

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 40	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2012 - * 142	Amendment No. (req. for Amendments *)
Filing by NASDAQ Stock Market Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
Description Provide a brief description of the action (limit 250 characters, required when Initial is checked *). A proposed rule change with respect to the amendment of the by-laws of its parent corporation, The NASDAQ OMX Group Inc				
Contact Information Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action. First Name * John Last Name * Yetter Title * Vice President E-mail * john.yetter@nasdaqomx.com Telephone * (301) 978-8497 Fax (301) 978-8472				
Signature Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. (Title *) Date 12/19/2012 By Edward S. Knight (Name *) Executive Vice President and General Counsel Edward S Knight,				
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change with respect to the amendment of the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX" or the "Corporation").

The text of the proposed rule change is attached as Exhibit 5.

(b) and (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors (the "Board") of NASDAQ OMX approved the proposed rule change on May 22, 2012 and December 18, 2012. As provided in Article EIGHTH, Paragraph B of the Restated Certificate of Incorporation of NASDAQ OMX and Section 11.3 of its By-Laws, proposed amendments to the By-Laws are to be reviewed by the Board of each self-regulatory organization subsidiary of NASDAQ OMX, and if any such proposed amendment must, under Section 19 of the Act and the rules promulgated thereunder, be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. Accordingly the Boards of the Exchange, NASDAQ OMX BX ("BX"), and NASDAQ OMX PHLX LLC ("Phlx") approved the proposed rule change on June 5, 2012; and the Boards of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Boston Stock Exchange Clearing Corporation (“BSECC”) and the Stock Clearing Corporation of Philadelphia (“SCCP”) approved the proposed rule change on June 11, 2012.³ Each such Board has determined that the proposed rule change should be filed with the Commission. The proposed rule change does not require approval by NASDAQ OMX stockholders. The proposed amendments will be implemented as soon as practicable following approval by the Commission.

Questions and comments on the proposed rule change may be directed to John M. Yetter, Vice President and Deputy General Counsel, NASDAQ OMX, at (301) 978-8497.

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

a. Purpose

NASDAQ OMX is proposing amendments to provisions of its By-Laws pertaining to the compositional requirements of the NASDAQ OMX Board. The changes are primarily focused on amending the definition of “Industry Director” (and “Industry committee member”)⁴ to make the definition less restrictive, but in a manner that NASDAQ believes will continue to serve the purpose of ensuring that members and member organizations of Self-Regulatory Subsidiaries – the self-regulatory organizations

³ The By-Laws define each of NASDAQ, BX, Phlx, BSECC, and SCCP as a “Self-Regulatory Subsidiary”.

⁴ The term “committee member” in the By-Laws refers to membership in the committees authorized under Section 4.13 of the By-Laws, such as the Executive Committee and the Audit Committee. Under the By-Laws and the Delaware General Corporation Law, all members of committees with the power and authority to act on behalf of the Board in the management of the business and affairs of NASDAQ OMX must themselves be Directors. Accordingly, the definitions of “Industry Director” and “Industry committee member” are coterminous as applied to any member of these committees. The By-Laws do not presently contemplate any committees with non-Director members.

owned by NASDAQ OMX – do not have disproportionate influence on its governance. In making the change, NASDAQ OMX is adapting concepts already approved by the Commission in its review of the Independence Policy of the NYSE Euronext Board of Directors (the “Independence Policy”).⁵ The proposed rule change also makes several other changes to provisions pertaining to the Board’s compositional requirements and categorization of Directors.

Definitions

The By-Laws require Directors to be assigned to certain defined categories, based on their current and past affiliations.⁶ Specifically, Directors may be categorized as “Industry Directors,” “Non-Industry Directors,” “Public Directors,” and/or “Staff Directors.” Currently, an Industry Director is defined as a Director 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;

⁵ Securities Exchange Act Release No. 51217 (February 16, 2005), 70 FR 9688 (February 28, 2005) (SR-NYSE-2004-54); Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR-NYSE-2006-120); Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161 (SR-NYSE-2012-17; SR-NYSEArca-2012-59; SR-NYSEMKT-2012-07).

⁶ As discussed above, the categories also govern the classification of members of committees of NASDAQ OMX, as provided for in the By-Laws.

- (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 the Corporation or any affiliate⁷ thereof (including any Self-Regulatory Subsidiary) or to the Financial Industry Regulatory Authority (“FINRA”) (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

⁷ NASDAQ OMX is adding a definition of “affiliate” as follows: “An ‘affiliate’ of, or a person ‘affiliated’ with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.” The definition is identical to the definition of the term in SEC Rule 12b-2, 17 CFR 240.12b-2.

