

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 22	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2014 - * 61	Amendment No. (req. for Amendments *)
Filing by NASDAQ OMX PHLX LLC. 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			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>	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"/>			
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="Rule Change to Amend the Amended and Restated Certificate of Incorporation and By-Laws of The NASDAQ OMX Group, Inc."/>				
<b>Contact Information</b>				
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 *	<input type="text" value="Erika"/>	Last Name *	<input type="text" value="Moore"/>	
Title *	<input type="text" value="Associate General Counsel"/>			
E-mail *	<input type="text" value="erika.moore@nasdaqomx.com"/>			
Telephone *	<input type="text" value="(301) 978-8490"/>	Fax	<input type="text" value="(301) 978-8472"/>	
<b>Signature</b>				
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	<input type="text" value="09/10/2014"/>	<input type="text" value="Executive Vice President and General Counsel"/>		
By	<input type="text" value="Edward S. Knight"/>	<input type="text"/>		
(Name *)				
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.				
<input type="button" value="Persona Not Validated - 1383935917270"/>				

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 \***

Add Remove View

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) NASDAQ OMX PHLX LLC (“Exchange” or “Phlx”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change with respect to amendments of the Amended and Restated Certificate of Incorporation (the “Charter”) and By-Laws (the “By-Laws”) of its parent corporation, The NASDAQ OMX Group, Inc. (“NASDAQ OMX” or the “Company”).

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

NASDAQ OMX’s Board of Directors (the “Board”) approved the proposed rule change on March 26, 2014. At the annual meeting of stockholders held on May 7, 2014, NASDAQ OMX’s stockholders approved the proposed amendments to the Charter. The proposed amendments to the By-Laws do not require stockholder approval.<sup>3</sup>

As provided in the Charter and By-Laws, proposed amendments to the Charter and By-Laws are to be reviewed by the Board of Directors of each self-regulatory

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

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

<sup>3</sup> See Article Eighth, Paragraph A of the Charter and Section 11.2 of the By-Laws, which provide that the By-Laws may be amended by NASDAQ OMX’s Board without stockholder approval.

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.<sup>4</sup> Accordingly, the Boards of Directors of NASDAQ OMX BX, Inc. (“BX”), The NASDAQ Stock Market LLC (“NASDAQ”), Phlx, the Boston Stock Exchange Clearing Corporation (“BSECC”) and the Stock Clearing Corporation of Philadelphia (“SCCP”) approved the proposed rule change on May 14, 2014. Each such board has determined that the proposed rule change should be filed with the Commission.

No other action is necessary for the filing of the rule change. The proposed amendments will be implemented on a date designated by NASDAQ OMX following approval by the Commission.

Questions and comments on the proposed rule change may be directed to Erika J. Moore, Associate General Counsel, The NASDAQ OMX Group, Inc., at +1 301 978 8490.

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

a. Purpose

NASDAQ OMX is proposing to make certain amendments to its Charter and By-Laws.

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<sup>4</sup> See Article Eighth, Paragraph B and Article Ninth, Paragraph B of the Charter and Sections 11.3 and 12.6 of the By-Laws.

(i) Background

Article Fourth, Paragraph C of NASDAQ OMX's Charter includes a voting limitation that generally prohibits a stockholder from voting shares beneficially owned, directly or indirectly, by such stockholder in excess of 5% of the then-outstanding shares of capital stock of NASDAQ OMX entitled to vote as of the record date in respect of any matter. Pursuant to Article Fourth, Paragraph C(6) of the Charter, NASDAQ OMX's Board may grant exemptions to this limitation prior to the time a stockholder beneficially owns more than 5% of the outstanding shares of stock entitled to vote on the election of a majority of directors at such time. NASDAQ OMX's Board has never granted an exemption to the 5% voting limitation and has no current plans to do so. However, in the event the Board decides to grant such an exemption in the future, Article Fourth, Paragraph C(6) of the Charter and Section 12.5 of the By-Laws limit the Board's authority to grant the exemption. These provisions, which are intended to be substantively identical, currently contain some language differences. Following discussions with the SEC staff,<sup>5</sup> NASDAQ OMX proposes the amendments described below to the Charter and By-Laws to conform these provisions and remove any ambiguity that may exist because of the current language differences.

