

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63830; File Nos. SR-SCCP-2011-001; BSECC-2011-001)

February 3, 2011

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Boston Stock Exchange Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Stockholders' Agreement between The NASDAQ OMX Group, Inc. and Investor AB

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 19, 2011, Stock Clearing Corporation of Philadelphia, Inc. ("SCCP") and Boston Stock Exchange Clearing Corporation ("BSECC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I and II below, which Items have been prepared by SCCP and BSECC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of the Substance of the Proposed Rule Changes

SCCP and BSECC are filing the proposed rule changes regarding a stockholders' agreement between SCCP's and BSECC's parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX"), and Investor AB, a corporation organized under the laws of Sweden ("Investor Stockholders' Agreement"). SCCP and BSECC will implement these changes upon filing of these proposed rule changes with the Commission. There is no proposed rule text.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, SCCP and BSECC included statements concerning the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. SCCP and BSECC have prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On December 16, 2010, NASDAQ OMX entered into an agreement to repurchase approximately 22.8 million shares of NASDAQ OMX common stock, \$0.01 par value per share, for \$21.82 per share (approximately \$497 million in aggregate) from Borse Dubai Limited ("Borse Dubai") ("Stock Repurchase"). Also on December 16, 2010, Nomura International plc ("Nomura") agreed to purchase 8 million shares of NASDAQ OMX common stock from Borse Dubai ("Nomura Purchase"). The Stock Repurchase and Nomura Purchase closed on December 21, 2010.

On December 16, 2010, NASDAQ OMX and Investor AB also entered into the Investor Stockholders' Agreement, relating to 8 million shares of NASDAQ OMX common stock that Investor AB may purchase pursuant to a forward share purchase agreement with Nomura. The Investor Stockholders' Agreement will generally become effective after all applicable regulatory reviews or consents have been completed or obtained and the purchase by Investor AB of 8 million shares of NASDAQ OMX common stock from Nomura has been completed ("Transaction"). After the completion of the Transaction, it is anticipated that Investor AB would be the beneficial owner of approximately 9.7% of the outstanding capital stock of NASDAQ OMX.

The NASDAQ OMX shares to be acquired by Investor AB from Nomura are subject to Article Fourth of NASDAQ OMX's Restated Certificate of Incorporation,<sup>3</sup> which provides that no person who is the beneficial owner of voting securities of NASDAQ OMX in excess of 5% of the then-outstanding shares of stock generally entitled to vote ("Excess Securities") may vote such Excess Securities.

Prior to the closing of the Stock Repurchase and the Nomura Purchase, under the existing Stockholders' Agreement between NASDAQ OMX and Borse Dubai ("Borse Dubai Stockholders' Agreement") Borse Dubai had the right to recommend two persons reasonably acceptable to the NASDAQ OMX Nominating Committee (or any successor committee serving such function) ("Nominating Committee") to serve as directors of NASDAQ OMX ("Borse Dubai Designees"). In addition, under the Borse Dubai Stockholders' Agreement, NASDAQ OMX had agreed to use reasonable best efforts to cause appointment of one of the Borse Dubai Designees to the Audit, Executive, Finance, and Management Compensation committees of the Board and to cause the appointment of another person designated by Borse Dubai to serve on the Nominating Committee but in each case only if such designees met the requirements for service on such committee. By operation of the Borse Dubai Stockholders' Agreement, the sale of approximately 30.8 million shares of NASDAQ OMX common stock by Borse Dubai resulted in a reduction in the Borse Dubai Designees from two to one and in the forfeit of the right to designate a member to the specified Board committees.<sup>4</sup> As a result, as of December 21, 2010, Borse

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<sup>3</sup> As amended most recently on May 11, 2009. Securities Exchange Act Release No. 59858 (May 4, 2009), 74 FR 22191 (May 12, 2009) (SR-NASDAQ-2009-039).

<sup>4</sup> The provisions relating to the Borse Dubai Designees remained in effect as long as Borse Dubai maintained at least 50% of 42,901,148 shares of NASDAQ OMX common stock

Dubai is entitled to nominate one Borse Dubai Designee to serve as a director of NASDAQ OMX and has no rights with regard to Board committee membership.

Under the Investor Stockholders' Agreement, among other things, Investor AB will have the right to recommend one person reasonably acceptable to the Nominating Committee to serve as a director of NASDAQ OMX ("Investor Board Designee"). NASDAQ OMX will: (i) include the Investor Board Designee on each slate of nominees proposed by management of NASDAQ OMX; (ii) recommend the election of the Investor Board Designee to the stockholders of NASDAQ OMX; and (iii) otherwise use reasonable best efforts to cause the Investor Board Designee to be elected to the Board. NASDAQ OMX also has agreed to use reasonable best efforts to: (i) cause the appointment of the Investor Board Designee to a committee of the Board reasonably agreed by Investor AB and NASDAQ OMX and (ii) cause the appointment of one person designated by Investor AB who shall not be an Investor Board Designee and who shall be reasonably acceptable to the Nominating Committee to a committee of the Board reasonably agreed to by Investor AB and NASDAQ OMX ("Additional Committee Designee") in each of the foregoing subject to applicable law, regulation, stock exchange listing standard, or committee composition standards. The provisions relating to the Investor Board Designee and committee membership remain in effect as long as Investor AB beneficially owns at least 5% of the outstanding capital stock of NASDAQ OMX.