Thus, the current definition focuses on a Director's affiliation with any broker-dealer, regardless of whether the broker-dealer is a member or member organization of a Self-Regulatory Subsidiary. The definition also features a three-year "look-back" period during which a Director formerly associated with a broker-dealer would continue to be deemed an Industry Director. In lieu of this definition, NASDAQ OMX is proposing to adopt a definition that focuses on whether a Director is affiliated with a member or a member organization of a Self-Regulatory Subsidiary. Under the revised definition, an Industry Director will be defined as a Director who:

(1) is, or within the last year was, or has an immediate family member⁸ who is, or within the last year was, a member of a Self-Regulatory Subsidiary;⁹

(2) is, or within the last year was, employed by a member or a member organization of a Self-Regulatory Subsidiary;¹⁰

(3) has an immediate family member who is, or within the last year was, an executive officer of a member or a member organization¹¹ of a Self-Regulatory Subsidiary;

⁸ NASDAQ OMX is adding a definition of "immediate family member" as follows: "'Immediate family member' means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home." The definition is identical to the definition of "family member" contained in NASDAQ listing standards, as provided in NASDAQ Rule 5605.

⁹ This provision would apply to an individual that was a member of Phlx, the only Self-Regulatory Subsidiary that allows natural persons to become members.

¹⁰ A broker-dealer that is admitted to membership in Phlx is referred to as a "member organization;" broker-dealers admitted to membership in the other Self-Regulatory Subsidiaries are referred to as "members."

¹¹ An "Executive Officer" of a member or member organization means those officers covered in Rule 16a-1(f) under the Act, as if the member or member

(4) has within the last year received from any member or member organization of a Self-Regulatory Subsidiary more than \$100,000 per year in direct compensation, or received from such members or member organizations in the aggregate an amount of direct compensation that in any one year is more than 10 percent of the Director's annual gross compensation for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); or

(5) is affiliated, directly or indirectly, with a member or member organization of a Self-Regulatory Subsidiary.

NASDAQ OMX believes that the change is warranted to ensure that the definition of Industry Director is appropriately focused on the mitigation of potential conflicts of interest associated with Directors who are currently or were very recently employed by members or member organizations of Self-Regulatory Subsidiaries, or that otherwise have material affiliations with such members or member organizations. The current definition covers individuals who are employed by broker-dealers that are not members of Self-Regulatory Subsidiaries, or who retired from service at a broker-dealer more than one, but less than three years in the past. NASDAQ OMX and the Exchange believe that by deeming such potential Directors to be Industry Directors, the current By-Laws unnecessarily restrict highly qualified individuals with extensive knowledge of the financial services industry from serving on the Board.

In addition to this change, NASDAQ OMX is also proposing the following additional changes to the definitions applicable to categories of Directors:

organization were an issuer within the meaning of such Rule. 17 CFR 240.16a-1(f).

(1) NASDAQ OMX proposes a new definition of “Staff Director.” Currently, the definition of “Staff Director” is included within the definition of “Industry Director,” and is defined as “any two officers of the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors.” By virtue of being designated as Staff Directors, these Directors are not considered to be Industry Directors for purposes of the compositional requirements of the By-Laws. Instead, NASDAQ OMX proposes a separate definition of “Staff Director” as “an officer of the Corporation that is serving as a Director.”¹² As discussed below, however, Section 4.3 of the By-Laws is to be amended to provide that only one Staff Director may serve on the Board, unless the Board consists of ten or more Directors, in which case no more than two Staff Directors may serve. Thus, the change will further restrict the number of possible Staff Directors in instances where the Board is smaller than ten Directors, while retaining the current limit for a larger Board.

(2) NASDAQ OMX is adopting a new definition of “Issuer Director” and “Issuer committee member”. The By-Laws currently provide that the number of “Non-Industry Directors” (i.e., Directors who are not Industry Directors) must equal or exceed the number of Industry Directors, and shall include at least one “issuer representative,” unless the Board consists of ten or more Directors, in which case it must include at least two issuer representatives. NASDAQ OMX and the Exchange believe that requiring the representation of issuers on the Board is consistent with the goal of promoting a diversity

¹² The definition of “Industry Director” will continue to exclude Staff Directors, who might otherwise be considered Industry Directors by virtue of affiliation with NASDAQ Exchange Services LLC and NASDAQ Options Services, LLC, registered broker-dealers that are members or NASDAQ and BX and member organizations of Phlx.

of viewpoints and skills among Directors and the requirement of Section 6(b)(3) of the Act¹³ to provide for representation of issuers among the directors of a national securities exchange. The term “issuer representative” is not directly defined in the By-Laws, but is implicitly defined in the definition of “Non-Industry Director” as “an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary.” The new proposed definition is “a Director (excluding any Staff Director) or committee member who is an officer or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary, excluding any Director or committee member who is a director of such an issuer but is not also an officer or employee of such an issuer.” The exclusion of Staff Directors from the definition is necessary because NASDAQ OMX is listed on NASDAQ, but the purposes of the By-Laws in requiring issuer representation to promote a diversity of viewpoints among Directors would not be well served by deeming Staff Directors also to be Issuer Directors. The definition is also being changed to exclude persons who are directors of issuers but not also officers or employees. This change is intended to make it clear that a Director is not barred from being considered a Public Director¹⁴ merely because the Director serves as an independent director of another listed company.

(3) The definition of “Public Director” and “Public committee member” is being restated as follows: “a Director or committee member who (1) is not an Industry Director or Industry committee member, (2) is not an Issuer Director or Issuer committee member,

¹³ 15 U.S.C. 78f(b)(3).

