

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-59773; File Nos. SR-BX-2009-019, SR-NASDAQ-2009-032, SR-Phlx-2009-31)

April 15, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; The NASDAQ Stock Market LLC; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes to Amend the Certificate of Incorporation of 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 April 2, 2009, NASDAQ OMX BX, Inc. (“BX”), The NASDAQ Stock Market LLC (“NASDAQ Exchange”) and NASDAQ OMX PHLX, Inc. (“Phlx”) (collectively, the “NASDAQ OMX Exchange Subsidiaries”)³ filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes as described in Items I, II, and III below, which Items have been substantially prepared by the NASDAQ OMX Exchange Subsidiaries. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations’ Statement of the Terms of Substance of the Proposed Rule Changes

The NASDAQ OMX Exchange Subsidiaries are filing the proposed rule changes with regard to proposed changes to the Restated Certificate of Incorporation (the “Certificate”) of their parent corporation, NASDAQ OMX. The proposed rule changes

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that on April 2, 2009, substantially similar filings also were submitted by Boston Stock Exchange Clearing Corporation (“BSECC”) (SR-BSECC-2009-003) and Stock Clearing Corporation of Philadelphia (“SCCP”) (SR-SCCP-2009-02), the clearing corporation subsidiaries of NASDAQ OMX Group, Inc. (“NASDAQ OMX”).

will be implemented as soon as practicable following filing with the Commission. The text of the proposed rule changes is available at <http://www.cchwallstreet.com/nasdaqomx/>, <http://www.nasdaqtrader.com/Trader.aspx?id=BSEIERules2009>, and <http://www.nasdaqtrader.com/Micro.aspx?id=PhlxApprovedRulefilings>, respectively, and at the respective NASDAQ OMX Exchange Subsidiary's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, each of the NASDAQ OMX Exchange Subsidiaries included statements concerning the purpose of and basis for its proposed rule change and discussed any comments it received on its proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Each of the NASDAQ OMX Exchange Subsidiaries has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

NASDAQ OMX is proposing to make amendments to its Certificate. As provided in Articles XI and XII of the NASDAQ OMX By-Laws, proposed amendments to the Certificate are to be reviewed by the Board of Directors of each self-regulatory 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. The governing boards of BX, the NASDAQ Exchange, Phlx, BSECC, and SCCP have each reviewed the proposed change and determined that it should be filed with the Commission.⁴ The changes to the Certificate are limited in scope, and under Delaware law, they do not require approval by the stockholders of NASDAQ OMX.

Specifically, NASDAQ OMX is proposing to restate, without amendment, its Certificate. The Certificate is composed of a previous Restated Certificate of Incorporation adopted in 2003, and numerous subsequent amendments, which, under Delaware law, are adopted as freestanding documents. However, Delaware law allows the various documents comprising a certificate of incorporation to be consolidated into a single restated certificate upon approval of a corporation's board of directors. The change will assist interested persons, including NASDAQ OMX stockholders and Commission staff, in reading the Certificate without having to review multiple documents. The restated Certificate reflects the deletion of both the Certificate of Designations, Preferences and Rights of Series D Preferred Stock and the Certificate of Elimination that was recently filed with respect to it.⁵ Since the latter component of the Certificate cancels the former, they are both deleted from the restated Certificate.

⁴ BX, the NASDAQ Exchange, Phlx, BSECC, and SCCP have each submitted its respective filing pursuant to Section 19(b)(3)(A)(iii) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ Securities Exchange Act Release No. 59460 (February 26, 2009), 74 FR 9841 (March 6, 2009) (SR-NASDAQ-2009-010, SR-BX-2009-009, SR-Phlx-2009-14); Securities Exchange Act Release No. 59496 (March 3, 2009), 74 FR 10626 (March 11, 2009) (SR-BSECC-2009-01); Securities Exchange Act Release No. 59494 (March 3, 2009), 74 FR 10642 (March 11, 2009) (SR-SCCP-2009-01).

2. Statutory Basis

The NASDAQ OMX Exchange Subsidiaries believe that their respective proposed rule changes are consistent with the provisions of Section 6 of the Act,⁶ in general, and with Sections 6(b)(1) and (b)(5) of the Act,⁷ in particular, in that the proposal enables the NASDAQ OMX Exchange Subsidiaries 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 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. The proposed change will enhance the clarity of NASDAQ OMX's governance documents by restating the various documents comprising the Certificate as a single document.

B. Self-Regulatory Organizations' Statements on Burden on Competition

The NASDAQ OMX Exchange Subsidiaries do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(1), (b)(5).

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received from Members, Participants, or Others

Written comments were neither solicited nor received.

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

The foregoing rule changes have become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and subparagraph (f)(3) of Rule 19b-4 thereunder.⁹ At any time within 60 days of the filing of the respective proposed rule change by the applicable NASDAQ OMX Exchange Subsidiary, the Commission may summarily abrogate such rule changes 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 changes, are 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 Nos. SR-BX-2009-019, SR-NASDAQ-2009-032, SR-Phlx-2009-31 on the subject line.

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(3).

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 Nos. SR-BX-2009-019, SR-NASDAQ-2009-032, SR-Phlx-2009-31. These file numbers 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings 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 Nos. SR-BX-2009-019, SR-NASDAQ-2009-032, and SR-Phlx-2009-31, 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.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).