

registered advisers, exempt reporting advisers must file Form ADV through the Investment Adviser Registration Depository ("IARD"), which is operated by the Financial Industry Regulatory Authority ("FINRA").

In addition, the Commission recently proposed a new rule that would require any adviser registered with the Commission and managing one or more private funds (a "private fund adviser") to file proposed Form PF on a periodic basis.² On September 30, 2011, the Commission issued notice of its determination that, if the Form PF proposal is adopted, FINRA will develop and maintain the filing system for Form PF as an extension of the existing IARD (the "Notice").³

Following discussions with Commission staff, FINRA recommended a schedule of filing fees for exempt reporting advisers and private fund advisers.⁴ With respect to exempt reporting advisers, FINRA recommended a filing fee of \$150 for each initial and annual report on Form ADV. With respect to private fund advisers, FINRA recommended filing fees of \$150 for the proposed quarterly filings of Form PF and \$150 for the proposed annual filings.⁵ In the Notice, the Commission indicated its intent to approve filing fees for these filings consistent with these recommendations.

The Notice also explained that the fee for exempt reporting advisers filing Form ADV would apply starting with the date on which this order is published in the **Federal Register** and, if the Form PF proposal is adopted, the fees applicable to private fund advisers would apply starting with the effective date of rule 204(b)-1.

The Notice gave interested persons an opportunity to request a hearing and stated that an order approving these filing fees would be issued unless a hearing were ordered. No request for a

hearing has been filed, and no hearing has been ordered.

It is therefore ordered, pursuant to Section 204(c) of the Advisers Act, that:

For initial reports and annual updating amendments on Form ADV filed on or after October 28, 2011, the filing fee due from exempt reporting advisers is \$150.

For quarterly reports on Form PF filed on or after the effective date of rule 204(b)-1 under the Advisers Act, the filing fee due from private fund advisers is \$150.

For annual reports on Form PF filed on or after the effective date of rule 204(b)-1 under the Advisers Act, the filing fee due from private fund advisers is \$150.

By the Commission.
Elizabeth M. Murphy,
Secretary.
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 3306; File No.: 801-35969]

Investment Advisers Act of 1940; In the Matter of Creative Investment Research, Inc., 1050 17th Street, NW., Suite 1000, Washington, DC 20036; Notice of Intention To Cancel Registration Pursuant to Section 203(H) of the Investment Advisers Act of 1940

October 24, 2011

Notice is given that the Securities and Exchange Commission (the "Commission") intends to issue an order, pursuant to Section 203(h) of the Investment Advisers Act of 1940 (the "Act"), cancelling the registration of Creative Investment Research, Inc., hereinafter referred to as the registrant.

Section 203(h) provides, in pertinent part, that if the Commission finds that any person registered under Section 203, or who has pending an application for registration filed under that section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A, the Commission shall by order, cancel the registration of such person.

The registrant indicated on its most recent Form ADV filing that it is relying on rule 203A-2(b) to register with the Commission, which, at the time of the filing, provided an exemption from the prohibition on registration for a pension consultant if it provided investment advice to plans described in the rule that had an aggregate value of at least

\$50,000,000 in assets.¹ The Commission believes, based on the facts it has, that the registrant did not at the time of the Form ADV filing, and does not currently, provide investment advice to plans that have a sufficient aggregate asset value under the rule, and that it is therefore prohibited from registering as an investment adviser under section 203A of the Act. Accordingly, the Commission believes that reasonable grounds exist for a finding that this registrant is no longer eligible to be registered with the Commission as an investment adviser and that the registration should be cancelled pursuant to section 203(h) of the Act.

Any interested person may, by November 18, 2011, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the cancellation, accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

At any time after November 18, 2011, the Commission may issue an order cancelling the registration, upon the basis of the information stated above, unless an order for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any adviser whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

For further information contact: Jennifer Porter, Senior Counsel at (202) 551-6787 (Office of Investment Adviser Regulation).

¹ Section 203A of the Act generally prohibits an investment adviser from registering with the Commission unless it meets certain requirements. Rule 203A-2 provides exemptions from the prohibition on Commission registration in section 203A of the Act. Effective September 19, 2011, rule 203A-2(b) was renumbered as rule 203A-2(a), and advisers relying on the rule to remain registered with the Commission are required to advise plans with an aggregate value of at least \$200,000,000. See *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 3221 (June 22, 2011), available at <http://www.sec.gov/rules/final/2011/ia-3221.pdf>.

² The Commission proposed new rule 204(b)-1 on January 26, 2011. See section II.C of *Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF*, Investment Advisers Act Release No. 3145 (January 26, 2011), 76 FR 8068 (February 11, 2011) ("Form PF Proposing Release"). "Private fund" is defined in section 202(a)(29) of the Advisers Act.