¹⁴ The definition of Public Director is discussed below.

and (3) has no material business relationship with a member or member organization of a Self-Regulatory Subsidiary, the Corporation or its affiliates, or FINRA.” The definition currently covers a person who “has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA.” Thus, the changes make it clear that any Industry Director or Issuer Director would not be considered a Public Director. As noted above, however, an independent director of an issuer of securities listed on NASDAQ could be considered a Public Director. In addition, in keeping with the change to the definition of Industry Director discussed above, the final clause of the definition is being revised to focus on the existence of a material business relationship with a member or member organization of a Self-Regulatory Subsidiary, rather than any broker or dealer. Thus, for example, a Director that had a material business relationship with a non-U.S. broker or dealer that was not a member or a member organization of a Self-Regulatory Subsidiary might be eligible to be a Public Director.

(4) The definition of “Non-Industry Director” or “Non-Industry committee member” is proposed to be amended to cover any “Director (excluding any Staff Director) or committee member who is (1) a Public Director or Public committee member; (2) an Issuer Director or Issuer committee member; or (3) any other individual who would not be an Industry Director or Industry committee member.” The revised definition is generally consistent with the current definition, but reflects the adoption of a definition for “Issuer Director or Issuer committee member”.

(5) NASDAQ OMX is making conforming changes to the letter designations of paragraphs in Article I of the By-Laws.

Qualifications of Directors

NASDAQ OMX is proposing to amend Section 4.3 of the By-Laws, which governs the qualifications and compositional requirements of the Board of Directors, to (i) increase the required number of Public Directors from one to two, (ii) replace the requirement to include at least one issuer representative (or at least two issuer representatives if the Board consists of ten or more Directors) with a requirement to include at least one, but no more than two, Issuer Directors, and (iii) provide that the number of Staff Directors may not exceed one, unless the Board consists of ten or more Directors, in which case the number may not exceed two. The section will continue to require that the number of Non-Industry Directors equals or exceeds the number of Industry Directors. Although these changes will not significantly modify the Board's compositional requirements, they will continue to ensure a diversity of representation among Industry, Staff, Issuer, and Public Directors, will place more stringent caps on the number of Issuer and Staff Directors, and will increase the requirement for Public Directors. NASDAQ OMX also proposes to make a conforming change to add the term "Issuer Director" to Section 4.8 and Section 4.13(h), which govern the filling of vacancies on the Board and the determination of Directors' qualifications by NASDAQ OMX's Secretary.

The changes to the compositional requirements imposed specifically by the By-Laws do not alter in any respect the compositional requirements imposed by NASDAQ listing standards on NASDAQ OMX as a public company. Specifically, NASDAQ Rule 5605 requires that the board of directors of a company listed on NASDAQ must have a majority of directors that are "independent" within the meaning of that rule. As provided

in NASDAQ Rule 5605(a)(2) with respect to a company listed on NASDAQ (a “Company”), “ ‘Independent Director’ means a person other than an Executive Officer¹⁵ or employee of the Company or any other individual having a relationship which, in the opinion of the Company’s board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.” The rule goes on to provide that directors having certain defined relationships with a Company may not be considered independent. Thus, while Staff Directors are clearly not independent within the meaning of Rule 5605, other Directors may or may not be considered independent, depending on the specific facts of their relationship to NASDAQ OMX. The proposed rule change does not alter in any respect the obligations of the NASDAQ OMX Board under NASDAQ Rule 5605.

Composition of Executive Committee

NASDAQ OMX is proposing a minor amendment to the compositional requirements of its Executive Committee. Currently, Section 4.13(d) of the By-Laws provides that the percentage of Public Directors on the Executive Committee must be at least as great as the percentage of Public Directors on the whole Board. As noted above, however, the By-Laws currently require only one Public Director on the whole Board (a requirement that NASDAQ OMX is proposing to raise to two Public Directors). Thus, the By-Laws currently reflect a standard under which voluntary inclusion of additional Public Directors on the full Board translates into a requirement to include ever increasing numbers of Public Directors on the Executive Committee, even though the requirements for the full Board itself may be satisfied with only one Public Director. Accordingly,

¹⁵ NASDAQ Rule 5605(a)(1) provides that “‘Executive Officer’ means those officers covered in Rule 16a-1(f) under the Act.” 17 CFR 240.16a-1(f).

NASDAQ OMX is proposing to make the requirements consistent by requiring at least two Public Directors on the Executive Committee.

Composition of the Audit Committee

Earlier this year, the Commission approved changes to the provisions of NASDAQ OMX's By-Laws pertaining to the composition of the Management Compensation Committee of its Board of Directors. NASDAQ OMX is now proposing comparable changes to the compositional requirements of its Audit Committee. Specifically, NASDAQ OMX is proposing to amend Section 4.13(g) to replace a requirement that the Audit Committee be composed of a majority of Non-Industry Directors 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, the Nominating and Governance Committee, the Management Compensation Committee, and 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 members and member organizations of the Self-Regulatory Subsidiaries do not exert

disproportionate influence of the governance of NASDAQ OMX. As required by Section 10A of the Act,¹⁶ SEC Rule 10A-3 thereunder,¹⁷ and NASDAQ Rule 5605(c), the committee would continue at all times to be composed solely of Directors who are independent within the meaning of those provisions.

b. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁸ in general, and with Sections 6(b)(1) and (b)(5) of the Act,¹⁹ in particular, in that the proposal enables NASDAQ 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 NASDAQ 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.

