and into Yellow Merger Corporation, a Delaware corporation and wholly owned subsidiary of NASDAQ OMX, with BSE surviving the merger (the "BSE Merger"). As a result of the BSE Merger, BSE will become a Delaware stock corporation, with 100% of its outstanding stock owned by NASDAQ OMX. BSE members will receive cash as consideration for their ownership interests, and therefore will not retain ownership interests in BSE or its affiliates. On November 7, 2007, The Nasdaq Stock Market, Inc. announced that it had entered into an agreement with Philadelphia Stock Exchange, Inc. ("PHLX") pursuant to which NASDAQ OMX will acquire all of the outstanding capital stock of PHLX, and PHLX will be merged with and into Pinnacle Merger Corp., a Delaware corporation and wholly owned subsidiary of NASDAQ OMX, with PHLX surviving the merger (the "PHLX Merger", and together with the BSE Merger, the "Mergers"). NASDAQ OMX will operate BSE and PHLX as wholly owned subsidiaries, with rules, membership rosters, and listings that are separate and distinct from the rules, membership rosters, and listings of the Exchange. By virtue of the BSE Merger and the PHLX Merger, NASDAQ OMX will also acquire control of Boston Stock Exchange Clearing Corporation ("BSECC") and Stock Clearing Corporation of Philadelphia ("SCCP"), each a registered clearing agency.

To reflect its ownership of these four self-regulatory organizations (“SROs”), NASDAQ OMX is amending its by-laws (“By-Laws”) to make certain governance provisions that are currently applicable to the Exchange also applicable to the newly acquired SROs. The provisions collectively regulate the actions of NASDAQ OMX and its directors, officers and employees in light of its ownership of the SROs.

First, to assist in the clear drafting of the changes, NASDAQ OMX is adopting a definition of “Self-Regulatory Subsidiary,” which means each of: (i) the Exchange; (ii) upon the closing of their acquisition by NASDAQ OMX, BSE and BSECC; and (iii) upon the closing of their acquisition by NASDAQ OMX, PHLX and SCPP. Thus, although NASDAQ OMX will adopt the amendment immediately upon Commission approval, provisions of its By-Laws that reference the definition of Self-Regulatory Subsidiary will expand to include the new subsidiaries as each Merger closes. Separately, BSE, BSECC, PHLX and SCPP are filing proposed rule changes to amend their respective charters and by-laws to reflect the Mergers. The BSE Merger will not close until this filing and the filings by BSE and BSECC have been approved by the Commission, and the PHLX Merger will not close until this filing and the filings by PHLX and SCPP have been approved by the Commission. NASDAQ OMX is also amending the definitions of “Industry Director,” “Industry committee member,” “Non-Industry Director,” and “Non-Industry committee member” to include appropriate references to the Self-Regulatory Subsidiaries.

Second, NASDAQ OMX is amending Section 11.3 of its By-Laws. This section currently provides for review by the Exchange’s board of directors of any proposed adoption, alteration, amendment, change or repeal (an “amendment”) of any By-Law, and when required by the Act, the filing of such amendments with the Commission prior to implementation. NASDAQ OMX

proposes amending this provision to state that any amendment of any By-Law shall be submitted to the board of directors of each Self-Regulatory Subsidiary, and if any such proposed amendment must, under Section 19 of the Act and the rules promulgated thereunder, be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. NASDAQ OMX also proposes adopting new Section 12.6 of its By-Laws to state that any amendment of any provision of the NASDAQ OMX Restated Certificate of Incorporation (“Certificate”) shall be submitted to the board of directors of each Self-Regulatory Subsidiary, and if any such proposed amendment must, under Section 19 of the Act and the rules promulgated thereunder, be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be filed with the Secretary of State of the State of Delaware until filed with, or filed with and approved by, the Commission, as the case may be.

Third, NASDAQ OMX proposes amending each of the existing provisions of Article XII of its By-Laws to make them applicable to each of the Self-Regulatory Subsidiaries. Thus, Section 12.1(a) will provide that for so long as NASDAQ OMX shall control any Self-Regulatory Subsidiary, the board of directors, officers, employees and agents of NASDAQ OMX shall give due regard to the preservation of the independence of the self-regulatory function of each such Self-Regulatory Subsidiary and to its obligations to investors and the general public and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors of any Self-Regulatory Subsidiary relating to its regulatory functions

(including disciplinary matters) or the market structures or clearing systems³ which it regulates, or that would interfere with the ability of any Self-Regulatory Subsidiary to carry out its responsibilities under the Act.

