

Commission designates the proposal operative on September 1, 2012.<sup>15</sup>

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.

#### 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-NYSE-2012-38 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-NYSE-2012-38. 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-NYSE-2012-38 and should be submitted on or before September 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67760; File Nos. SR-BSECC-2012-01; SR-BX-2012-052; SR-NASDAQ-2012-072; SR-Phlx-2012-95; SR-SCCP-2012-01]

### Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; NASDAQ OMX BX, Inc.; the NASDAQ Stock Market LLC; NASDAQ OMX PHLX LLC; Stock Clearing Corporation of Philadelphia; Order Approving Proposed Rule Changes With Respect to the Amendment of the By-Laws of The NASDAQ OMX Group, Inc.

August 30, 2012.

#### I. Introduction

On June 20, 2012, the NASDAQ Stock Market LLC ("NASDAQ"), and on July 11, 2012, Boston Stock Exchange Clearing Corporation ("BSECC"), NASDAQ OMX BX, Inc. ("BX"), NASDAQ OMX PHLX LLC ("Phlx"), and the Stock Clearing Corporation of Philadelphia ("SCCP" and, with BSECC, BX, NASDAQ, and Phlx, the "SROs"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> proposed rule changes with respect to the amendment of the by-laws (the "NASDAQ OMX By-Laws") of The NASDAQ OMX Group, Inc. ("NASDAQ OMX"), the parent company of the SROs. The proposed rule changes were published for comment in the **Federal Register** on July 5, 2012, July 19, 2012, and July 27,

2012.<sup>4</sup> The Commission received no comment letters on the proposals.

#### II. Background

NASDAQ OMX is proposing to amend provisions of the NASDAQ OMX By-Laws pertaining to the composition of the Management Compensation Committee of the NASDAQ OMX Board of Directors. Specifically, NASDAQ OMX proposes to amend the compositional requirements of its Management Compensation Committee as set forth in Section 4.13 of the NASDAQ OMX By-Laws to replace a requirement that the committee be composed of a majority of Non-Industry Directors<sup>5</sup> with a requirement that the

<sup>4</sup> See Securities Exchange Act Release Nos. 67293 (June 28, 2012), 77 FR 39751 (July 5, 2012) (SR-NASDAQ-2012-072) (the "NASDAQ Notice"); 67433 (July 13, 2012), 77 FR 42522 (July 19, 2012) (SR-BX-2012-052); 67434 (July 13, 2012), 77 FR 42524 (July 19, 2012) (SR-Phlx-2012-95); 67487 (July 23, 2012), 77 FR 44301 (July 27, 2012) (SR-BSECC-2012-001); 67486 (July 23, 2012), 77 FR 44299 (July 27, 2012) (SR-SCCP-2012-01).

<sup>5</sup> Article I(j) of the NASDAQ OMX By-Laws defines an "Industry Director", in part, as 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.

Article I(m) of the NASDAQ OMX By-Laws defines a "Non-Industry Director", in part, as 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 SRO; or (3) any other individual who would not be an Industry Director.

Article I(n) of the NASDAQ OMX By-Laws defines a "Public Director", in part, as a Director who has no material business relationship with a broker or dealer, NASDAQ OMX or its affiliates, or FINRA.

<sup>15</sup> 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).

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

number of Non-Industry Directors on the committee equal or exceed the number of 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 NASDAQ OMX By-Laws with respect to the Executive Committee and the Nominating and Governance Committee, as well as the full Board of Directors.

According to the SROs, the proposed changes will provide NASDAQ OMX with a greater flexibility 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.<sup>6</sup>

### III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange or a registered clearing agency.<sup>7</sup> In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b) of the Act,<sup>8</sup> which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 Commission also finds that the proposed rule changes are consistent with Section 17A of the Act<sup>9</sup> because the proposed rule changes will help ensure that BSECC and SCCP are so organized and have the capacity to comply with the provisions of the Act

and the rules and regulations thereunder.

The proposed changes to the composition requirement of NASDAQ OMX's Management Compensation Committee are identical to the composition requirements currently in effect for the Executive Committee, Nominating and Governance Committee, and full Board of Directors of NASDAQ OMX.<sup>10</sup> Furthermore, the NASDAQ OMX Management Compensation Committee is required to be comprised of Independent Directors (as defined in NASDAQ's rules).<sup>11</sup>

### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and a registered clearing agency.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>12</sup> that the proposed rule changes (SR-BSECC-2012-001; SR-BX-2012-052; SR-NASDAQ-2012-072; SR-Phlx-2012-95; and SR-SCCP-2012-01), are approved.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-21902 Filed 9-5-12; 8:45 am]

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## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2012-0016]

### Privacy Act of 1974, as Amended; Computer Matching Program (Social Security Administration (SSA)/ Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA)—Match Number 1309

**AGENCY:** SSA.

**ACTION:** Notice of a renewal of an existing computer matching program that will expire on October 1, 2012.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with VA/VBA.

<sup>10</sup> See Sections 4.3, 4.13(d) and 4.13(h)(1) of NASDAQ OMX By-Laws.

<sup>11</sup> See NASDAQ Rule 5605(d). Rule 5605(d) provides that the compensation committees of NASDAQ-listed companies must be comprised solely of Independent Directors. NASDAQ OMX is a NASDAQ-listed company.

<sup>12</sup> *Id.*

<sup>13</sup> 17 CFR 200.30-3(a)(12).

**DATES:** We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefaxing to (410) 966-0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, as shown above.

### SUPPLEMENTARY INFORMATION:

#### A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-503) amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and by adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

- (1) Negotiate written agreements with the other agency or agencies participating in the matching programs;
- (2) Obtain the approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;
- (3) Publish notice of the computer matching program in the **Federal Register**;
- (4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

<sup>6</sup> See, e.g., NASDAQ Notice, 77 FR at 39752.

<sup>7</sup> In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

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