In particular, NASDAQ believes that the change to the definition of Industry Director is warranted to ensure that it is appropriately focused on the mitigation of

¹⁶ 15 U.S.C. 78j-1.

¹⁷ 17 CFR 240.10A-3.

¹⁸ 15 U.S.C. 78f.

¹⁹ 15 U.S.C. 78f(b)(1), (5).

potential conflicts of interest associated with Directors who are currently or were very recently employed by members or member organizations of Self-Regulatory Subsidiaries, or that otherwise have material affiliations with such members or member organizations, without unnecessarily restricting highly qualified individuals with extensive knowledge of the financial services industry from serving on the Board. NASDAQ further believes that the other definitional changes and the changes to the compositional requirements of the NASDAQ OMX Board and the Executive Committee will enhance the clarity of these provisions and promote a diversity of backgrounds and viewpoints on the NASDAQ OMX Board. The Exchange believes that these changes will collectively promote the capacity of the NASDAQ OMX Board to fulfill its responsibilities.

With respect to the proposed changes to the Audit Committee's compositional requirements, NASDAQ 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 members and member organizations of Self-Regulatory Subsidiaries do not exert disproportionate influence of the governance of NASDAQ OMX. The change would not affect NASDAQ OMX's compliance with Section 10A of the Act,²⁰ SEC Rule 10A-3 thereunder,²¹ and NASDAQ Rule 5605(c), as the committee would continue at all times to be composed solely of Directors who are independent within the meaning of those provisions.

²⁰ 15 U.S.C. 78j-1.

²¹ 17 CFR 240.10A-3.

4. 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 necessary or appropriate in furtherance of the purposes the Act. Specifically, the Exchange believes that the By-Laws of its holding company, NASDAQ OMX, do not directly affect competition between the Exchange and others that provide the same goods and services as the Exchange, since they do not affect the availability or pricing of such goods and services. To the extent that the proposed change to the By-Laws may be construed to have any bearing on competition, the Exchange believes that the change will promote competition between the Exchange and the subsidiaries of NYSE Euronext, since the change will allow NASDAQ OMX to have greater flexibility in the selection of its Directors in a manner similar to the flexibility available to NYSE Euronext under its Independence Policy.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The definition of “Industry Director” in the proposed rule change is based on provisions of the Independence Policy pertaining to directors that are, or are affiliated with, members or member organizations of the New York Stock Exchange LLC, NYSE MKT LLC, or NYSE Arca, Inc. There are no material differences between the proposed definition and the analogous provisions of the Independence Policy.

9. Exhibits

1. Form of Notice of the Proposed Rule Change for the Federal Register.
5. Text of Proposed By-Law Amendments.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASDAQ-2012-142)

December __, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market 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.

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 December 19, 2012, 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 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 the 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” or the “Corporation”). The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com>, at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 compositional requirements of the NASDAQ OMX Board. The changes are primarily focused on amending the definition of "Industry Director" (and "Industry committee member")³ to make the definition less restrictive, but in a manner that NASDAQ believes will continue to serve the purpose of ensuring that members and member organizations of Self-Regulatory Subsidiaries⁴ – the self-regulatory organizations owned by NASDAQ OMX – do not have disproportionate influence on its

³ The term "committee member" in the By-Laws refers to membership in the committees authorized under Section 4.13 of the By-Laws, such as the Executive Committee and the Audit Committee. Under the By-Laws and the Delaware General Corporation Law, all members of committees with the power and authority to act on behalf of the Board in the management of the business and affairs of NASDAQ OMX must themselves be Directors. Accordingly, the definitions of "Industry Director" and "Industry committee member" are coterminous as applied to any member of these committees. The By-Laws do not presently contemplate any committees with non-Director members.

⁴ The By-Laws define each of NASDAQ, NASDAQ OMX BX, Inc. ("BX"), NASDAQ OMX PHLX LLC ("Phlx"), the Boston Stock Exchange Clearing Corporation ("BSECC"), and the Stock Clearing Corporation of Philadelphia ("SCCP") as a "Self-Regulatory Subsidiary".

governance. In making the change, NASDAQ OMX is adapting concepts already approved by the Commission in its review of the Independence Policy of the NYSE Euronext Board of Directors (the “Independence Policy”).⁵ The proposed rule change also makes several other changes to provisions pertaining to the Board’s compositional requirements and categorization of Directors.

Definitions

The By-Laws require Directors to be assigned to certain defined categories, based on their current and past affiliations.⁶ Specifically, Directors may be categorized as “Industry Directors,” “Non-Industry Directors,” “Public Directors,” and/or “Staff Directors.” Currently, an Industry Director is defined as a Director 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

⁵ Securities Exchange Act Release No. 51217 (February 16, 2005), 70 FR 9688 (February 28, 2005) (SR-NYSE-2004-54); Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR-NYSE-2006-120); Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47161 (SR-NYSE-2012-17; SR-NYSEArca-2012-59; SR-NYSEMKKT-2012-07).

