

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K**

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the fiscal year ended December 31, 2008

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 000-32651

**The NASDAQ OMX Group, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**52-1165937**  
(I.R.S. Employer  
Identification No.)

**One Liberty Plaza, New York, New York**  
(Address of Principal Executive Offices)

**10006**  
(Zip Code)

**Registrant's telephone number, including area code:**  
**+1 212 401 8700**

**Securities registered pursuant to Section 12(b) of the Act:**

<u>Title of each class</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$.01 par value per share	The NASDAQ Stock Market

**Securities registered pursuant to Section 12(g) of the Act:**

**None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of June 30, 2008, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was approximately \$3.7 billion (this amount represents approximately 139 million shares of The NASDAQ OMX Group Inc.'s common stock based on the last reported sales price of \$26.55 of the common stock on The NASDAQ Stock Market on such date).

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

<u>Class</u>	<u>Outstanding at February 13, 2009</u>
Common Stock, \$.01 par value per share	201,926,244 shares

**DOCUMENTS INCORPORATED BY REFERENCE**

Document  
Proxy Statement for the 2009 Annual Meeting of Stockholders

Parts Into Which Incorporated  
Part III

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### **About This Form 10-K**

The NASDAQ OMX Group, Inc. is a holding company created by the business combination of The Nasdaq Stock Market, Inc. and OMX AB (publ) which was completed on February 27, 2008. Under the purchase method of accounting, Nasdaq was treated as the accounting and legal acquirer in this business combination. As such, Nasdaq is the predecessor reporting entity of NASDAQ OMX and the results of operations of OMX are only included in NASDAQ OMX's consolidated results of operations beginning February 27, 2008.

Throughout this Form 10-K, unless otherwise specified:

- "NASDAQ OMX," "we," "us" and "our" refer to The NASDAQ OMX Group, Inc.
- "Nasdaq" refers to The Nasdaq Stock Market, Inc., as that entity operated prior to the business combination with OMX AB.
- The "NASDAQ Exchange," "The NASDAQ Stock Market" and "NASDAQ" refer to the registered national securities exchange operated by The NASDAQ Stock Market LLC.
- "OMX AB" refers to OMX AB (publ), as that entity operated prior to the business combination with Nasdaq.
- "OMX" refers to OMX AB (publ) subsequent to the business combination with Nasdaq.
- "NASDAQ OMX Nordic" refers to collectively, NASDAQ OMX Stockholm (formerly OMX Nordic Exchange Stockholm), NASDAQ OMX Copenhagen (formerly OMX Nordic Exchange Copenhagen), NASDAQ OMX Helsinki (formerly OMX Nordic Exchange Helsinki) and NASDAQ OMX Iceland (formerly OMX Nordic Exchange Iceland).
- "NASDAQ OMX Baltic" refers to collectively, NASDAQ OMX Tallinn (formerly Tallinn Stock Exchange), NASDAQ OMX Riga (formerly Riga Stock Exchange) and NASDAQ OMX Vilnius (formerly Vilnius Stock Exchange).
- "PHLX" refers to the Philadelphia Stock Exchange, Inc. and its subsidiaries, as that entity operated prior to its acquisition by NASDAQ OMX.
- "NASDAQ OMX PHLX" refers to NASDAQ OMX PHLX, Inc. subsequent to its acquisition by NASDAQ OMX.
- "SEK" or "Swedish Krona" refers to the lawful currency of Sweden.
- "NOK" or "Norwegian Krone" refers to the lawful currency of Norway.

This Form 10-K includes market share and industry data that we obtained from industry publications and surveys, reports of governmental agencies and internal company surveys. Industry publications and surveys generally state that the information they contain has been obtained from sources believed to be reliable, but we cannot assure you that this information is accurate or complete. We have not independently verified any of the data from third-party sources nor have we ascertained the underlying economic assumptions relied upon therein. Statements as to our market position are based on the most currently available market data. For market comparison purposes, The NASDAQ Stock Market data in this Form 10-K for initial public offerings, or IPOs, is based on data provided by Thomson Financial, which does not include best efforts underwritings, and we have chosen to exclude closed-end funds; therefore, the data may not be comparable to other publicly-available IPO data. Data in this Form 10-K for secondary offerings for The NASDAQ Stock Market also is based on data provided by Thomson Financial. Data in this Form 10-K for new listings of equity securities on The NASDAQ Stock Market is based on data generated internally by us, which includes best efforts underwritings and issuers that switched from other listing venues, closed-end funds and exchange traded funds, or ETFs. OMX data in this Form 10-K for IPOs and new listings of equities securities on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic is also based on data generated internally by us. IPOs, secondary offerings and new listings data is presented as of period end. While we are not aware of any misstatements regarding industry data presented herein, our estimates involve risks and uncertainties and are subject to change based on various factors, including those discussed in "Item 1A. Risk Factors" in this Form 10-K.

