

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67434; File No. SR-Phlx-2012-95]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change With Respect to the Amendment of the By-Laws of its Parent Corporation, The NASDAQ OMX Group, Inc. (“NASDAQ OMX”) July 13, 2012.

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 July 11, 2012, NASDAQ OMX PHLX LLC (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items II and III below, which Items have been prepared by the Exchange. 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 Exchange proposes a rule change with respect to the amendment of the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. (“NASDAQ OMX”). The text of the proposed rule change is available at the Exchange’s Web site, at the Exchange’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, 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 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 is proposing amendments to provisions of its by-laws

pertaining to the composition of the Management Compensation Committee of the NASDAQ OMX Board of Directors. Specifically, NASDAQ OMX is amending the compositional requirements of its Management Compensation Committee in Section 4.13 to replace a requirement that the committee be composed of a majority of Non-Industry Directors<sup>3</sup> with a requirement that the number of Non-Industry Directors on the committee equal or exceed the number of Industry Directors. Thus, in the case of a committee composed of four Directors, the current by-law provides that only one Director may be an Industry Director, while the amended by-law would allow up to two Directors to be Industry Directors. The proposed compositional requirement for the committee with regard to the balance between Industry Directors and Non-Industry Directors would be the same as that already provided for in the by-laws with respect to the Executive Committee and the Nominating and Governance

<sup>3</sup> An “Industry Director” means a Director (excluding any two officers of NASDAQ OMX, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the “Staff Directors”)) who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director’s firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director’s, officer’s, or employee’s professional capacity and constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director’s firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to NASDAQ OMX or any affiliate thereof or to the Financial Industry Regulatory Authority (“FINRA”) or has had any such relationship or provided any such services at any time within the prior three years.

A “Non-Industry Director” means a Director (excluding the Staff Directors) who is (1) A Public Director; (2) an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by any subsidiary of NASDAQ OMX that is a self-regulatory organization; or (3) any other individual who would not be an Industry Director.

A “Public Director” means a Director who has no material business relationship with a broker or dealer, NASDAQ OMX or its affiliates, or FINRA.

Committee, as well as the full Board of Directors.

NASDAQ OMX and the Exchange believe that the change will provide greater flexibility to NASDAQ OMX with regard to populating a committee that includes Directors with relevant expertise and that is not excessively large in relation to the size of the full Board of Directors, while continuing to ensure that Directors associated with Exchange members and other broker-dealers do not exert disproportionate influence of the governance of NASDAQ OMX. As required by NASDAQ Stock Market Rule 5605(d), the committee would continue at all times to be composed solely of Directors who are independent within the meaning of that rule.

###### 2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Sections 6(b)(1) and (b)(5) of the Act,<sup>5</sup> in particular, in that the proposal enables Phlx to be so organized and 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 Phlx 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.

Phlx believes that the change will provide greater flexibility to NASDAQ OMX with regard to populating a committee that includes Directors with relevant expertise and that is not excessively large in relation to the size of the full Board of Directors, while continuing to ensure that Directors associated with Exchange members and other broker-dealers do not exert disproportionate influence of the governance of NASDAQ OMX.

##### 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

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

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

<sup>4</sup> 15 U.S.C. 78f.

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

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*

Written comments were neither solicited nor 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 Exchange 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-95 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-Phlx-2012-95. This file number should be included on the subject line if email 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 10:00 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-Phlx-2012-95 and should be submitted on or before August 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-67437; File Nos. SR-NYSE-2011-56; SR-NYSEAmex-2011-86]**

**Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Amex LLC; Order Disapproving Proposed Rule Changes To Codify Certain Traditional Trading Floor Functions That May Be Performed by Designated Market Makers and To Permit Designated Market Makers and Floor Brokers Access to Disaggregated Order Information**

July 13, 2012.

On October 31, 2011, the New York Stock Exchange LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex") (collectively, the "SROs") each filed with the Securities and Exchange Commission ("Commission"), 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> proposed rule changes ("SRO Proposals") to amend certain of their respective rules relating to Designated Market Makers ("DMMs")<sup>3</sup> and Floor brokers. The SRO

Proposals were published for comment in the **Federal Register** on November 17, 2011.<sup>4</sup> The Commission received no comment letters on the proposals. On December 22, 2011, the Commission extended the time period in which to either approve the SRO Proposals, disapprove the SRO Proposals, or to institute proceedings to determine whether to disapprove the SRO Proposals, to February 15, 2012.<sup>5</sup>

On February 15, 2012, the Commission instituted proceedings to determine whether to disapprove the proposed rule changes.<sup>6</sup> The Commission thereafter received five comment letters on the proposals.<sup>7</sup> NYSE Euronext, on behalf of the SROs, submitted a response letter on March 28, 2012.<sup>8</sup> On May 14, 2012, the Commission issued a notice of designation of longer period for Commission action on proceedings to determine whether to disapprove the proposed rule changes.<sup>9</sup> This order disapproves the proposed rule changes.

**I. Description of the Proposals**

The SRO Proposals seek to amend the SROs' rules in several ways. First, the

a member organization that (i) Has been approved by NYSE Regulation pursuant to section (c) of NYSE Rule 98, (ii) is eligible for allocations under NYSE Rule 103B as a DMM unit in a security listed on the Exchange, and (iii) has met all registration and qualification requirements for DMM units assigned to such unit. The term "DMM" means any individual qualified to act as a DMM on the floor of the Exchange under NYSE Rule 103. *See also* NYSE Amex Equities Rule 2(i). Rule 2(i) defines the term "DMM" to mean an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM. NYSE Amex Equities Rule 2(j) defines the term "DMM unit" as a member organization or unit within a member organization that has been approved to act as a DMM unit under NYSE Amex Equities Rule 98.

<sup>4</sup> *See* Securities Exchange Act Release Nos. 65735 (November 10, 2011), 76 FR 71405 (SR-NYSEAmex-2011-86) ("NYSE Amex Notice") and 65736 (November 10, 2011), 76 FR 71399 (SR-NYSE-2011-56) ("NYSE Notice").

<sup>5</sup> *See* Securities Exchange Act Release No. 66036, 76 FR 82011 (December 29, 2011).

<sup>6</sup> *See* Securities Exchange Act Release No. 66397, 77 FR 10586 (February 22, 2012) ("Order Instituting Proceedings").

<sup>7</sup> *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from Kenneth Polcari, dated March 12, 2012 ("Polcari Letter"); Patrick Armstrong and Daniel Tandy, Co-Presidents, Alliance of Floor Brokers ("AFB"), dated March 13, 2012 ("AFB Letter"); Jonathan Corpina, President, and Jennifer Lee, Vice President, Organization of Independent Floor Brokers ("OIFB"), dated March 13, 2012 ("OIFB Letter"); James J. Angel, Ph.D., CFA, dated March 15, 2012 ("Angel Letter"); and John Petschauer, CEO, EZX, Inc., dated March 14, 2012 ("EZX Letter").

<sup>8</sup> *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, Executive Vice President and Corporate Secretary, NYSE Euronext, dated March 28, 2012 ("SRO Response Letter").

<sup>9</sup> *See* Securities Exchange Act Release No. 66981, 77 FR 29730 (May 18, 2012).

<sup>6</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.

<sup>3</sup> *See* NYSE Rule 98(b)(2). "DMM unit" means any member organization, aggregation unit within a member organization, or division or department within an integrated proprietary aggregation unit of