⁶ As discussed above, the categories also govern the classification of members of committees of NASDAQ OMX, as provided for in the By-Laws.

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 the Corporation or any affiliate⁷ thereof (including any Self-Regulatory Subsidiary) or to the Financial Industry Regulatory Authority ("FINRA") (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

Thus, the current definition focuses on a Director's affiliation with any broker-dealer, regardless of whether the broker-dealer is a member or member organization of a Self-Regulatory Subsidiary. The definition also features a three-year "look-back" period

⁷ NASDAQ OMX is adding a definition of "affiliate" as follows: "An 'affiliate' of, or a person 'affiliated' with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified." The definition is identical to the definition of the term in SEC Rule 12b-2, 17 CFR 240.12b-2.

during which a Director formerly associated with a broker-dealer would continue to be deemed an Industry Director. In lieu of this definition, NASDAQ OMX is proposing to adopt a definition that focuses on whether a Director is affiliated with a member or a member organization of a Self-Regulatory Subsidiary. Under the revised definition, an Industry Director will be defined as a Director who:

(1) is, or within the last year was, or has an immediate family member⁸ who is, or within the last year was, a member of a Self-Regulatory Subsidiary;⁹

(2) is, or within the last year was, employed by a member or a member organization of a Self-Regulatory Subsidiary;¹⁰

(3) has an immediate family member who is, or within the last year was, an executive officer of a member or a member organization¹¹ of a Self-Regulatory Subsidiary;

(4) has within the last year received from any member or member organization of a Self-Regulatory Subsidiary more than \$100,000 per year in direct compensation, or

⁸ NASDAQ OMX is adding a definition of “immediate family member” as follows: “Immediate family member” means a person’s spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person’s home.” The definition is identical to the definition of “family member” contained in NASDAQ listing standards, as provided in NASDAQ Rule 5605.

⁹ This provision would apply to an individual that was a member of Phlx, the only Self-Regulatory Subsidiary that allows natural persons to become members.

¹⁰ A broker-dealer that is admitted to membership in Phlx is referred to as a “member organization;” broker-dealers admitted to membership in the other Self-Regulatory Subsidiaries are referred to as “members.”

¹¹ An “Executive Officer” of a member or member organization means those officers covered in Rule 16a-1(f) under the Act, as if the member or member organization were an issuer within the meaning of such Rule. 17 CFR 240.16a-1(f).

received from such members or member organizations in the aggregate an amount of direct compensation that in any one year is more than 10 percent of the Director's annual gross compensation for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); or

(5) is affiliated, directly or indirectly, with a member or member organization of a Self-Regulatory Subsidiary.

NASDAQ OMX believes that the change is warranted to ensure that the definition of Industry Director is appropriately focused on the mitigation of potential conflicts of interest associated with Directors who are currently or were very recently employed by members or member organizations of Self-Regulatory Subsidiaries, or that otherwise have material affiliations with such members or member organizations. The current definition covers individuals who are employed by broker-dealers that are not members of Self-Regulatory Subsidiaries, or who retired from service at a broker-dealer more than one, but less than three years in the past. NASDAQ OMX and the Exchange believe that by deeming such potential Directors to be Industry Directors, the current By-Laws unnecessarily restrict highly qualified individuals with extensive knowledge of the financial services industry from serving on the Board.

In addition to this change, NASDAQ OMX is also proposing the following additional changes to the definitions applicable to categories of Directors:

(1) NASDAQ OMX proposes a new definition of "Staff Director." Currently, the definition of "Staff Director" is included within the definition of "Industry Director," and is defined as "any two officers of the Corporation, selected at the sole discretion of the

Board, amongst those officers who may be serving as Directors.” By virtue of being designated as Staff Directors, these Directors are not considered to be Industry Directors for purposes of the compositional requirements of the By-Laws. Instead, NASDAQ OMX proposes a separate definition of “Staff Director” as “an officer of the Corporation that is serving as a Director.”¹² As discussed below, however, Section 4.3 of the By-Laws is to be amended to provide that only one Staff Director may serve on the Board, unless the Board consists of ten or more Directors, in which case no more than two Staff Directors may serve. Thus, the change will further restrict the number of possible Staff Directors in instances where the Board is smaller than ten Directors, while retaining the current limit for a larger Board.

(2) NASDAQ OMX is adopting a new definition of “Issuer Director” and “Issuer committee member”. The By-Laws currently provide that the number of “Non-Industry Directors” (i.e., Directors who are not Industry Directors) must equal or exceed the number of Industry Directors, and shall include at least one “issuer representative,” unless the Board consists of ten or more Directors, in which case it must include at least two issuer representatives. NASDAQ OMX and the Exchange believe that requiring the representation of issuers on the Board is consistent with the goal of promoting a diversity of viewpoints and skills among Directors and the requirement of Section 6(b)(3) of the Act¹³ to provide for representation of issuers among the directors of a national securities

¹² The definition of “Industry Director” will continue to exclude Staff Directors, who might otherwise be considered Industry Directors by virtue of affiliation with NASDAQ Exchange Services LLC and NASDAQ Options Services, LLC, registered broker-dealers that are members or NASDAQ and BX and member organizations of Phlx.

