Commission designates the proposal operative on September 1, 2012. 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. 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 20549–1090, during the regular business hours 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. Kevin M. O’Neill, Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; NASDAQ OMX BX, Inc.; the NASDAQ Stock Market LLC; NASDAQ OMX PHXL 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


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 with a requirement that the committee be composed of a majority of Non-Industry Directors and capital formation.


5 Article I(m) 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(n) 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 a Non-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.
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.

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. In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b) of the Act, 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 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. Furthermore, the NASDAQ OMX Management Compensation Committee is required to be comprised of Independent Directors (as defined in NASDAQ’s rules).

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 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.

Kevin M. O’Neill,
Deputy Secretary.

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 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.

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