### Forward-Looking Statements

The U.S. Securities and Exchange Commission, or SEC, encourages companies to disclose forward-looking information so that investors can better understand a company's future prospects and make informed investment decisions. This Annual Report on Form 10-K contains these types of statements. Words such as "anticipates," "estimates," "expects," "projects," "intends," "plans," "believes" and words or terms of similar substance used in connection with any discussion of future operating results or financial performance identify forward-looking statements. These include, among others, statements relating to:

- 2009 outlook;
- the scope, nature or impact of acquisitions, dispositions, investments or other transactional activities;
- the integration of our recently acquired businesses, including accounting decisions relating thereto;
- the effective dates for, and expected benefits of, ongoing initiatives;
- the cost and availability of liquidity;
- the settlement of tax audits; and
- the outcome of any litigation and/or government investigation to which we are a party and other contingencies.

Forward-looking statements involve risks and uncertainties. Factors that could cause actual results to differ materially from those contemplated by the forward-looking statements include, among others, the following:

- our operating results may be lower than expected;
- our ability to successfully integrate our recently acquired businesses, including the fact that such integration may be more difficult, time consuming or costly than expected, and our ability to realize synergies from business combinations and acquisitions;
- loss of significant trading volume or listed companies;
- covenants in our credit facilities, indentures and other agreements governing our indebtedness which may restrict the operation of our business;
- economic, political and market conditions and fluctuations, including interest rate and foreign currency risk, inherent in U.S. and international operations;
- the current global economic and credit crises;
- government and industry regulation; and
- adverse changes that may occur in the securities markets generally.

Most of these factors are difficult to predict accurately and are generally beyond our control. You should consider the uncertainty and any risk related to forward-looking statements that we make. These risk factors are more fully described under the caption "Item 1A. Risk Factors," in this Form 10-K. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this report. You should carefully read this entire Form 10-K, including "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations," and the consolidated financial statements and the related notes. Except as required by the federal securities laws, we undertake no obligation to release publicly any revisions to any forward-looking statements, to report events or to report the occurrence of unanticipated events. For any forward-looking statements contained in any document, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

## Part I

### Item 1. Business

#### Overview

We are a leading global exchange group that delivers trading, exchange technology, securities listing, and public company services across six continents. Our global offerings are diverse and include trading across multiple asset classes, market data products, financial indexes, capital formation solutions, financial services and market technology products and services. Our technology powers markets across the globe, supporting cash equity trading, derivatives trading, clearing and settlement and many other functions.

In the U.S., we operate The NASDAQ Stock Market, a registered national securities exchange. The NASDAQ Stock Market is the largest electronic cash equities securities market in the U.S. in terms of number of listed companies and in the world in terms of share value traded. As of December 31, 2008, The NASDAQ Stock Market was home to over 3,000 listed companies with a combined market capitalization of approximately \$2.6 trillion. In addition, in the U.S. we operate NASDAQ OMX PHLX, the third largest U.S. options market, The NASDAQ Options Market, a second options market, NASDAQ OMX BX, a second cash equities trading market, and NASDAQ OMX Futures Exchange (formerly the Philadelphia Board of Trade), or NFX, a futures market.

In Europe, we operate exchanges in Stockholm (Sweden), Copenhagen (Denmark), Helsinki (Finland), and Iceland as NASDAQ OMX Nordic and exchanges in Tallinn (Estonia), Riga (Latvia) and Vilnius (Lithuania) as NASDAQ OMX Baltic. In addition, we operate NASDAQ OMX Europe, our new marketplace for pan-European blue chip trading, as well as NASDAQ OMX Commodities, our new offering for trading and clearing commodities, and the Armenian Stock Exchange.

The exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic offer trading in cash equities, bonds, structured products and ETFs, as well as trading and clearing of derivatives. Our Nordic and Baltic operations also offer alternative marketplaces for smaller companies. As of December 31, 2008, the exchanges within NASDAQ OMX Nordic and NASDAQ OMX Baltic were home to over 800 listed companies with a combined market capitalization of approximately \$605 billion.

#### History and Structure

Nasdaq was founded in 1971 as a wholly-owned subsidiary of the Financial Industry Regulatory Authority, or FINRA (then known as the National Association of Securities Dealers, Inc.). Beginning in 2000, FINRA restructured and broadened ownership in Nasdaq by selling shares to FINRA members, investment companies and issuers listed on The NASDAQ Stock Market.

In connection with this restructuring, Nasdaq applied to the SEC to register The NASDAQ Stock Market as a national securities exchange. Prior to operating as an exchange, The NASDAQ Stock Market operated under an SEC-approved plan that provided a delegation of legal authority from FINRA to The NASDAQ Stock Market to operate as a stock market. FINRA fully divested its ownership of Nasdaq in 2006, and The NASDAQ Stock Market became fully operational as an independent registered national securities exchange in 2007.

In 2006, Nasdaq also reorganized its operations into a holding company structure. As a result, our exchange licenses and exchange and broker-dealer operations are held by our subsidiaries.

On February 27, 2008, Nasdaq and OMX AB combined their businesses and Nasdaq was renamed The NASDAQ OMX Group, Inc. Prior to the combination, OMX AB owned and operated the largest securities marketplace in Northern Europe.

## Recent Acquisitions and Strategic Initiatives

We believe that an exchange company's scale and technology have become very important factors in maintaining a competitive advantage due to the liberalization and globalization of world markets and regulatory changes in the U.S. and Europe. As a result, we recently completed several strategic acquisitions and investments that we believe further strengthen our competitive position.

***The combination with OMX and strategic partnership with Borse Dubai Limited.*** On February 27, 2008, Nasdaq and OMX AB combined their businesses pursuant to an agreement with Borse Dubai Limited, a Dubai company, or Borse Dubai. The purchase price of OMX AB was approximately \$4.3 billion, consisting of an equity component and a cash component. We believe that the combination with OMX AB created a premier global exchange company, bringing together complementary businesses, diversifying our operations, enhancing our existing product offerings and solidifying our leadership in global exchange technology.

Concurrently with the business combination with OMX AB, we also acquired 33 1/3% of the equity of the Dubai International Financial Exchange, or DIFX, in exchange for a contribution of \$50 million in cash and the entry into certain technology and trademark licensing agreements. DIFX, which has been renamed NASDAQ Dubai, is an international financial exchange serving the region between Western Europe and East Asia.

We believe that the strategic partnership with Borse Dubai and our investment in NASDAQ Dubai provide us with significant resources and valuable expertise in the growing Middle Eastern and North African financial markets, as well as enhance the globalization of the NASDAQ OMX brand name, further increasing strategic opportunities. In November 2008, we listed our common stock on NASDAQ Dubai.

***The acquisition of the Philadelphia Stock Exchange.*** In July 2008, we completed our acquisition of the Philadelphia Stock Exchange, Inc., or PHLX, expanding our presence in the derivatives market. The acquisition of PHLX provided us with the third largest options market in the U.S. and with increased exposure to a fast growing asset class and diversification into an area adjacent to our core equity trading business. PHLX, renamed NASDAQ OMX PHLX, Inc., operates as a distinct market alongside The NASDAQ Options Market, our options platform that was launched in March 2008. With the acquisition of PHLX and the launch of The NASDAQ Options Market, we have substantially increased our footprint in global derivatives. As of December 31, 2008, we had a combined market share of approximately 17.3% in the trading of U.S. equity options.

***The acquisition of the Boston Stock Exchange.*** We closed the acquisition of the Boston Stock Exchange, Incorporated, or BSX, in August 2008. The BSX acquisition provided us with an additional license for trading both equities and options and a clearing license. We used the BSX license to create a second U.S. cash equities market, called NASDAQ OMX BX, which was launched in January 2009. With NASDAQ OMX BX, we offer a second quote within the U.S. equities marketplace, providing our customers enhanced trading choices and price flexibility. We have been able to leverage our INET trading system, which runs The NASDAQ Stock Market, to operate NASDAQ OMX BX, providing customers an additional fast and efficient cash equities market.

