

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64347; File No. SR-NASDAQ-2011-054)

April 27, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change relating to Amendments to the NASDAQ OMX Group, Inc.'s By-Laws

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 14, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, which Items have been prepared 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 Substance of the Proposed Rule Change

The NASDAQ Stock Market LLC proposes to file a rule change related to 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 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

NASDAQ OMX recently made certain clarifying amendments to its By-Laws.³

Specifically, the recently approved NASDAQ OMX rule change: (i) amended the name of the Nominating Committee to the Nominating & Governance Committee; (ii) amended the Phlx reference to reflect a recent conversion to a limited liability company; and (iii) clarified By-Law Article IV, Section 4.4 that broker nonvotes are not counted as a vote cast either “for” or “against” a Director in an uncontested election.⁴

NASDAQ OMX By-Laws previously provided for a Nominating Committee which is appointed pursuant to the By-Laws. In addition to the responsibilities listed in By-Law Article IV, Section 4.13(h), the Nominating Committee also conducts certain governance functions such as consulting with the Board and the management to determine the characteristics, skills and experience desired for the Board as a whole and for its individual members, overseeing the annual director evaluation, and reviewing the overall effectiveness of the Board. Accordingly, NASDAQ OMX renamed and changed all references to the “Nominating Committee” in the By-Laws, to the “Nominating & Governance Committee” so that the title of the committee accurately reflects all of its current functions, including those that are deemed governance functions. The proposal to rename the Nominating Committee did not change the function of the

³ See Securities Exchange Act Release No. 64285 (April 8, 2011) (SR-NASDAQ-2011-025) (“Approval Order”). SR-NASDAQ-2011-025 was filed by NASDAQ Stock Market LLC on behalf of NASDAQ OMX to amend the By-Laws of its parent corporation.

⁴ Id.

committee, but was intended to clarify the current functions and its governance role with respect to the Board selection process.

Additionally, NASDAQ OMX amended Article 1, Section (o) of NASDAQ OMX's By-Laws to change the reference to "NASDAQ OMX PHLX, Inc." to "NASDAQ OMX PHLX LLC" to reflect a recently filed rule change by NASDAQ OMX PHLX from a Delaware corporation to a Delaware limited liability company.⁵

Finally, NASDAQ OMX added the words "and broker nonvotes" to NASDAQ OMX's By-Law Article IV, Section 4.4 to make clear that broker nonvotes will not be counted as a vote cast either "for" or "against" that director's election. In its filing to amend NASDAQ OMX's By-Laws, NASDAQ noted that NASDAQ OMX's past practice has been to not count a broker nonvote as a vote cast either for or against a director's election.⁶ Accordingly, this change clarifies this practice by codifying it into the By-Laws, especially in light of NASDAQ OMX's recent change to a majority vote standard in the uncontested election of directors.

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, requiring 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.⁷ A plurality standard would still remain in a contested election. While in its filing to amend NASDAQ OMX's By-Laws, NASDAQ noted that it has always been NASDAQ OMX's practice to not count broker nonvotes "for" or "against" in director elections, as the Commission noted in its Approval Order the impact of the

⁵ See Securities Exchange Act Release No. 62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (SR-Phlx-2010-104).

⁶ See Securities Exchange Act Release No. 63925 (February 17, 2011), 76 FR 10418 (February 24, 2011) (SR-NASDAQ-2011-025).

⁷ See Securities Exchange Act Release No. 63925 [sic] (April 8, 2010), 75 FR 19436 (April 14, 2010) (SR-NASDAQ-2010-025).

broker nonvote and how such votes are counted will take on added significance under NASDAQ OMX's newly adopted majority vote standard for director elections. Although in its filing NASDAQ Stock Market LLC stated that under Delaware case law,⁸ broker nonvotes are not considered as votes cast for or against a proposal or director nominee, the Exchange proposes the change for clarity and transparency purposes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and with Sections 6(b)(1) and 6(b)(5) of the Act,¹⁰ in particular, in that the proposal enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes 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 changing the name of the Nominating Committee to the Nominating and Governance Committee and amending references to an exchange name to reflect a corporate change to a limited liability company are both clarifying in nature. The changes will ensure that the committee's title accurately reflects its functions and will ensure that the By-Laws accurately and properly reflect an exchange entity name. As discussed above, the

⁸ See Berlin v. Emerald Partners, 552 A.2d 482 494 (Del Supr. 1988).

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(1),(5).

amendment that broker nonvotes will not be counted as a vote either “for” or “against” in director elections will codify NASDAQ OMX’s past practice, providing clarity and transparency. Accordingly the Exchange believes that the amendments are consistent with investor protection 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 impose 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) (iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as

19b4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to ensure that NASDAQ OMX is able to implement the rule changes.

The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest. The Commission notes in waiving the 30-day operative delay that the Commission published for comment in the Federal Register the initial filing to amend NASDAQ OMX's By-Laws, did not receive any comments,¹⁵ and subsequently approved the proposed rule change.¹⁶ Further, the Commission notes that the Exchange's proposal is identical to the proposed rule change previously approved by the Commission.¹⁷ Accordingly, the Commission finds that it is consistent with investor protection and the public interest to waive the 30-day operative delay in accordance with 19b-4(f)(6)(iii) so that NASDAQ OMX's By-Laws can be effective without undue delay, and therefore designates the proposal operative upon filing.¹⁸

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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.

designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ See supra note 6.

¹⁶ See supra note 3.

¹⁷ Id.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2011-054 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-2011-054. 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-2011-054 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.¹⁹

Cathy H. Ahn
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).