¹³ 15 U.S.C. 78f(b)(3).

exchange. The term “issuer representative” is not directly defined in the By-Laws, but is implicitly defined in the definition of “Non-Industry Director” as “an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary.” The new proposed definition is “a Director (excluding any Staff Director) or committee member who is an officer or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary, excluding any Director or committee member who is a director of such an issuer but is not also an officer or employee of such an issuer.” The exclusion of Staff Directors from the definition is necessary because NASDAQ OMX is listed on NASDAQ, but the purposes of the By-Laws in requiring issuer representation to promote a diversity of viewpoints among Directors would not be well served by deeming Staff Directors also to be Issuer Directors. The definition is also being changed to exclude persons who are directors of issuers but not also officers or employees. This change is intended to make it clear that a Director is not barred from being considered a Public Director¹⁴ merely because the Director serves as an independent director of another listed company.

(3) The definition of “Public Director” and “Public committee member” is being restated as follows: “a Director or committee member who (1) is not an Industry Director or Industry committee member, (2) is not an Issuer Director or Issuer committee member, and (3) has no material business relationship with a member or member organization of a Self-Regulatory Subsidiary, the Corporation or its affiliates, or FINRA.” The definition currently covers a person who “has no material business relationship with a broker or

¹⁴ The definition of Public Director is discussed below.

dealer, the Corporation or its affiliates, or FINRA.” Thus, the changes make it clear that any Industry Director or Issuer Director would not be considered a Public Director. As noted above, however, an independent director of an issuer of securities listed on NASDAQ could be considered a Public Director. In addition, in keeping with the change to the definition of Industry Director discussed above, the final clause of the definition is being revised to focus on the existence of a material business relationship with a member or member organization of a Self-Regulatory Subsidiary, rather than any broker or dealer. Thus, for example, a Director that had a material business relationship with a non-U.S. broker or dealer that was not a member or a member organization of a Self-Regulatory Subsidiary might be eligible to be a Public Director.

(4) The definition of “Non-Industry Director” or “Non-Industry committee member” is proposed to be amended to cover any “Director (excluding any Staff Director) or committee member who is (1) a Public Director or Public committee member; (2) an Issuer Director or Issuer committee member; or (3) any other individual who would not be an Industry Director or Industry committee member.” The revised definition is generally consistent with the current definition, but reflects the adoption of a definition for “Issuer Director or Issuer committee member”.

(5) NASDAQ OMX is making conforming changes to the letter designations of paragraphs in Article I of the By-Laws.

Qualifications of Directors

NASDAQ OMX is proposing to amend Section 4.3 of the By-Laws, which governs the qualifications and compositional requirements of the Board of Directors, to (i) increase the required number of Public Directors from one to two, (ii) replace the

requirement to include at least one issuer representative (or at least two issuer representatives if the Board consists of ten or more Directors) with a requirement to include at least one, but no more than two, Issuer Directors, and (iii) provide that the number of Staff Directors may not exceed one, unless the Board consists of ten or more Directors, in which case the number may not exceed two. The section will continue to require that the number of Non-Industry Directors equals or exceeds the number of Industry Directors. Although these changes will not significantly modify the Board's compositional requirements, they will continue to ensure a diversity of representation among Industry, Staff, Issuer, and Public Directors, will place more stringent caps on the number of Issuer and Staff Directors, and will increase the requirement for Public Directors. NASDAQ OMX also proposes to make a conforming change to add the term "Issuer Director" to Section 4.8 and Section 4.13(h), which govern the filling of vacancies on the Board and the determination of Directors' qualifications by NASDAQ OMX's Secretary.

The changes to the compositional requirements imposed specifically by the By-Laws do not alter in any respect the compositional requirements imposed by NASDAQ listing standards on NASDAQ OMX as a public company. Specifically, NASDAQ Rule 5605 requires that the board of directors of a company listed on NASDAQ must have a majority of directors that are "independent" within the meaning of that rule. As provided in NASDAQ Rule 5605(a)(2) with respect to a company listed on NASDAQ (a "Company"), " 'Independent Director' means a person other than an Executive Officer¹⁵ or employee of the Company or any other individual having a relationship which, in the

¹⁵ NASDAQ Rule 5605(a)(1) provides that " 'Executive Officer' means those officers covered in Rule 16a-1(f) under the Act." 17 CFR 240.16a-1(f).

opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director." The rule goes on to provide that directors having certain defined relationships with a Company may not be considered independent. Thus, while Staff Directors are clearly not independent within the meaning of Rule 5605, other Directors may or may not be considered independent, depending on the specific facts of their relationship to NASDAQ OMX. The proposed rule change does not alter in any respect the obligations of the NASDAQ OMX Board under NASDAQ Rule 5605.