We have announced plans to launch a clearing service for U.S. cash equities, using the clearing license obtained in the acquisition of BSX. The new clearinghouse, to be called NASDAQ Clearing Corporation (NCC), is subject to regulatory approval and is expected to launch in 2009.

***The acquisition of certain businesses from Nord Pool ASA.*** In October 2008, we acquired Nord Pool ASA's clearing, international derivatives and consulting subsidiaries. As a result of the acquisition, we launched NASDAQ OMX Commodities, which offers energy and carbon derivatives products. NASDAQ OMX Commodities, together with third party partner Nord Pool, provides access to the world's largest power derivatives markets and one of Europe's largest carbon markets.

***The acquisition of a majority interest in International Derivatives Clearing Group.*** In December 2008, we acquired an 81% interest in the International Derivatives Clearing Group, or IDCG, and IDCG became an

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independently operated subsidiary of NASDAQ OMX. IDCG has been granted approval by the U.S. Commodity Futures Trading Commission, or CFTC, to clear over-the-counter, or OTC, interest rate swap futures contracts and other fixed income derivatives contracts. In December 2008, IDCG began providing central counterparty, or CCP, clearing for interest rate swap products through its clearinghouse subsidiary, International Derivatives Clearinghouse, LLC, or IDCH. NFX is serving as the designated contract market for trading of these interest rate swap products.

**Investment in EMCF.** In January 2009, we acquired a 22% stake in European Multilateral Clearing Facility N.V., or EMCF, a leading European clearing house. In addition, we signed an agreement with EMCF to use its CCP services for all Nordic transactions. The strategic investment in EMCF and the introduction of CCP services in the Nordic markets is part of our broader commitment to reducing clearing and settlement costs for customers in Europe.

**Investment in Agora-X.** In 2008, we acquired a 20% equity interest in Agora-X, LLC. Agora-X has launched an electronic communications network, or ECN, designed to enable institutional traders to efficiently negotiate OTC transactions in agricultural swaps and swaptions, as well as swaps and options on ethanol. The platform provides a more liquid and transparent marketplace for price discovery and negotiation.

### **Competitive Strengths**

**Premier global exchange company.** We are a premier global exchange company that is the largest electronic cash equities market in terms of share volume traded in the world. For the twelve months ended December 31, 2008, The NASDAQ Stock Market and the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic had an average daily trading volume of 12.3 million trades in cash equities, representing a value of approximately \$25.2 trillion. In addition, across our markets, we had over 3,800 listings representing 38 countries as of December 31, 2008. We have many of the world's largest companies listed on our marketplaces, with a leading market share of listings in the information technology, biotech and paper product industries. Our wholly-owned subsidiary The NASDAQ Stock Market continues to be the single largest liquidity pool for trading cash equities in the U.S.

**Leader in global exchange technology.** We believe we are the leader in global exchange technology. As the world's first electronic stock exchange, we pioneered electronic trading and have continued to innovate over the last 30 years. Our INET platform processes trades at sub-millisecond transaction speeds with close to 100% system reliability. In addition, our platforms are highly scalable with current capacity at twice the level of daily peaks, allowing significantly higher transaction volume to be handled at low incremental cost. Furthermore, through OMX AB, we were the first exchange to offer electronic trading and integrated derivatives trading and clearing to other exchanges and today have a global technology customer base of more than 70 marketplaces in over 50 countries worldwide, including China (Hong Kong), Singapore, Australia and the U.S. We believe that we will continue to provide leading technology for the world's competitive and demanding capital markets, which increasingly require that exchanges be able to constantly secure the best price for investors and issuers, a natural strength of our technology and electronic trading platforms.

**Diversified operations and products.** We have a diversified business, both in terms of geography and product offerings. The recent acquisitions of OMX, PHLX and BSX, the strong derivatives exchange business of our options markets, the launch of NASDAQ OMX Commodities and our recent investments in IDCG, EMCF and Agora-X have significantly diversified our product offerings. In addition, our recently launched pan-European market, named NASDAQ OMX Europe, and our offerings in derivatives clearing and settlement further diversify our product offerings and enhance our growth opportunities in Europe.