The Investor Stockholders' Agreement relates solely to the Board of NASDAQ OMX and not to the boards of any of its subsidiaries including the Board of Directors of SCCP and BSECC. Nevertheless, the provisions of the Investor Stockholders' Agreement described above

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that had been acquired by Borse Dubai Limited. As long as Borse Dubai maintains at least 25% of these shares, it will be entitled to propose one director for nomination, but will have no rights with regard to committees.

could be considered a proposed rule change of a subsidiary that is a self-regulatory organization (“SRO”) if the provisions were viewed as affecting the influence that a significant stockholder of the parent corporation might be seen as exercising over the business and affairs of the SRO in its capacity as a wholly owned subsidiary of the parent corporation. Accordingly, senior management of The NASDAQ Stock Market LLC (“Exchange”), NASDAQ OMX PHLX LLC (“PHLX”) and NASDAQ OMX BX, Inc. (“BX”), through delegated authority of their governing boards, have determined that the proposed change should be filed with the Commission, and the governing boards of SCCP and BSECC have each reviewed the proposed change and determined that it should be filed with the Commission.<sup>5</sup>

In general, directors of NASDAQ OMX, including the Investor Board Designee, must be nominated by a Nominating Committee,<sup>6</sup> the composition of which is subject to the requirements of the NASDAQ OMX By-Laws and Exchange Rule 5605(e),<sup>7</sup> and must then be elected by the

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<sup>5</sup> The Exchange, PHLX, BX, BSECC and SCCP are each submitting this filing pursuant to Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>6</sup> An exception to the requirement of nomination by the Nominating Committee exists for nominations by a stockholder who is conducting a proxy contest and who complies with the strict requirements of the NASDAQ OMX By-Laws governing direct stockholder nomination. The Investor Board Designee would not be nominated by Investor AB under these provisions.

<sup>7</sup> The NASDAQ OMX By-Laws provide that the Nominating Committee shall be appointed annually by the Board of Directors and shall consist of four or five directors, each of whom shall be an independent director within the meaning of the rules of the Exchange. The number of Non-Industry Directors (i.e., directors without material ties to the securities industry) on the Nominating Committee shall equal or exceed the number of Industry Directors, and at least two members of the committee shall be Public Directors (i.e., directors who have no material business relationship with a broker or dealer, NASDAQ OMX or its affiliates, or FINRA). Exchange Rule 5605(e), which governs NASDAQ OMX as a company whose securities are listed on the Exchange, requires Nominating Committee members to satisfy the definition of “independence” in Exchange Rule 5605 and IM-5605 and to otherwise be deemed independent by the Board of Directors.

stockholders of NASDAQ OMX. The NASDAQ OMX Board is currently composed of 15 members and is expected to increase to 16 members upon the closing of the Transaction. Thus, the Investor Board Designee would represent approximately 6% of the NASDAQ OMX Board.

Board committees are subject to compositional requirements established by the NASDAQ OMX By-Laws; moreover, the Audit, Management Compensation, and Nominating Committees are subject to independence requirements established by Exchange Rule 5605 and in the case of the Audit Committee by SEC Section 10A and Rule 10A-3 of the Act.<sup>8</sup> Thus, the affiliations of the Investor Board Designee and Additional Committee Designee and the judgment of the NASDAQ OMX Board of Directors with regard to his or her independence will be taken into account in considering eligibility for service on these committees.

## 2. Statutory Basis

SCCP and BSECC believe that the proposed rule change is consistent with the provisions of Section 17A of the Act,<sup>9</sup> in general, and with Section 17A(b)(3)(A) of the Act,<sup>10</sup> in particular, in that they are designed to ensure that SCCP and BSECC are so organized and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions. SCCP and BSECC believe that the proposed rule changes will result in no substantive change to the corporate ownership structure of its parent NASDAQ OMX.

### B. Self-Regulatory Organizations' Statement on Burden on Competition

SCCP and BSECC do 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.

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<sup>8</sup> 17 CFR 240.10A-3.

<sup>9</sup> 15 U.S.C. 78q-1.

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(A).

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

SCCP and BSECC have not solicited or received written comments relating to the proposed rule change. SCCP and BSECC will notify the Commission of any written comments it receives.

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

Because the foregoing proposed rule changes do not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the dates on which they were filed, or such shorter time as the Commission may designate, they have become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

A proposed rule change filed under 19b-4(f)(6) may not become operative prior to 30 days after the date of filing unless the Commission designates a shorter time if such action is consistent with the protection of investors and the public interest.<sup>13</sup> SCCP and BSECC have requested that the Commission waive the 30-day operative delay set forth in Rule 19b-4(f)(6)(iii) under the Act<sup>14</sup> to ensure that the filing is effective and therefore does not delay the closing of the Transaction. The parties to the Transaction expect all regulatory actions necessary for the

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a SRO 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 date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that SCCP and BSECC have satisfied the five-day pre-filing notice requirement.

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

closing of the Transaction to be completed as early as January 2011. The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be operative upon filing with the Commission.<sup>15</sup>

At any time within 60 days of the filing of the respective proposed rule change by SCCP and BSECC, 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.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule changes are 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](mailto:rule-comments@sec.gov). Please include File No. SR-SCCP-2011-001 or SR-BSECC-2011-001 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 No. SR-SCCP-2011-001 or SR-BSECC-2011-001. Either of these file numbers should be included on the subject line if e-mail is used.

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<sup>15</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 such filing also will be available for inspection and copying at the principal offices of SCCP and BSECC's (<http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>) and SCCP's Web sites (<http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>). 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 Nos. SR-SCCP-2011-001 or SR-BSECC-2011-001, 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.<sup>16</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).