(ii) Proposed Amendments to Charter

First, unlike the Charter, the By-Laws state that for so long as NASDAQ OMX shall control, directly or indirectly, any self-regulatory subsidiary, a resolution of the Board to approve an exemption for any person under Article Fourth, Paragraph C(6) of

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<sup>5</sup> See Securities Exchange Act Release No. 71353 (January 17, 2014), 79 FR 4209 (January 24, 2014) (SR-BSECC-2013-001, SR-BX-2013-057, SR-NASDAQ-2013-148, SR-Phlx-2013-115, SR-SCCP-2013-01), at note 14.

the Charter shall not be permitted to become effective until such resolution has been filed with and approved by the SEC under Section 19 of the Act. NASDAQ OMX proposes that this requirement be added to the Charter and that “self-regulatory subsidiary,” which is currently not a defined term in the Charter, be defined as any subsidiary of NASDAQ OMX that is a “self-regulatory organization” as defined under Section 3(a)(26) of the Act.<sup>6</sup> At present, this defined term would include NASDAQ, BX and Phlx, which are national securities exchanges, and BSECC and SCCP, which are registered clearing agencies that are both currently dormant.

Second, both the Charter and the By-Laws state that the Board may not approve an exemption to the 5% voting limitation for: (i) a registered broker or dealer or an affiliate thereof or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Act. The By-Laws include a further proviso stating that, for these purposes, an “affiliate” shall not be deemed to include an entity that either owns 10% or less of the equity of a broker or dealer, or receives 1% or less of its consolidated gross revenues from a broker or dealer. This proviso, which is not currently included in the Charter, allows NASDAQ OMX’s Board to grant exemptions to the 5% voting limitation for entities that either own 10% or less of the equity of a broker or dealer, or receive 1% or less of their consolidated gross revenues from a broker or dealer. NASDAQ OMX proposes that this proviso be added to the Charter to ensure consistency between the Charter and By-Laws.

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<sup>6</sup> Under Section 3(a)(26) of the Act, a “self-regulatory organization” is “any national securities exchange, registered securities association, or registered clearing agency...” 15 U.S.C. 78c(a)(26).

Third, both the Charter and By-Laws require the Board to make certain determinations prior to granting an exemption to the 5% voting limitation. Regarding the first of these determinations, the Charter states that the Board must determine that granting such an exemption would not reasonably be expected to diminish the quality of, or public confidence in, NASDAQ OMX or The NASDAQ Stock Market LLC or the other operations of NASDAQ OMX and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public. The By-Laws include similar language, but state that the Board must make this determination with respect to NASDAQ OMX or its self-regulatory-subidiaries. Because the term “self-regulatory subsidiary” includes The NASDAQ Stock Market LLC but also includes other entities, NASDAQ OMX proposes that the provisions be made fully consistent by amending the Charter to refer to NASDAQ OMX or the self-regulatory subsidiaries, and to define the term “self-regulatory subsidiary” as described above.

Fourth, unlike the Charter, the By-Laws further provide that prior to granting an exemption from the 5% voting limitation, the Board must also determine that granting the exemption would promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), assure the safeguarding of securities and funds in the custody or control of the self-regulatory subsidiaries that are clearing agencies or securities and funds for which they are responsible, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and

settlement of securities transactions. NASDAQ OMX proposes that this language be added to the Charter.

Finally, NASDAQ OMX proposes that Article Fourth, Paragraph C(6) of the Charter be amended to correct a cross-reference to subparagraph 6(b), which no longer exists.

(iii) Proposed Amendments to the By-Laws

NASDAQ OMX also proposes amendments to NASDAQ OMX's By-Laws to further conform the Charter and By-Law provisions discussed above. Specifically, the proposed amendment to Article I(s) revises the definition of "self-regulatory subsidiary" in the By-Laws to refer to any subsidiary of NASDAQ OMX that is a self-regulatory organization as defined under Section 3(a)(26) of the Act, rather than list specific subsidiaries that would fall within this category. This revised definition, which is the same definition of "self-regulatory subsidiary" proposed for purposes of the Charter as described above, will capture NASDAQ OMX's current self-regulatory subsidiaries as well as any subsidiaries that in the future meet the definition of "self-regulatory organization" under the Act. Consequently, such future self-regulatory subsidiaries will automatically be subject to the By-Law provisions relating to these subsidiaries without NASDAQ OMX having to take formal action to amend the By-Laws to include them.