Composition of Executive Committee

NASDAQ OMX is proposing a minor amendment to the compositional requirements of its Executive Committee. Currently, Section 4.13(d) of the By-Laws provides that the percentage of Public Directors on the Executive Committee must be at least as great as the percentage of Public Directors on the whole Board. As noted above, however, the By-Laws currently require only one Public Director on the whole Board (a requirement that NASDAQ OMX is proposing to raise to two Public Directors). Thus, the By-Laws currently reflect a standard under which voluntary inclusion of additional Public Directors on the full Board translates into a requirement to include ever increasing numbers of Public Directors on the Executive Committee, even though the requirements for the full Board itself may be satisfied with only one Public Director. Accordingly, NASDAQ OMX is proposing to make the requirements consistent by requiring at least two Public Directors on the Executive Committee.

Composition of the Audit Committee

Earlier this year, the Commission approved changes to the provisions of NASDAQ OMX's By-Laws pertaining to the composition of the Management Compensation Committee of its Board of Directors. NASDAQ OMX is now proposing comparable changes to the compositional requirements of its Audit Committee. Specifically, NASDAQ OMX is proposing to amend Section 4.13(g) to replace a requirement that the Audit Committee be composed of a majority of Non-Industry Directors 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, the Nominating and Governance Committee, the Management Compensation Committee, and 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 members and member organizations of the Self-Regulatory Subsidiaries do not exert disproportionate influence of the governance of NASDAQ OMX. As required by Section

10A of the Act,¹⁶ SEC Rule 10A-3 thereunder,¹⁷ and NASDAQ Rule 5605(c), the committee would continue at all times to be composed solely of Directors who are independent within the meaning of those provisions.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁸ in general, and with Sections 6(b)(1) and (b)(5) of the Act,¹⁹ in particular, in that the proposal enables NASDAQ 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 NASDAQ 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.

In particular, NASDAQ believes that the change to the definition of Industry Director is warranted to ensure that it is appropriately focused on the mitigation of potential conflicts of interest associated with Directors who are currently or were very

¹⁶ 15 U.S.C. 78j-1.

¹⁷ 17 CFR 240.10A-3.

¹⁸ 15 U.S.C. 78f.

¹⁹ 15 U.S.C. 78f(b)(1), (5).

recently employed by members or member organizations of Self-Regulatory Subsidiaries, or that otherwise have material affiliations with such members or member organizations, without unnecessarily restricting highly qualified individuals with extensive knowledge of the financial services industry from serving on the Board. NASDAQ further believes that the other definitional changes and the changes to the compositional requirements of the NASDAQ OMX Board and the Executive Committee will enhance the clarity of these provisions and promote a diversity of backgrounds and viewpoints on the NASDAQ OMX Board. The Exchange believes that these changes will collectively promote the capacity of the NASDAQ OMX Board to fulfill its responsibilities.

With respect to the proposed changes to the Audit Committee's compositional requirements, NASDAQ 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 members and member organizations of Self-Regulatory Subsidiaries do not exert disproportionate influence of the governance of NASDAQ OMX. The change would not affect NASDAQ OMX's compliance with Section 10A of the Act,²⁰ SEC Rule 10A-3 thereunder,²¹ and NASDAQ Rule 5605(c), as the committee would continue at all times to be composed solely of Directors who are independent within the meaning of those provisions.

²⁰ 15 U.S.C. 78j-1.

²¹ 17 CFR 240.10A-3.

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 necessary or appropriate in furtherance of the purposes the Act. Specifically, the Exchange believes that the By-Laws of its holding company, NASDAQ OMX, do not directly affect competition between the Exchange and others that provide the same goods and services as the Exchange, since they do not affect the availability or pricing of such goods and services. To the extent that the proposed change to the By-Laws may be construed to have any bearing on competition, the Exchange believes that the change will promote competition between the Exchange and the subsidiaries of NYSE Euronext, since the change will allow NASDAQ OMX to have greater flexibility in the selection of its Directors in a manner similar to the flexibility available to NYSE Euronext under its Independence Policy.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-142 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-NASDAQ-2012-142. This file number should be included on the subject line if e-mail 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 website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Copies of such filing also will be available for inspection and copying at the principal offices 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-NASDAQ-2012-142, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Kevin M. O'Neill
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).

EXHIBIT 5

The text of the proposed amendment is below. Proposed new language is underlined; proposed deletions are in brackets.

BY-LAWS OF THE NASDAQ OMX GROUP, INC.**Article I Definitions**

When used in these By-Laws, unless the context otherwise requires, the term:

When used in these By-Laws, unless the context otherwise requires, the term:

(a) "Act" means the Securities Exchange Act of 1934, as amended;

(b) An "affiliate" of, or a person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;

[(b)] (c) "Board" means the Board of Directors of the Corporation;

[(c)] (d) "broker" shall have the same meaning as in Section 3(a)(4) of the Act;

[(d)] (e) "Commission" means the Securities and Exchange Commission;

[(e)] (f) "Corporation" means The Nasdaq OMX Group, Inc.;

[(f)] (g) "day" means calendar day;

[(g)] (h) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act;

[(h)] (i) "Delaware law" means the General Corporation Law of the State of Delaware;

[(i)] (j) "Director" means a member of the Board;

(k) An "Executive Officer" of a member or member organization means those officers covered in Rule 16a-1(f) under the Act, as if the member or member organization were an issuer within the meaning of such Rule.