³ See *Approval of Filing Fees for Exempt Reporting Advisers and Private Fund Advisers*, Investment Advisers Act Release No. 3297 (Sept. 30, 2011), 76 FR 62100 (Oct. 6, 2011).

⁴ FINRA letter dated September 28, 2011, available at <http://www.sec.gov/rules/other/2011/finalletter092811-pferafees.pdf>.

⁵ Under the proposal, advisers managing \$1 billion or more in hedge fund assets, combined liquidity fund and registered money market fund assets or private equity fund assets would file Form PF on a quarterly basis. All other private fund advisers would file on an annual basis. See sections II.B and II.C of the Form PF Proposing Release.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.²

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011-27900 Filed 10-27-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65604; File No. SR-NASDAQ-2011-143]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to Amending the By-Laws of The NASDAQ OMX Group, Inc.

October 21, 2011.

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 October 11, 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, II, and III below, which Items have been prepared by the self-regulatory organization. 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 this proposed rule change with respect to an amendment 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 Web site at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room. The proposed amendments will be implemented upon approval by the Commission.

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. 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 committees of the NASDAQ OMX Board of Directors. First, NASDAQ OMX is amending the compositional requirements of its Audit Committee in Section 4.13(g) to provide that the committee shall include three or more directors. Currently, the provision provides that the Audit Committee shall be composed of either four or five directors. The change will provide the NASDAQ OMX Board of Directors, which has authority to establish the size of each committee of the Board of Directors, with flexibility to increase or decrease the size of the committee, as long as the committee includes at least three directors. The listing standards of the NASDAQ Stock Market, which apply to NASDAQ OMX as a listed company, require that NASDAQ OMX's Audit Committee must have at least three members.³ The amendment would not change any of the other compositional requirements of the Audit Committee, including independence requirements.

Similarly, NASDAQ OMX is proposing to amend the compositional requirements of the Nominating & Governance Committee in Section 4.13(h) to replace a requirement that the committee comprise four or five members with a requirement to include two or more members, thereby creating flexibility to populate a larger or a smaller committee than is currently the case. NASDAQ Stock Market listing standards do not regulate the size of a listed company's nominating committee. The amendment would not change any of the other compositional requirements of the Nominating & Governance Committee, including independence requirements.

NASDAQ expects that the NASDAQ OMX Board of Directors will, in the immediate future, use the modified authority to increase the size of the Nominating & Governance Committee to six directors, but will not modify the size of the Audit Committee at this time. It is likely that the authority would be used to reduce the size of these committees below their current levels

only in the event of a reduction in the overall size of the NASDAQ OMX Board of Directors (which currently has 16 members). The Audit Committee supervises the audit function with respect to NASDAQ OMX and all of its subsidiaries, including NASDAQ, but the Nominating & Governance Committee does not perform a nominating function with respect to NASDAQ OMX's subsidiaries.

Third, NASDAQ OMX proposes to delete a paragraph of the by-laws (Section 4.13(k)) that pertains to the qualifications of committee members who are not directors. This provision was originally adopted by NASDAQ OMX's predecessor corporation, The Nasdaq Stock Market, Inc., when it was a subsidiary and facility of the National Association of Securities Dealers, Inc. ("NASD"). In that capacity, The Nasdaq Stock Market, Inc. appointed committees that included non-directors and that exercised authority provided for under NASD rules. For example, at that time, the Board of Directors of The Nasdaq Stock Market, Inc. appointed the Nasdaq Listing and Hearing Review Council, a committee composed of non-directors with authority to review listing decisions with respect to companies with securities listed on The Nasdaq Stock Market, which was then a facility of NASD.

In 2005, NASDAQ was formed as a subsidiary [sic] The Nasdaq Stock Market, Inc., and in 2006, NASDAQ was registered as a national securities exchange. The Nasdaq Stock Market, Inc., which had already issued stock to the public, became a holding company, and in 2007, it ceased operating as a facility of NASD or NASDAQ. Subsequently, following the acquisition of OMX AB, The Nasdaq Stock Market, Inc. became NASDAQ OMX. As a public holding company, NASDAQ OMX no longer appoints committees that include non-directors. Accordingly, the provision with respect to the qualifications of non-directors is obsolete and may appropriately be deleted.

Finally, NASDAQ OMX is correcting a typographical error in the numbering of the provisions of Section 4.13(h) of the by-laws.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Sections 6(b)(1) and (b)(5) of the Act,⁵ in particular, in that the proposal enables NASDAQ to be so

² 17 CFR 200.30-5(e)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NASDAQ IM-4605-3. [sic]

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(1), (5).