The proposed By-Law amendments also include the correction of a typographical error in Article I and minor edits to Section 12.5 to conform the language regarding the 5% voting limitation to the language in the analogous provision of the Charter.



b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

NASDAQ OMX is proposing changes to its Charter and By-Laws to conform the provisions in each document relating to the procedures by which NASDAQ OMX's Board may grant an exemption to the prohibition on any NASDAQ OMX stockholder voting shares in excess of 5% of the Company's then-outstanding shares of capital stock. The Exchange believes that the changes will protect investors and the public interest by eliminating confusion that may exist because of the current language differences between the two provisions. In addition, NASDAQ OMX is proposing to define "self-regulatory subsidiary" with reference to a definition in the Act. The Exchange believes that this will protect investors and the public interest by ensuring that any NASDAQ OMX subsidiary that meets the definition of "self-regulatory organization" in the Act will be subject to the Charter and By-Law provisions relating to self-regulatory subsidiaries. Finally, the remaining changes are clarifying in nature, and they enhance investor protection by making NASDAQ OMX's governance documents clearer and easier to understand.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

Because the proposed rule change relates to the governance of NASDAQ OMX and not to the operations of the Exchange, 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 of the Act.

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

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2014-61)

September \_\_, 2014

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change to Amend the Amended and Restated Certificate of Incorporation and By-Laws of The NASDAQ OMX Group, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 10, 2014, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change with respect to amendments of the Amended and Restated Certificate of Incorporation (the “Charter”) and By-Laws (the “By-Laws”) of its parent corporation, The NASDAQ OMX Group, Inc. (“NASDAQ OMX” or the “Company”). The proposed amendments will be implemented on a date designated by NASDAQ OMX following approval by the Commission. The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqomxphlx.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

<sup>2</sup> 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 to make certain amendments to its Charter and By-Laws.

(i) Background

Article Fourth, Paragraph C of NASDAQ OMX's Charter includes a voting limitation that generally prohibits a stockholder from voting shares beneficially owned, directly or indirectly, by such stockholder in excess of 5% of the then-outstanding shares of capital stock of NASDAQ OMX entitled to vote as of the record date in respect of any matter. Pursuant to Article Fourth, Paragraph C(6) of the Charter, NASDAQ OMX's Board may grant exemptions to this limitation prior to the time a stockholder beneficially owns more than 5% of the outstanding shares of stock entitled to vote on the election of a majority of directors at such time. NASDAQ OMX's Board has never granted an exemption to the 5% voting limitation and has no current plans to do so. However, in the event the Board decides to grant such an exemption in the future, Article Fourth, Paragraph C(6) of the Charter and Section 12.5 of the By-Laws limit the Board's authority to grant the exemption. These provisions, which are intended to be

substantively identical, currently contain some language differences. Following discussions with the SEC staff,<sup>3</sup> NASDAQ OMX proposes the amendments described below to the Charter and By-Laws to conform these provisions and remove any ambiguity that may exist because of the current language differences.

(ii) Proposed Amendments to Charter

First, unlike the Charter, the By-Laws state that for so long as NASDAQ OMX shall control, directly or indirectly, any self-regulatory subsidiary, a resolution of the Board to approve an exemption for any person under Article Fourth, Paragraph C(6) of the Charter shall not be permitted to become effective until such resolution has been filed with and approved by the SEC under Section 19 of the Act. NASDAQ OMX proposes that this requirement be added to the Charter and that “self-regulatory subsidiary,” which is currently not a defined term in the Charter, be defined as any subsidiary of NASDAQ OMX that is a “self-regulatory organization” as defined under Section 3(a)(26) of the Act.<sup>4</sup> At present, this defined term would include NASDAQ, BX and Phlx, which are national securities exchanges, and BSECC and SCCP, which are registered clearing agencies that are both currently dormant.

