

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 a.m. and 3 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-2011-159 and should be submitted on or before December 23, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Kevin M. O'Neill,  
Deputy Secretary.

[FR Doc. 2011-30981 Filed 12-1-11; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65840; File No. SR-BX-2011-071]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change With Respect to an Amendment to the By-Laws of The NASDAQ OMX Group, Inc.

November 28, 2011.

On October 11, 2011, NASDAQ OMX BX, Inc. ("Exchange") 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> a proposed rule change to amend the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). The proposed rule change was published for comment in the **Federal Register** on October 28, 2011.<sup>3</sup> The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>4</sup> and, in particular, the requirements of Section 6(b)(5) of the Act.<sup>5</sup> The proposal will allow the NASDAQ OMX Board of Directors ("Board") to determine the size of its Audit Committee, so long as the Audit Committee includes at least three directors, as well as the size of its Nominating & Governance Committee, so long as the Nominating & Governance Committee includes at least two directors. The proposal is intended to provide greater flexibility to the NASDAQ OMX Board to determine the appropriate size for these committees. The Commission notes that the proposed rule change maintains compliance with the Exchange's listing standards. The proposal does not change any other compositional requirements of either the Audit Committee or the Nominating & Governance Committee, including independence requirements. Moreover, the Commission notes that the proposal does not alter the application of Section 10A of the Exchange Act<sup>6</sup> and Rule 10A-3 thereunder<sup>7</sup> to the NASDAQ OMX Audit Committee. The proposal also deletes an obsolete section from, and corrects a typographical error in, the NASDAQ OMX by-laws, which are clarifying revisions. For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-BX-2011-071) be, and it hereby is, approved.

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

<sup>3</sup> See Securities Exchange Act Release No. 65603 (October 21, 2011), 76 FR 67013.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>6</sup> 15 U.S.C. 78j-1.

<sup>7</sup> 17 CFR 240.10A-3.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Kevin M. O'Neill,  
Deputy Secretary.

[FR Doc. 2011-30982 Filed 12-1-11; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65845; File No. SR-NYSE-2011-59]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Listed Company Manual To Apply Listing and Annual Fees to Foreign Private Issuers of Certain Debt Securities

November 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on November 18, 2011, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, 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 to amend the Listed Company Manual to include a fee that it believes was inadvertently omitted. In particular, the Exchange proposes to apply Listing and Annual fees to foreign private issuers of debt securities listed under Section 103.05 of the Listed Company Manual. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received

<sup>9</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>9</sup> 17 CFR 200.30-3(a)(12).

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

on the proposed rule change. The text of those 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 parts of such statements.

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

1. Purpose

NYSE proposes to amend the Listed Company Manual to include a fee that it believes was inadvertently omitted. In particular, the Exchange proposes to apply Listing and Annual Fees to foreign private issuers of debt securities listed under Section 103.05 of the Listed Company Manual.

Debt Securities Listed Under Section 102.03 or 103.05

Under Section 102.03 of the Listed Company Manual, a debt security for a domestic company may be listed on the Exchange if it has an aggregate market value or principal amount of no less than \$5,000,000 and meets certain other requirements.<sup>3</sup> Under Section 103.05, a debt security of a foreign private issuer also may be listed on the Exchange if it has an aggregate market value or principal amount of no less than \$5,000,000 and meets certain requirements substantially similar to those applicable to a domestic debt security.<sup>4</sup>

The Listing and Annual Fees for debt securities listed under Section 102.03 are set forth in Section 902.08. For the non-listed debt securities of NYSE equity issuers and affiliated companies, and for the domestic debt securities of issuers exempt from registration under [sic] Securities and Exchange Act of

<sup>3</sup> The debt security must be characterized by one of the following conditions: (a) The issuer of the debt security has equity securities listed on the Exchange; (b) an issuer of equity securities listed on the Exchange directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; (c) an issuer of equity securities listed on the Exchange has guaranteed the debt security; (d) a nationally recognized securities rating organization ("NRSRO") has assigned a current rating to the debt security that is no lower than an S&P Corporation "B" rating or an equivalent rating by another NRSRO; or (e) if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned (i) an investment grade rating to a senior issue, or (ii) a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a *pari passu* or junior issue.

<sup>4</sup> The only difference in the requirements is that under Section 102.03, a convertible debt issue must have an aggregate market value or principal amount of no less than \$10,000,000 and may be listed only if the underlying equity securities are subject to real-time last sale reporting in the United States.

1934 (the "Act"), no fees are charged. For the listed debt securities of NYSE equity issuers and affiliated companies, an initial Listing Fee of \$5,000 and an Annual Fee of \$5,000 are charged. For all other debt securities listed under Section 102.03, an initial Listing Fee of \$5,000 and an Annual Fee of \$5,000 are charged.

Under Section 902.02, certain Listing and Annual Fees that may be billed to an issuer in a calendar year are currently capped at \$500,000. Listing and Annual Fees for securities listed under Section 102.03 are currently subject to the \$500,000 cap in Section 902.02.