**Proven and disciplined management team.** We have a proven and disciplined management team that has substantial industry experience and expertise in making and integrating strategic acquisitions. Led by Robert Greifeld, our Chief Executive Officer, our executive management team has significant experience in the financial

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services industry. The combination with OMX AB brought the addition of Magnus Böcker, our President and previously the President and Chief Executive Officer of OMX AB. We believe the NASDAQ OMX management team has demonstrated an ability to innovate and respond effectively to market opportunities.

**Commitment to regulatory integrity.** As a global exchange company, our business is subject to regulation in many jurisdictions worldwide. We are charged by regulators with maintaining fair and orderly markets for the benefit of investors and we work to fulfill this obligation in several ways. We have entered into agreements with independent third parties to provide regulatory oversight that is separate from our markets. In addition, we operate real-time market surveillance programs relating to trading and compliance-monitoring and enforcement programs with respect to listings on our markets. We are committed to strong and effective regulation and believe that regulatory integrity benefits investors, strengthens the NASDAQ OMX brand and attracts companies seeking to do business with us or to list securities on our markets.

### **Products and Services**

We operate in three segments: Market Services, Issuer Services and Market Technology. Of our total 2008 revenues of \$3,648.7 million, 87.9% was from our Market Services segment, 9.1% was from our Issuer Services segment, 2.9% was from our Market Technology segment and 0.1% related to other revenues. Of our total 2007 revenues of \$2,436.6 million, 88.3% was from our Market Services segment and 11.7% was from our Issuer Services segment. Of our total 2006 revenues of \$1,657.8 million, 84.9% was from our Market Services segment and 15.1% was from our Issuer Services segment.

See Note 21, "Segments," to the consolidated financial statements for additional financial information about our segments and geographic data.

### **Market Services**

Our Market Services segment includes our U.S. and European Transaction Services businesses, as well as our Market Data and Broker Services businesses. We offer trading on multiple exchanges and facilities across several asset classes, including equities, derivatives, debt, commodities, structured products and ETFs.

#### ***U.S. Transaction Services***

In the U.S., we offer trading in equity securities, derivatives and ETFs on The NASDAQ Stock Market, NASDAQ OMX PHLX, NASDAQ OMX BX and NFX. Our transaction-based platforms in the U.S. provide market participants with the ability to access, process, display and integrate orders and quotes for cash equities and derivatives. The platforms allow the routing and execution of buy and sell orders as well as the reporting of transactions for cash equity securities, derivatives and ETFs, providing fee-based revenues.

**Equities Trading.** The NASDAQ Stock Market is the largest single pool of liquidity for trading U.S.-listed cash equities, matching an average of 30% of all U.S. equities volume for 2008. The NASDAQ Stock Market also is a significant source of liquidity for securities listed on the New York Stock Exchange, or NYSE, closing 2008 with 20% matched market share of NYSE-listed securities.

Our fully electronic U.S. transaction-based platform provides members with the ability to access, process, display and integrate orders and quotes on The NASDAQ Stock Market and NASDAQ OMX BX. Market participants include market makers, broker-dealers, ECNs and registered securities exchanges. These services are offered for NASDAQ-listed and non-NASDAQ-listed securities. Specifically, our platform:

- Provides a comprehensive display of the interest by market participants at the highest price a participant is willing to buy a security (best bid) and also the lowest price a participant is willing to sell that security (best offer).

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- Provides subscribers quotes, orders and total anonymous interest at every price level for exchange-listed securities and critical data for the Opening Cross, Closing Cross, Halt Cross, IPO Cross and the Intraday Cross.
- Provides anonymity to market participants, i.e., participants do not know the identity of the firm displaying the order unless that firm chooses to reveal its identity, which can contribute to improved pricing for securities by reducing the potential market impact that transactions by investors whose trading activity, if known, may influence others.

*Trade Reporting.* All U.S. registered national securities exchanges and securities associations are required to establish a transaction reporting plan for the central collection of price and volume information concerning trades executed in those markets. Trades executed on The NASDAQ Stock Market and NASDAQ OMX BX are automatically reported under the appropriate transaction reporting plan. Currently market participants are not charged for the reporting of most of these trades. The NASDAQ Stock Market and NASDAQ OMX BX, however, earn revenues for all of these trades in the form of shared market information revenues under the Unlisted Trading Privileges Plan, or the UTP Plan, for NASDAQ-listed securities and under the Consolidated Tape and Consolidated Quotation Plans for NYSE-listed, NYSE Alternext-listed and other exchange-listed securities.