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under Section 3(a)(39) of the Act. The By-Laws include a further proviso stating that, for these purposes, an “affiliate” shall not be deemed to include an entity that either owns 10% or less of the equity of a broker or dealer, or receives 1% or less of its consolidated gross revenues from a broker or dealer. This proviso, which is not currently included in the Charter, allows NASDAQ OMX’s Board to grant exemptions to the 5% voting limitation for entities that either own 10% or less of the equity of a broker or dealer, or receive 1% or less of their consolidated gross revenues from a broker or dealer. NASDAQ OMX proposes that this proviso be added to the Charter to ensure consistency between the Charter and By-Laws.

Third, both the Charter and By-Laws require the Board to make certain determinations prior to granting an exemption to the 5% voting limitation. Regarding the first of these determinations, the Charter states that the Board must determine that granting such an exemption would not reasonably be expected to diminish the quality of, or public confidence in, NASDAQ OMX or The NASDAQ Stock Market LLC or the other operations of NASDAQ OMX and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public. The By-Laws include similar language, but state that the Board must make this determination with respect to NASDAQ OMX or its self-regulatory-subidiaries. Because the term “self-regulatory subsidiary” includes The NASDAQ Stock Market LLC but also includes other entities, NASDAQ OMX proposes that the provisions be made fully consistent by amending the Charter to refer to NASDAQ OMX or the self-regulatory subsidiaries, and to define the term “self-regulatory subsidiary” as described above.

Fourth, unlike the Charter, the By-Laws further provide that prior to granting an exemption from the 5% voting limitation, the Board must also determine that granting the exemption would promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), assure the safeguarding of securities and funds in the custody or control of the self-regulatory subsidiaries that are clearing agencies or securities and funds for which they are responsible, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. NASDAQ OMX proposes that this language be added to the Charter.

Finally, NASDAQ OMX proposes that Article Fourth, Paragraph C(6) of the Charter be amended to correct a cross-reference to subparagraph 6(b), which no longer exists.

(iii) Proposed Amendments to the By-Laws

NASDAQ OMX also proposes amendments to NASDAQ OMX's By-Laws to further conform the Charter and By-Law provisions discussed above. Specifically, the proposed amendment to Article I(s) revises the definition of "self-regulatory subsidiary" in the By-Laws to refer to any subsidiary of NASDAQ OMX that is a self-regulatory organization as defined under Section 3(a)(26) of the Act, rather than list specific subsidiaries that would fall within this category. This revised definition, which is the same definition of "self-regulatory subsidiary" proposed for purposes of the Charter as described above, will capture NASDAQ OMX's current self-regulatory subsidiaries as

well as any subsidiaries that in the future meet the definition of “self-regulatory organization” under the Act. Consequently, such future self-regulatory subsidiaries will automatically be subject to the By-Law provisions relating to these subsidiaries without NASDAQ OMX having to take formal action to amend the By-Laws to include them.

The proposed By-Law amendments also include the correction of a typographical error in Article I and minor edits to Section 12.5 to conform the language regarding the 5% voting limitation to the language in the analogous provision of the Charter.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

NASDAQ OMX is proposing changes to its Charter and By-Laws to conform the provisions in each document relating to the procedures by which NASDAQ OMX’s Board may grant an exemption to the prohibition on any NASDAQ OMX stockholder voting shares in excess of 5% of the Company’s then-outstanding shares of capital stock. The Exchange believes that the changes will protect investors and the public interest by eliminating confusion that may exist because of the current language differences between the two provisions. In addition, NASDAQ OMX is proposing to define “self-regulatory subsidiary” with reference to a definition in the Act. The Exchange believes that this will

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).



protect investors and the public interest by ensuring that any NASDAQ OMX subsidiary that meets the definition of “self-regulatory organization” in the Act will be subject to the Charter and By-Law provisions relating to self-regulatory subsidiaries. Finally, the remaining changes are clarifying in nature, and they enhance investor protection by making NASDAQ OMX’s governance documents clearer and easier to understand.