The Exchange proposes to amend Section 902.08 to make it also applicable to debt securities listed under Section 103.05; the Exchange believes that such a reference to Section 103.05 was inadvertently omitted because the Exchange intended to treat these similarly situated securities in the same way for fee purposes. The Exchange believes that there is no substantial difference between the listing support, regulatory, and administrative activities that must be carried out for securities listed under Section 102.03 or 103.05 and accordingly these securities should be charged the same fees.<sup>5</sup>

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposed fees for foreign private issuers of debt are reasonable and equitably allocated because they are the same fees that are charged to issuers of domestic debt listed under substantially the same criteria. The Exchange engages in the same listing support, regulatory, and administrative activities for domestic securities listed under Section 102.03 as it does for foreign securities listed under Section 103.05.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose

<sup>5</sup> Like securities listed under Section 102.03, Listing and Annual Fees for securities listed under Section 103.05 would be subject to the \$500,000 cap in Section 902.02.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

any burden on competition that is not 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*

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>8</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such 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-2011-59 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-2011-59. 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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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 inspection and copying in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at <http://www.nyse.com>. 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-2011-59 and should be submitted on or before December 23, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2011-30983 Filed 12-1-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65835; File No. SR-CBOE-2011-105]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Market-Makers' Continuous Electronic Quoting Obligations and Adjusted Option Series

November 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 18, 2011, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to

Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder. 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 to amend its rules to indicate that Market-Makers will not be obligated to maintain continuous electronic quotes in adjusted option series and to define the term adjusted option series. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, 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 those 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 parts of such statements.

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

###### 1. Purpose

CBOE proposes to amend its rules to indicate that Market-Makers will not be obligated to maintain continuous electronic quotes in adjusted option series and to define the term adjusted option series. The proposal is based on recent rule changes of NYSE Amex LLC ("NYSE Amex"), NYSE Arca, Inc. ("NYSE Arca") and NASDAQ OMX PHLX, Inc. ("PHLX").<sup>5</sup>

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

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

<sup>5</sup> See Securities Exchange Act Release Nos. 65572 (October 14, 2011), 76 FR 65310 (October 20, 2011) (SR-NYSEAmex-2011-61) (order granting approval of proposed rule change concerning market maker continuous quoting obligations and adjusted option series); 65573 (October 14, 2011), 76 FR 65305 (October 20, 2011) (SR-NYSEArca-2011-59) (order granting approval of proposed rule change concerning market maker continuous quoting obligations and adjusted option series); and 61095 (December 2, 2009), 74 FR 64786 (December 8, 2009) (SR-PHLX-2009-99).

Rules 8.7, 8.13, 8.15A, 8.85, and 8.93 impose certain obligations on Market-Makers, Preferred Market-Makers, Lead Market-Makers ("LMMs"), Designated Primary Market-Makers ("DPMs"), and electronic-DPMs ("e-DPMs"), respectively (collectively, "Market-Makers").

These rules require that Market-Makers maintain continuous electronic quotes<sup>6</sup> as follows:

- Rule 8.7(d)(ii)(B) requires that Market-Makers maintain continuous electronic quotes in 60% of the series of the Market-Maker's appointed class that have a time to expiration of less than nine months;

- Rule 8.13(d) requires that Preferred Market-Makers, among other things, provide continuous electronic quotes in at least 90% of the series of each class for which it receives Preferred Market-Maker orders;

- Rule 8.15A(b)(i) requires that LMMs provide continuous electronic quotes that comply with the bid/ask differential requirements determined by the Exchange on a class-by-class basis in 90% of the option series within their assigned classes;<sup>7</sup>

- Rule 8.85(a)(i) requires DPMs to provide continuous electronic quotes in at least 90% of the series of each multiply listed option class allocated to it and in 100% of the series of each singly listed option class allocated to it; and

- Rule 8.93 requires that e-DPMs provide continuous electronic quotes in at least 90% of the series of each allocated class.<sup>8</sup>

The Exchange proposes to relieve Market-Makers of the obligation to

<sup>6</sup> Rule 1.1(ccc) provides that a Market-Maker who is obligated to provide continuous electronic quotes on CBOE's Hybrid Trading System will be deemed to have provided "continuous electronic quotes" if the Market-Maker provides electronic two-sided quotes for 99% of the time that the Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day. The rule also provides that if a technical failure or limitation of a system of the Exchange prevents the Market-Maker from maintaining, or prevents the Market-Maker from communicating to the Exchange, timely and accurate electronic quotes in a class, the duration of such failure will not be considered in determining whether the Market-Maker has satisfied the 99% quoting standard with respect to that option class. The Exchange may consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances.

<sup>7</sup> This rule also provides that in option classes in which both an on-floor LMM and an off-floor LMM have been appointed, the on-floor LMM will only be obligated to comply with obligations of Market-Makers in hybrid classes set forth in Rule 8.7(d).

<sup>8</sup> Alternatively, an e-DPM must provide continuous electronic quotes in at least 98% of requests for quotes if such functionality is enabled as determined by the Exchange.

<sup>10</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.