Through The FINRA/NASDAQ Trade Reporting Facility, or FINRA/NASDAQ TRF, we collect reports of trades executed by broker-dealers outside of our exchanges. The FINRA/NASDAQ TRF collects trade reports as a facility of FINRA. A large percentage of these trades result from orders that broker-dealers have matched internally, or internalized, and are submitted to the FINRA/NASDAQ TRF for reporting purposes only. The FINRA/NASDAQ TRF does not charge market participants for locked in reporting of most trades, but it does earn shared market information revenues with respect to the trades. The FINRA/NASDAQ TRF also generates revenues by providing trade comparison to broker dealers by matching and locking-in the two parties to a trade that they have submitted to the FINRA/NASDAQ TRF for reporting and clearing.

In addition to trade reporting and trade comparison services, we provide clearing firms with risk management services to assist them in monitoring their exposure to their correspondent brokers.

*U.S. Derivatives Trading.* With the recent acquisition of PHLX and the launch of The NASDAQ Options Market, we have strengthened our position in the U.S. marketplace for the trading of equity options, index options and currency options. The NASDAQ Options Market, which was launched in March 2008, is designed to leverage our existing technology, customer connectivity and market structure. In the third quarter of 2008, we acquired PHLX, providing us with the third largest U.S. options market in the U.S. Renamed NASDAQ OMX PHLX, it operates a hybrid electronic and floor-based market as a distinct market alongside The NASDAQ Options Market. As of December 31, 2008, NASDAQ OMX PHLX and The NASDAQ Options Market had a combined market share of 17.3% in the U.S. equity options market. Our options trading platforms provide trading opportunities to both retail investors and high frequency trading firms, who tend to prefer electronic trading, and institutional investors, who typically pursue more complex trading strategies and often prefer to trade on the floor.

In the U.S., we also operate NFX which offers trading for currency futures and other financial futures. All futures traded on NFX clear at The Options Clearing Corporation, or OCC. In addition, NFX is serving as the designated contract market for interest rate swap products that are cleared through IDCH.

*Access Services.* We provide market participants with several alternatives for accessing our markets for a fee. Shifting connectivity from proprietary networks to third-party networks has significantly reduced technology and network costs and increased our systems' scalability without affecting performance or reliability.

Our U.S. marketplaces may be accessed via a number of different protocols. The Financial Information Exchange product that uses the FIX protocol, a standard method of financial communication between trading

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firms and vendors, enables firms to leverage their existing FIX technology with cost-effective connections to our markets. Market participants may also access our systems using QIX, a proprietary programming interface that provides a more streamlined and efficient protocol for our users with expanded functionality, including quotation updates, and computer-to-computer interface, a protocol that allows market participants to enter transactions directly from their computer systems to our computer systems. Finally, firms may use former INET protocols, such as OUCH and RASH, to access our single trading platform. As an alternative to firm-developed trading front-end, our system offers the NASDAQ Workstation, an internet browser based interface that allows market participants to view market data and enter orders, quotes and trade reports.

The NASDAQ Stock Market also provides co-location services to market participants whereby firms may lease space for equipment within our data center. These participants are charged fees for cabinet space, connectivity and support. We also offer our customers memberships to our multiple exchanges for an annual and monthly fee.

### **European Transaction Services**

*Nordics.* NASDAQ OMX Nordic's operations comprise the exchanges in Stockholm (Sweden), Copenhagen (Denmark), Helsinki (Finland), and Iceland. The exchanges offer trading for equities and bonds and trading and clearing services for derivatives. Our platform allows the exchanges to share the same trading system which enables efficient cross-border trading and settlement, cross membership and one source for Nordic market data.

Cash trading is offered in Nordic securities such as equities and depository receipts, warrants, convertibles, rights, fund units, ETFs, bonds and other interest-related products. NASDAQ OMX Stockholm and NASDAQ OMX Copenhagen also offer trading in derivatives, such as stock options and futures, index options and futures, fixed-income options and futures and stock loans.