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

Because the proposed rule change relates to the governance of NASDAQ OMX and not to the operations of the Exchange, 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 of the Act.

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

No written comments were either solicited or 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2014-61 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-Phlx-2014-61. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2014-61 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.<sup>7</sup>

Kevin M O'Neill  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

\* \* \* \* \*

**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF THE NASDAQ OMX GROUP, INC.**

\* \* \* \* \*

ARTICLE FOURTH

A. – B. No change.

C. 1. – 5. No change.

6. Notwithstanding anything herein to the contrary, subparagraph 2 of this paragraph C. of this Article Fourth shall not be applicable to any Excess Shares beneficially owned by any person as may be approved for such exemption by the Board prior to the time such person beneficially owns more than five percent (5%) of the outstanding shares of stock entitled to vote on the election of a majority of directors at such time. For so long as Nasdaq shall control, directly or indirectly, any Self-Regulatory Subsidiary, a resolution of the Board to approve an exemption for any person under this subparagraph 6 of this paragraph C. of this Article Fourth shall not be permitted to become effective until such resolution has been filed with and approved by the Securities and Exchange Commission under Section 19 of the Exchange Act. The Board, however, may not approve an exemption under [Section] this subparagraph 6[(b)]: (i) for a registered broker or dealer or an Affiliate thereof (provided that, for these purposes, an Affiliate shall not be deemed to include an entity that either owns ten percent or less of the equity of a broker or dealer, or the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity); or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act. The Board may approve an exemption for any other stockholder if the Board determines that granting such exemption would (A) not reasonably be expected to diminish the quality of, or public confidence in, Nasdaq or [The NASDAQ Stock Market LLC] the Self-Regulatory Subsidiaries or the other operations of Nasdaq and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, [and ](B) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system, and (C) promote the prompt and accurate clearance and

settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), assure the safeguarding of securities and funds in the custody or control of the Self-Regulatory Subsidiaries that are clearing agencies or securities and funds for which they are responsible, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. For purposes of this provision, “Self-Regulatory Subsidiary” shall mean any subsidiary of Nasdaq that is a self-regulatory organization as defined under Section 3(a)(26) of the Exchange Act.

7. No change.

\* \* \* \* \*

## **BY-LAWS OF THE NASDAQ OMX GROUP, INC.**

### **Article I Definitions**

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

(a) – (q) No change.

(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 member or member organization of a Self-Regulatory Subsidiary, the Corporation or its affiliates, or FINRA; [and]

(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.] any subsidiary of the Corporation that is a self-regulatory organization as defined under Section 3(a)(26) of the Act; and

(t) No change.

\* \* \* \* \*

### **Article XII The Self-Regulatory Subsidiaries**

#### **Sec. 12.1 – Sec. 12.4**

No change.

#### **Sec. 12.5 Board Action with Respect to Voting Limitations of the Certificate of Incorporation**

For so long as the Corporation shall control, directly or indirectly, any Self-Regulatory Subsidiary, a resolution of the Board to approve an exemption for any person under Article Fourth, Section C.6 of the Restated Certificate of Incorporation (the “Certificate”) shall not be permitted to become effective until such resolution has been filed with and approved by the Commission under Section 19 of the Act. The Board, however, may not approve an exemption under Article Fourth, Section C.6 of the Certificate: (i) for a registered broker or dealer or an Affiliate thereof (as defined in the Certificate) (provided that, for these purposes, an Affiliate shall not be deemed to include an entity that either owns ten percent or less of the equity of a broker or dealer, or the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity); or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Act. The Board may approve an exemption for any other stockholder under Article Fourth, Section C.6 if the Board determines that granting such exemption would (A) not reasonably be expected to diminish the quality of, or public confidence in, the Corporation or the Self-Regulatory Subsidiaries or the other operations of the Corporation and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, (B) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system, and (C) [would] promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), [would] assure the safeguarding of securities and funds in the custody or control of the Self-Regulatory Subsidiaries that are clearing agencies or securities and funds for which they are responsible, [would] foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and [would] remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

#### **Sec. 12.6 – Sec. 12.7**

No change.

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