

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57099; File No. SR-NASDAQ-2008-002)

January 4, 2008

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Nasdaq Stockholders' Agreement between The Nasdaq Stock Market, Inc. and Borse Dubai Limited

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 January 2, 2008, the NASDAQ Stock Market LLC (the "Nasdaq Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Nasdaq Exchange. The Nasdaq Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission. 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 Nasdaq Exchange's parent corporation, The Nasdaq Stock Market, Inc. ("Nasdaq"),⁵ proposes to enter into a Nasdaq Stockholders' Agreement (the "Agreement") with Borse Dubai Limited ("Borse Dubai"). There is no proposed rule text.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ On December 12, 2007, Nasdaq's stockholders voted to approve a change in its name from The Nasdaq Stock Market, Inc. to The NASDAQ OMX Group, Inc. The change will become effective upon the closing of the Transactions (as defined below).

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 Nasdaq 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 Nasdaq 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

On November 15, 2007, Nasdaq entered into definitive agreements with Borse Dubai and BD Stockholm AB, and with Borse Dubai and Dubai International Financial Exchange (“DIFX”) (the “Definitive Agreements”) pursuant to which (i) Borse Dubai will acquire up to 100% of the outstanding share capital of OMX AB (“OMX”) by means of a public tender offer, (ii) Borse Dubai will acquire shares of common stock of Nasdaq representing approximately 28% of its outstanding share capital, with the shares in excess of 19.9% held in a trust subject to an obligation to sell under certain conditions, (iii) Nasdaq will acquire 33.3% of the outstanding share capital of DIFX, an exchange subsidiary of Borse Dubai, and (iv) Nasdaq will acquire up to 100% of the outstanding share capital of OMX from Borse Dubai (collectively, the “Transactions”).⁶ The shares held by Borse Dubai directly and in the trust will be subject to Article Fourth of Nasdaq’s Restated Certificate of Incorporation,⁷ which provides that no person

⁶ Copies of the Definitive Agreements and a description of their terms were filed by Nasdaq on Form 8-K on November 16, 2007 and are available at <http://www.sec.gov/Archives/edgar/data/1120193/000119312507249279/d8k.htm>.

⁷ As amended most recently on July 31, 2006. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

who is the beneficial owner of voting securities of Nasdaq in excess of 5% of the then-outstanding shares of stock generally entitled to vote (“Excess Securities”) may vote such Excess Securities.

At the time of the closing of the Transactions, Nasdaq and Borse Dubai will enter into the Agreement, under which, among other things, Borse Dubai will have the right to recommend two persons reasonably acceptable to the Nasdaq Nominating Committee (the “Board Designees”) to serve as directors of Nasdaq. Under the Agreement, Nasdaq will: (i) include the Board Designees on each slate of nominees proposed by management of Nasdaq; (ii) recommend the election of the Board Designees to the stockholders of Nasdaq; and (iii) otherwise use reasonable best efforts to cause the Board Designees to be elected to the Board of Directors. Nasdaq has also agreed to use reasonable best efforts to cause the appointment of one of the Board Designees to the Audit, Executive, Finance, and Management Compensation committees of the Board of Directors, and to cause the appointment of another person designated by Borse Dubai to serve on the Nominating Committee (the “Nominating Committee Designee”, and together with the Board Designees, the “Borse Dubai Designees”), but in each case only if such person meets the requirements for service on the committee.⁸

The Agreement relates solely to the Board of Directors of Nasdaq, and not to the boards of any of its subsidiaries, including the Board of Directors of the Nasdaq Exchange.

Nevertheless, the provisions of the Agreement described above could be considered a proposed rule change of the Nasdaq Exchange, if they were viewed as affecting the influence that a

⁸ These provisions relating to the Borse Dubai Designees remain in effect as long as Borse Dubai maintains at least 50% of its initial 19.9% direct investment in Nasdaq. As long as Borse Dubai maintains at least 25% of this investment, it will be entitled to propose one director for nomination, but will have no rights with regard to committees.

significant stockholder of Nasdaq might be seen as exercising over the business and affairs of the Nasdaq Exchange in its capacity as a wholly owned subsidiary of Nasdaq.

In general, directors of Nasdaq, including the Board Designees, must be nominated by a Nominating Committee,⁹ the composition of which is subject to the requirements of the Nasdaq By-Laws and Nasdaq Exchange Rule 4350,¹⁰ and must then be elected by the stockholders of Nasdaq. The Nasdaq Board is currently composed of 13 members, but will be expanded to 16 members at the time of the closing of the Transactions. Thus, the Board Designees would represent 12.5% of the Nasdaq Board.

The committees that are the subject of the Agreement are subject to compositional requirements established by the Nasdaq By-Laws; moreover, the Audit, Management Compensation, and Nominating Committees are subject to independence requirements established by Nasdaq Exchange Rule 4350 and, in the case of the Audit Committee, by 10A-3 under the Act.¹¹ Thus, depending on the affiliations of the Borse Dubai Designees and the judgment of the Nasdaq Board with regard to their independence, they would not be eligible for service on these three committees. Each of these committees currently has between four and

⁹ An exception to the requirement of nomination by the Nominating Committee exists for nominations by a stockholder who is conducting a proxy contest and who complies with the strict requirements of the Nasdaq By-Laws governing direct stockholder nomination. The Board Designees would not be nominated by Borse Dubai under these provisions.

¹⁰ Currently, the Nasdaq By-Laws provide that the Nominating Committee must be composed of directors in their final year of service on the Nasdaq Board or other persons who are not officers or employees of Nasdaq. Rule 4350, which governs Nasdaq as a company whose securities are listed on the Nasdaq Exchange, requires Nominating Committee members to satisfy the definition of “independence” in Nasdaq Exchange Rule 4200 and IM-4200 and to otherwise be deemed independent by the Nasdaq Board. In the future, Nasdaq may propose a by-law amendment to require all Nominating Committee members to be directors (with no limitation as to length of service), but Rule 4350 would continue to apply in that event.

¹¹ 17 CFR 240.10A-3.

seven members. Upon the closing of the Transactions, the size of each committee would remain the same or grow to reflect the increased size of the whole Board. Thus, each of the committees on which a Borse Dubai Designee serves will include at least five directors.

2. Statutory Basis

The Nasdaq Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹² in general, and with Sections 6(b)(1) and (b)(5) of the Act,¹³ in particular, in that the proposal enables the Nasdaq Exchange to be so organized as 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 self-regulatory organization (“SRO”) 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.

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

The Nasdaq Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments on the proposed rule change were neither solicited nor received.

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(1), (5).

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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed under 19b-4(f)(6) may not become operative prior to 30 days after the date of filing unless the Commission designates a shorter time if such action is consistent with the protection of investors and the public interest.¹⁶ The Nasdaq Exchange has requested that the Commission waive the 30-day operative delay set forth in Rule 19b-4(f)(6)(iii) under the Act¹⁷ to ensure that the filing is effective and therefore does not delay the commencement of the offer or the closing of the Transactions. The parties to the Transactions expect all regulatory actions necessary for the closing of the Transactions to be completed prior to Borse Dubai commencing its offer for OMX shares. The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a SRO submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Nasdaq Exchange has satisfied the five-day pre-filing notice requirement.

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

Accordingly, the Commission designates the proposal to be operative upon filing with the Commission.¹⁸

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2008-002 on the subject line.

Paper comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2008-002. 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

¹⁸ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Nasdaq 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-2008-002 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.¹⁹

Florence E. Harmon
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).