(l) "Immediate family member" means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home;

[(j)] (m) "Industry Director" or "Industry committee member" means a Director (excluding any [two officers of the Corporation, selected at the sole discretion of the

Board, amongst those officers who may be serving as Directors (the "[Staff Directors]") or committee member who (1) is, or within the last year was, or has an immediate family member who is, or within the last year was, a member of a Self-Regulatory Subsidiary; (2) is, or within the last year was, employed by a member or a member organization of a Self-Regulatory Subsidiary; (3) has an immediate family member who is, or within the last year was, an executive officer of a member or a member organization of a Self-Regulatory Subsidiary; (4) has within the last year received from any member or member organization of a Self-Regulatory Subsidiary more than \$100,000 per year in direct compensation, or received from such members or member organizations in the aggregate an amount of direct compensation that in any one year is more than 10 percent of the Director's annual gross compensation for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); or (5) is affiliated, directly or indirectly, with a member or member organization of a Self-Regulatory Subsidiary [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 committee member or 20 percent or more of the gross revenues received by the Director's or committee member'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 committee member or 20 percent or more of the gross revenues received by the Director's or committee member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate thereof (including any Self-Regulatory Subsidiary) or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years];

[(k)] (n) "FINRA" means the Financial Industry Regulatory Authority, Inc. and its affiliates;

(o) "Issuer Director" or "Issuer committee member" means a Director (excluding any Staff Director) or committee member who is an officer or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary, excluding any Director or committee member who is a director of such an issuer but is not also an officer or employee of such an issuer;

[(l)] (p) "Nominating & Governance Committee" means the Nominating & Governance Committee appointed pursuant to these By-Laws;

[(m)] (q) "Non-Industry Director" or "Non-Industry committee member" means a Director (excluding [the] any Staff Director[s]) or committee member who is (1) a Public Director or Public committee member; (2) [an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary] an Issuer Director or Issuer committee member; or (3) any other individual who would not be an Industry Director or Industry committee member;

[(n)] (r) "Public Director" or "Public committee member" means a Director or committee member who (1) is not an Industry Director or Industry committee member, (2) is not an Issuer Director or Issuer committee member, and (3) has no material business relationship with a [broker or dealer] member or member organization of a Self-Regulatory Subsidiary, the Corporation or its affiliates, or FINRA; and

[(o)] (s) "Self-Regulatory Subsidiary" means each of (i) The NASDAQ Stock Market LLC; (ii) NASDAQ OMX BX, Inc.; (iii) Boston Stock Exchange Clearing Corporation; (iv) NASDAQ OMX PHLX LLC; and (v) Stock Clearing Corporation of Philadelphia.

[(t)] "Staff Director" means an officer of the Corporation that is serving as a Director.

* * * * *

Article IV Board of Directors

* * * * *

Sec. 4.3 Qualifications

Directors need not be stockholders of the Corporation. The number of Non-Industry Directors, [including at least one Public Director and at least one issuer representative,] shall equal or exceed the number of Industry Directors[, unless the Board consists of ten or more Directors. In such case at least two Directors shall be issuer representatives]. The Board shall include at least two Public Directors. The Board shall include at least one, but no more than two, Issuer Directors. The Board shall include no more than one Staff Director, unless the Board consists of ten or more Directors. In such case, the Board shall include no more than two Staff Directors.

* * * * *

Sec. 4.8 Filling of Vacancies

If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating & Governance Committee shall nominate, and the Board shall elect by majority vote, a person satisfying the classification (Industry, Non-Industry, Issuer, or Public Director), if applicable, for the directorship as provided in Section 4.3 to fill such vacancy, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

* * * * *

Sec. 4.13 Committees

(a) – (c) No change.

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation between meetings of the Board, and which may authorize the seal of the Corporation to be affixed to all papers that may require it. The number of Non-Industry Directors on the Executive Committee shall equal or exceed the number of Industry Directors on the Executive Committee. The [percentage of Public Directors on the] Executive Committee shall include [be] at least [as great as the percentage of] two Public Directors [on the whole Board]. An Executive Committee member shall hold office for a term of one year.

(e) – (f) No change.

(g) The Board shall appoint an Audit Committee.

(i) The Audit Committee shall consist of three or more Directors, each of whom shall be an independent director within the meaning of the rules of the NASDAQ Stock Market and Section 10A of the Act. [A majority of] The number of Non-Industry Directors on the Audit Committee [members] shall [be Non-Industry Directors] equal or exceed the number of Industry Directors on the Audit Committee. The Audit Committee shall include two Public Directors. A Public Director shall serve as Chair of the Committee. An Audit Committee member shall hold office for a term of one year.

(h) The Board may appoint a Nominating & Governance Committee. The Nominating & Governance Committee shall nominate Directors for each vacant or new Director position on the Board.

(i) – (ii) No change.

(iii) The Secretary shall collect from each nominee for Director such information as is reasonably necessary to serve as the basis for a determination of the nominee's classification as an Industry, Non-Industry, Issuer, or Public Director, if applicable, and the Secretary shall certify to the Nominating & Governance Committee each nominee's classification, if applicable. Directors shall update the information submitted under this subsection at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

(i) – (j) No change.

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