Section 12.1(b) will provide that all books and records of each Self-Regulatory Subsidiary reflecting confidential information pertaining to the self-regulatory function of a Self-Regulatory Subsidiary (including but not limited to disciplinary matters, trading data, trading practices and audit information) which comes into the possession of NASDAQ OMX, and the information contained in those books and records, shall be retained in confidence by NASDAQ OMX and NASDAQ OMX's directors, officers, employees and agents, and shall not be used for any non-regulatory purposes. The section will continue to provide that the limit on disclosure is not to be construed to limit the Commission's access to books and records, and that NASDAQ OMX's books and records relating to each Self-Regulatory Subsidiary shall be maintained in the United States.

Section 12.1(c) will provide that to the extent they are related to the activities of a Self-Regulatory Subsidiary, NASDAQ OMX's books, records, premises, officers, directors, agents, and employees shall be deemed to be the books, records, premises, officers, directors, agents, and employees of that Self-Regulatory Subsidiary for the purposes of, and subject to oversight pursuant to, the Act.

Section 12.2 will provide that NASDAQ OMX's officers, directors, employees, and agents will be deemed to agree to cooperate with the Commission and each Self-Regulatory Subsidiary in respect of the Commission's oversight responsibilities regarding the Self-Regulatory Subsidiaries and their self-regulatory functions and responsibilities.

³ The reference to "clearing systems" is new language that reflects the acquisition of BSECC and SCCP.

Section 12.3 will provide that NASDAQ OMX and its officers, directors, employees and agents will be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the Commission, and each Self-Regulatory Subsidiary for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of any Self-Regulatory Subsidiary, and will be deemed to waive any defenses based on lack of personal jurisdiction, subject matter jurisdiction, or inconvenient venue. NASDAQ OMX and its officers, directors, employees and agents also agree to maintain an agent in the United States for the service of process of a claim arising out of, or relating to, the activities of each Self-Regulatory Subsidiary.

Section 12.4 will provide that NASDAQ OMX will take such action as is necessary to insure that its officers, directors, employees, and agents consent in writing to the applicability of Sections 12.1, 12.2, and 12.3 with respect to activities related to each Self-Regulatory Subsidiary.

Section 12.5 will provide that for long as NASDAQ OMX owns any Self-Regulatory Subsidiary, a resolution of the Board to approve an exemption for any person under Article Fourth, Section C.6(b) of the Certificate shall not be permitted to become effective until the resolution has been filed with and approved by the Commission under Section 19 of the Act.⁴ The referenced provision of the Certificate provides that no NASDAQ OMX stockholder holding voting securities in excess of 5% of the total outstanding voting securities may cast the excess votes, but that the NASDAQ OMX Board may approve an exemption from this restriction in certain very limited circumstances. Section 12.5 will also be amended to include provisions that describe limits on the Board's authority to approve an exemption. Specifically, amended Section

⁴ In addition to adding the reference to Self-Regulatory Subsidiaries, the amendment to this provision corrects typographical errors.

12.5 will provide that the Board may not approve an exemption under Article Fourth, Section C.6(b) of the Certificate: (i) for a registered broker or dealer or an “Affiliate” thereof (as defined in the Certificate) (provided that, for these purposes, an Affiliate shall not be deemed to include an entity that either owns ten percent or less of the equity of a broker or dealer, or the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity); or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Act. The Board may approve such an exemption only if the Board determines that granting such exemption would (A) not reasonably be expected to diminish the quality of, or public confidence in, NASDAQ OMX or the Self-Regulatory Subsidiaries or the other operations of the NASDAQ OMX and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, (B) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system, and (C) would promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), would assure the safeguarding of securities and funds in the custody or control of the Self-Regulatory Subsidiaries that are clearing agencies or securities and funds for which they are responsible, would foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

Finally, NASDAQ OMX proposes adopting new Section 12.7 to its By-Laws, which reflects language currently in the Certificate and makes it more generally applicable to all Self-Regulatory Subsidiaries. Specifically, the provision provides that in light of the unique nature of NASDAQ OMX and its subsidiaries, including the status of the Self-Regulatory Subsidiaries as SROs, the NASDAQ OMX Board of Directors, when evaluating any issue (including, but not limited to certain enumerated change of control transactions) will take into account all factors that the Board of Directors deems relevant, including, but not limited (i) the potential impact thereof on the integrity, continuity and stability of NASDAQ OMX, the Self-Regulatory Subsidiaries, and the other operations of the NASDAQ OMX and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, (ii) whether the considered action would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system, and (iii) whether the considered action would promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), would assure the safeguarding of securities and funds in the custody or control of the Self-Regulatory Subsidiaries that are clearing agencies or securities and funds for which they are responsible, would foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Sections 6(b)(1) and (b)(5) of the Act,⁶ in particular, in that the proposal enables the Exchange and the other Self-Regulatory Subsidiaries to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by its members and persons associated with its members with provisions of the Act, the rules and regulations thereunder, and the Exchange's rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(1) and (5).

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-NASDAQ-2008-035 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2008-035. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-NASDAQ-2008-035 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.⁷

Florence E. Harmon
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).