

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSEArca-2010-15) be, and hereby is, approved.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62003; File No. SR-NYSEArca-2010-32]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Rule Change Amending Its Fee Schedule

April 29, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 21, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Schedule of Fees and Charges for Exchange Services (the "Schedule"). Changes to the Schedule pursuant to this proposal will become operative on April 21, 2010. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office, on the Commission's Web site at <http://www.sec.gov> and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to change the pricing for Mid-Point Passive Liquidity ("MPL") Orders. Currently the rebate for MPL Orders that provide liquidity in Tape A and Tape C securities is \$0.002 per share, and the rebate for MPL Order that provide liquidity in Tape B securities is \$0.001 per share. There is currently no fee for MPL Orders that remove liquidity across all Tapes. Under this proposal, MPL Orders will receive a rebate of \$0.0010 per share for orders that provide liquidity and a fee of \$0.0010 for orders that take liquidity in Tape A, Tape B, and Tape C securities. These changes apply to all pricing levels.

The proposed changes to the Schedule are part of the Exchange's continued effort to attract and enhance participation on the Exchange by offering attractive rates for removing liquidity and rebates for providing liquidity. The Exchange believes the proposed fees are reasonable and equitable in that they apply uniformly to all ETP Holders. The proposed changes will become operative on April 21, 2010.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),<sup>4</sup> in general, and Section 6(b)(4) of the Act,<sup>5</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed changes to the Schedule are part of the Exchange's continued effort

to attract and enhance participation on the Exchange by offering attractive rates for removing liquidity and rebates for providing liquidity to the Exchange. The proposed changes to the Schedule are reasonable and equitable in that they apply uniformly to all ETP Holders.

##### 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2010-32 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

100 F Street, NE., Washington, DC  
20549-1090.

All submissions should refer to File Number SR-NYSEArca-2010-32. 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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549-1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at <http://www.nyse.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2010-32 and should be submitted on or before May 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62010; File No. SR-SCCP-2010-01]

### **Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Amendments to the By-Laws of The NASDAQ OMX Group, Inc.**

April 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 9, 2010, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by SCCP. SCCP filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(6)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

SCCP is filing the proposed rule change relating to amendments to the By-Laws of its parent corporation The NASDAQ OMX Group, Inc. ("NASDAQ OMX").<sup>4</sup>

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

In its filing with the Commission, SCCP 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. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>5</sup>

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

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> Article Eighth, Paragraph B of the Restated Certificate of Incorporation of NASDAQ OMX and Section 11.3 of the By-Laws provides that proposed amendments to the By-Laws are to be reviewed by the Board of Directors of each regulatory subsidiary of NASDAQ OMX and under certain circumstances be filed with the Commission.

<sup>5</sup> The Commission has modified the text of the summaries prepared by SCCP.

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

#### 1. Purpose

NASDAQ OMX has proposed making certain amendments to its By-Laws to make improvements in its governance. In SR-NASDAQ-2010-025, The NASDAQ Stock Market LLC ("NASDAQ Exchange") sought and received Commission approval to adopt these By-Laws changes as part of the rules of NASDAQ Exchange.<sup>6</sup> SCCP is now submitting this filing regarding these By-Law changes. The text of the changes to the By-Laws of NASDAQ OMX can be viewed at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/pdf/sccp-filings/2010/SR-SCCP-2010-01.pdf>.

The NASDAQ OMX By-Laws previously provided that each director receiving a plurality of the votes at which a quorum was present was duly elected to the board of directors ("Board"). Under Corporate Governance Guidelines adopted by the Board, however, any director in an uncontested election who received a greater number of votes "withheld" from his or her election than votes "for" such election was required to tender his or her resignation promptly following receipt of the certification of the stockholder vote. The NASDAQ OMX Nominating & Governance Committee ("Nominating & Governance Committee") then considered the resignation offer and recommended to the Board whether or not to accept it. Within 90 days after the certification of the election results, the Board determined whether to accept or reject the resignation. Promptly thereafter, the Board announced its decision by means of a press release. In a contested election (*i.e.*, where the number of nominees exceeded the number of directors to be elected), the unqualified plurality standard controlled.

#### *Uncontested Election:*

NASDAQ OMX recently amended its by-laws to adopt a majority vote standard. Specifically By-Law Article IV, Section 4.4 was amended to provide that in an uncontested election, directors shall be elected by holders of a majority of the votes cast at any meeting for the election of directors at which a quorum is present.<sup>7</sup> Under the majority voting standard, a nominee

<sup>6</sup> Securities Exchange Act Release No. 61876 (April 8, 2010), 75 FR 19436 (April 14, 2010) (SR-NASDAQ-2010-025).

<sup>7</sup> NASDAQ OMX also amended its Corporate Governance Guidelines to reflect the majority vote standard for uncontested director elections.

<sup>8</sup> 17 CFR 200.30-3(a)(12).