

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63925; File No. SR-NASDAQ-2011-025)

February 17, 2011

Self-Regulatory Organizations; NASDAQ Stock Market, LLC; Notice of Filing of Proposed Rule Change to Amend The NASDAQ OMX Group, Inc. By-Laws

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4² thereunder, notice is hereby given that on February 8, 2011, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the 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 Substance of the Proposed Rule Change

The NASDAQ Stock Market LLC proposes to amend the By-Laws of its parent corporation, The NASDAQ OMX Group, Inc. (“NASDAQ OMX”).

The text of the proposed rule change is available on the Exchange’s website at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, on the Commission’s website at <http://www.sec.gov>, and at 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. The text of these statements may be examined at the places specified in 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

NASDAQ OMX is proposing to make certain clarifying amendments to its By-Laws. Specifically, NASDAQ OMX is proposing to amend: (i) the name of the Nominating Committee to the "Nominating & Governance Committee"; (ii) a NASDAQ OMX PHLX, Inc. reference to reflect a recent conversion to a limited liability company; and (iii) By-Law Article IV, Section 4.4 to clarify that broker nonvotes are not counted as a vote cast either "for" or "against" a Director.

Currently, NASDAQ OMX By-Laws provide for a Nominating Committee which Committee is appointed pursuant to the By-Laws. The Exchange is proposing to name this Committee the "Nominating & Governance Committee." The Exchange proposes to amend the By-Laws to change all references to "Nominating Committee" to state "Nominating & Governance Committee." The Exchange is proposing to rename the Nominating Committee in order that all of its current functions are reflected in the title of the committee. The current functions of the Nominating Committee encompass certain functions that are deemed governance functions.

By way of example, and in addition to the responsibilities listed in By-Law Article IV, Section 4.13(h), the Nominating Committee consults with the Board and the management of the Company to determine the characteristics, skills and experience desired for the Board as a whole and for its individual members, with the objective of having a Board that reflects diverse backgrounds. The Non-Executive Chairman of the Board and the Nominating Committee is also responsible for overseeing the annual director evaluation. As part of the annual process of determining director representation on the corporate committees, the Non-Executive Chairman

solicits input from each committee chair and Board members on the effectiveness of the committee, the committee chair and the individual Board member. The Nominating Committee receives the results and reviews the overall effectiveness of the Board.

This proposed amendment to rename the Nominating Committee does not change the function of this committee. This proposal is merely to clarify the current function of this committee and its governance role with respect to the Board selection process.

Second, NASDAQ OMX PHLX, Inc. recently filed a rule change to convert NASDAQ OMX PHLX from a Delaware corporation to a Delaware limited liability company agreement.³ At this time NASDAQ OMX proposes to amend the definitions at Article 1, specifically section (o) to change the reference to “NASDAQ OMX PHLX, Inc.” to “NASDAQ OMX PHLX LLC.” This amendment is not substantive and merely seeks to correct the name of a NASDAQ OMX subsidiary.

Finally, NASDAQ OMX proposes to add the words “and broker nonvotes” to By-Law Article IV, Section 4-4 [sic] to clarify that broker nonvotes are not counted as a vote cast either "for" or "against" that Director's election.

In 2009, New York Stock Exchange LLC (“NYSE”) Rule 452 was amended to eliminate broker discretionary voting for the election of Directors with one exception.⁴ Previously, NYSE Rule 452 permitted brokers to vote without voting instructions from the beneficial owner⁵ on

³ See Securities Exchange Act Release No. 62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (SR-Phlx-2010-104).

⁴ See Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR-NYSE-2006-92) (a rule change to eliminate broker discretionary voting for all elections of directors at shareholder meetings held on or after January 1, 2010, whether contested or not, except for companies registered under the 1940 Act).

⁵ A shareholder of a public company may hold shares either directly, as the record holder, or indirectly, as the beneficial holder, with the shares held in the name of the beneficial shareholder's broker-dealer, bank nominee, or custodian ("securities intermediary"),

uncontested elections of directors. The rule change requires instructions from the beneficial owner to give a proxy to vote for a director with an exception for companies registered under the Investment Company Act of 1940.⁶ Therefore, when brokers do not have discretion to vote uninstructed shares on a particular proposal, the stockholder's failure to instruct the broker will result in a "broker nonvote."

Under Delaware case law, broker non-votes are not considered as votes cast for or against a proposal or director nominee.⁷ In its election of directors, NASDAQ OMX is proposing to clarify its current practice of not counting a broker nonvote as a vote cast either for or against a director's election. In 2010, NASDAQ OMX amended its By-Laws to state that in an uncontested election, a majority voting standard would apply to the election of its directors.⁸ This requires directors to be elected by the holders of a majority of the votes cast at any meeting for the election of directors at which a quorum is present in an uncontested election. A plurality standard still remains in a contested election. The practice of not counting a broker nonvote as a vote cast either for or against a director's election remains unchanged by the amendment to a majority vote standard. The Exchange is proposing to retain its current practice and codify such practice in its By-Laws at Article IV, Section 4.4. This Section 4.4 currently specifies that abstentions⁹ are similarly not counted as a vote cast either for or against the director's election.¹⁰

which is the record holder. The latter generally is referred to as holding securities in "street name." Securities intermediaries, on behalf of beneficial owners, hold a substantial majority of exchange securities.

⁶ See NYSE Rule 452.10(3) [sic]. The Commission notes that the correct reference is NYSE Rule 452.11(19).

⁷ See *Berlin v. Emerald Partners*, Del Supr. 552 A.2d 482 (1988).

⁸ See Securities Exchange Act Release No. 61876 (April 8, 2010), 75 FR 19436 (April 8, 2010) [sic] (SR-NASDAQ-2010-025).

⁹ An abstention is the voluntary act of not voting by a stockholder who is present at a meeting and entitled to vote.

This proposal is non-substantive and merely clarifies the existing practice of counting broker non votes [sic]. The Exchange believes that this additional language to Article IV, Section 4.4 will assist shareholders in understanding the manor [sic] in which directors are elected pursuant to NASDAQ OMX's By-Laws.

2. Statutory Basis

The NASDAQ Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹¹ in general, and with Sections 6(b)(5) of the Act,¹² in particular, in that the proposal enables the NASDAQ Exchange 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 members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and self-regulatory organization 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.

The Exchange believes that the proposed amendments are clarifying amendments or are non-substantive. The proposals would provide the proper Committee and entity names, with respect to the proposals to change the Nominating Committee and NASDAQ OMX PHLX names, and in the case of the broker nonvote proposal, would provide additional information to

¹⁰ In either a majority or plurality election, broker non-votes and abstentions are considered for purposes of establishing a quorum. A quorum is a majority of the shares entitled to vote, present in person or by proxy.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(2), [sic] (5).

shareholders. The Exchange believes that these proposed amendments protect investors and the public interest, including NASDAQ OMX shareholders, in that the proposed changes would serve to clarify NASDAQ OMX's By-Laws and processes for its annual election.

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 not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

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

Within 45 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 such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall: (a) by order approve or disapprove 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-2011-025 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NASDAQ-2011-025. 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 website (<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 website 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 a.m. and 3:00 p.m. Copies of such 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 No. SR-NASDAQ-2011-025 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Cathy H. Ahn
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).