

information regarding registered broker-dealers and their registered personnel. Therefore, the 515 broker-dealers that withdraw from registration by filing Form BDW would incur an aggregate annual reporting burden of approximately 515 hours.<sup>2</sup>

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: April 28, 2011.

**Cathy H. Ahn,**  
*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64355; File No. SR-SCCP-2011-02]

### Self-Regulatory Organizations; The Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the By-Laws of Its Parent Corporation, The NASDAQ OMX Group, Inc.

April 27, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 14, 2011, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared primarily by SCCP. SCCP filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(6)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

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

The proposed rule change relate to amendments to the By-Laws of SCCP's parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX").

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

In its filing with the Commission, SCCP 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 Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>4</sup>

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

NASDAQ OMX recently made certain clarifying amendments to its By-Laws.<sup>5</sup> Specifically, the recently approved NASDAQ OMX rule change: (i) Amended the name of the Nominating Committee to the Nominating & Governance Committee; (ii) amended the NASDAQ OMX PHLX, Inc. 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.<sup>6</sup>

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 of Directors ("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 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 to convert NASDAQ OMX PHLX, Inc. from a Delaware corporation to a Delaware limited liability company.<sup>7</sup>

Finally, NASDAQ OMX added the words "and broker nonvotes" to NASDAQ OMX's By-Law Article IV,

<sup>5</sup> Securities Exchange Act Release No. 34-64285 (April 8, 2011) 76 FR 21085 (April 14, 2011) (File No. 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.

<sup>6</sup> *Id.*

<sup>7</sup> Securities Exchange Act Release No. 34-62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (File No. SR-Phlx-2010-104).

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

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> The Commission has modified the text of the summaries prepared by SCCP.

<sup>2</sup> (515 × 1 hour) = 515 hours.

Section 4.4 to make clear that broker nonvotes will not be counted as votes cast either “for” or “against” that director’s election. In its filing to amend NASDAQ OMX’s By-Laws, NASDAQ Stock Market LLC 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.<sup>8</sup> 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.<sup>9</sup> A plurality standard would still remain in a contested election. While in its filing to amend NASDAQ OMX’s By-Laws, NASDAQ Stock Market LLC noted that it has always been NASDAQ OMX’s practice to not count broker nonvotes “for” or “against” in director elections, the Commission noted in its Approval Order that the impact of the 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,<sup>10</sup> broker nonvotes are not considered as votes cast for or against a proposal or director nominee, SCCP proposes the change for clarity and transparency purposes.

SCCP believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>11</sup> in general, and with Sections 6(b)(1) and 6(b)(5) of the Act,<sup>12</sup> in particular, in that the proposal enables SCCP 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.

SCCP believes that 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 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 SCCP believes that the amendments are consistent with investor protection and the public interest.

*(B) Self-Regulatory Organization’s Statement on Burden on Competition*

SCCP does not believe that the proposed rule change will have any impact or impose any burden on competition.

*(C) Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not been solicited or received. SCCP will notify the Commission of any written comments received by SCCP.

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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder 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 for 30 days after the date of the filing, or such shorter time as the

Commission may designate. At any time within 60 days of the filing of the 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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](mailto:rule-comments@sec.gov). Please include File Number SR-SCCP-2011-002 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-SCCP-2011-002. 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 Web site 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 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of SCCP and on SCCP’s Web site at <http://>

<sup>8</sup> Securities Exchange Act Release No. 34-63925 (February 17, 2011), 76 FR 10418 (February 24, 2011) (File No. SR-NASDAQ-2011-025).

<sup>9</sup> Securities Exchange Act Release No. 34-61786 (April 8, 2010), 75 FR 19436 (April 14, 2010) (File No. SR-NASDAQ-2010-025).

<sup>10</sup> *Berlin v. Emerald Partners*, 552 A.2d 482 494 (Del Supr. 1988).

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(1), (5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. NASDAQ OMX PHILX LLC has satisfied this requirement.

[nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/pdf/sccp-filings/2011/SR-SCCP-2011-02.pdf](http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/pdf/sccp-filings/2011/SR-SCCP-2011-02.pdf).

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-SCCP-2011-02 and should be submitted on or before May 25, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-10854 Filed 5-3-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64365; File No. SR-NASDAQ-2011-058]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Limitation of Liability

April 28, 2011.

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 April 28, 2011, The NASDAQ Stock Market LLC ("NASDAQ"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially 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

NASDAQ is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal for The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") to amend Rule 4626 (Limitation of Liability) regarding expansion of the Exchange's limitation of liability under specified circumstances.

The Exchange requests that the Commission waive the 30-day operative

delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>3</sup>

The text of the proposed rule change is available from NASDAQ's Web site at <http://nasdaq.cchwallstreet.com/Filings/>, at NASDAQ's principal office, 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, NASDAQ 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 Item IV below. NASDAQ 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

The purpose of this proposed rule change is to amend Rule 4626 regarding expansion of the Exchange's limitation of liability rule under specified circumstances.

Rule 4626 currently states that except as provided for in subsection (b) of the rule, Nasdaq and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Nasdaq Market Center or its use. Subsection (b)(1) states that for the aggregate of all claims made by all market participants related to the use of the Nasdaq Market Center during a single calendar month, Nasdaq's payments under Rule 4676 [sic] shall not exceed the larger of \$500,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy.<sup>4</sup>

The Exchange now proposes to add a new section to expand the maximum amount of payments that the Exchange may make during a calendar month pursuant to Rule 4626 in enumerated circumstances added in new subsection (b)(2).

First, the (b)(2) claims have to be related to a systems malfunction or error

of the Nasdaq Market Center concerning one the following functions that are system enforced by the Nasdaq trading system on behalf of the claimant: locked/crossed markets, trade through protection, market maker quoting, order protection, or firm quote compliance.<sup>5</sup> And second, Nasdaq has to determine in its sole discretion that such systems malfunction or error was caused exclusively by Nasdaq's trading system and that no outside factors contributed to the malfunction or error. That is, the trading system issue would have to be caused exclusively by the Exchange to trigger subsection (b)(2).<sup>6</sup>

For example, if the needed market data provided to the Exchange to properly perform a locked/crossed markets analysis was incorrect and therefore caused the Exchange's relevant trading system functionality to quote or execute improperly, the requirements of subsection (b)(2) would not be met because any resulting issue was not caused exclusively by the Exchange. A similar result would occur should any other third party or non-Exchange specific input to the Exchange's trading systems likewise cause incorrect processing by the Exchange.

Nasdaq's payments under subsection (b)(2) for all claims made by all market participants during a single calendar month, shall not exceed the larger of \$3,000,000, or the amount of the recovery obtained by Nasdaq under any applicable insurance policy, subject to the overall cap on payments under Rule 4626 discussed below.

Finally, the Exchange proposes to add new subsection (b)(3) stating that Nasdaq's total payment during a single calendar month pursuant to Rule 4626 (including both subsections (b)(1) and (b)(2)) shall not exceed \$3,000,000.<sup>7</sup>

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and

<sup>5</sup> Rule 610 and 611 of Regulation NMS and Exchange Rule 4613. Notwithstanding this provision, the Exchange notes that market participants are not absolved of their compliance obligations under the Exchange rules or the Act.

<sup>6</sup> Claims under subsection (b)(2) would remain subject to the other limitations for recovery contained in Rule 4672 [sic], including the limitations on covered losses contained in the introductory language of subsection (b).

<sup>7</sup> The Exchange proposes to add the word "payment" in subsection (b)(1) for consistency with proposed new subsections (b)(2) and (b)(3).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>3</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>4</sup> Rule 4676 [sic] was amended in 2009 to the current version. See Securities Exchange Act Release No. 60794 (October 6, 2009), 74 FR 52522 (October 13, 2009) (SR-NASDAQ-2009-084) (notice of filing and immediate effectiveness). The Commission notes that the references to "Rule 4676" herein are typographical errors and the correct rule number is 4626.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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