On NASDAQ OMX Stockholm, we offer clearing services for fixed-income options and futures, stock options and futures and index options and futures by serving as the central counterparty. In doing so, we guarantee the completion of the transaction and market participants can thereby limit their counterparty risk. We also act as the counterparty for certain over-the-counter contracts. The transactions are reported electronically prior to central counterparty clearing and we thereby guarantee the completion of the transaction. Following the completion of a transaction, settlement takes place between parties with the exchange of the securities and funds. The transfer of ownership is registered and the securities are stored on the owner's behalf. Settlement and registration of cash trading takes place in Sweden and Finland via the local central securities depositories.

*Pan-European.* NASDAQ OMX Europe is a new marketplace designed for high performance trading of the most actively traded European stocks. It currently is the most competitively priced multilateral trading facility in Europe, and the first platform to connect European liquidity pools with pan-European routing. As of December 31, 2008, NASDAQ OMX Europe traded approximately 800 securities including constituents of the main European indices, ETFs and other highly liquid securities.

*Baltics.* NASDAQ OMX Baltic operations comprise the exchanges in Tallinn (Estonia), Riga (Latvia) and Vilnius (Lithuania). We hold a majority interest in these exchanges. In addition, we own the central securities depositories in Estonia and Latvia, and 40% of the central securities depository in Lithuania.

In the Baltic markets, NASDAQ OMX exchanges offer their members trading, clearing, payment and custody services. Issuers, primarily large local companies, are offered listing and a distribution network for their securities. The securities traded are mainly equities, bonds and treasury bills. Clearing, payment and custody services are offered through the central securities depositories in Estonia, Latvia and Lithuania. In addition, in Estonia and Latvia, NASDAQ OMX offers registry maintenance of fund units included in obligatory pension funds, and in Estonia, the maintenance of shareholder registers for listed companies. The Baltic central securities depositories offer a complete range of cross-border settlement services.

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*Commodities Trading and Clearing.* NASDAQ OMX Commodities, together with our third party partner Nord Pool, provides access to the world's largest power derivatives markets and one of Europe's largest carbon markets. NASDAQ OMX Commodities offers international derivatives and carbon products, operates a clearing business and offers consulting services to commodities markets globally. Nord Pool is responsible for exchange operations and trading activities, including ownership of Nordic derivatives products. NASDAQ OMX Commodities and Nord Pool have more than 400 members from 22 countries across a wide range of energy producers and consumers, as well as financial institutions. With NASDAQ OMX Commodities, our goal is to create a global leader in energy derivatives and carbon products, by combining Nord Pool's footprint in the energy market with NASDAQ OMX's global distribution capabilities and world-leading technology platform. As a global company, we are in the position to offer cross-market trading in multiple asset classes, and also expect to introduce new commodity products to our existing portfolio. The NASDAQ OMX Commodities offering is designed for banks, brokers, hedge funds and other financial institutions, as well as power utilities, industry, manufacturing and oil companies.

### **Market Data**

We earn Market Data revenues from U.S. tape plans and U.S. and European market data products.

*U.S. Tape Plans.* The NASDAQ Stock Market operates as the exclusive Securities Information Processor of the UTP Plan for the collection and dissemination of best bid and offer information and last transaction information from markets that quote and trade in NASDAQ-listed securities. The NASDAQ Stock Market also is a participant in the UTP Plan and shares in the net distribution of revenue according to the plan on the same terms as the other plan participants. In the role as the Securities Information Processor, The NASDAQ Stock Market collects and disseminates quotation and last sale information for all transactions in NASDAQ-listed securities whether traded on The NASDAQ Stock Market or other exchanges. We sell this information to market participants and to data distributors and the data distributors then sell to the public. After deducting costs associated with acting as an exclusive Securities Information Processor, we distribute the tape fees to the respective UTP Plan participants, including The NASDAQ Stock Market, based on a formula required by Regulation NMS that takes into account both trading and quoting activity. In addition, all quotes and trades in NYSE- and NYSE Alternext-listed securities are reported and disseminated in real time, and as such, we share in the tape fees for information on NYSE- and NYSE Alternext-listed securities.

*U.S. Market Data Products.* Our data products enhance transparency and provide critical information to the professional and non-professional marketplace. We collect and process information and earn revenues as a distributor of our market data. We provide varying levels of quote and trade information to market participants and to data distributors, who in turn sell subscriptions for this information to the public. We earn revenues primarily based on the number of data subscribers and distributors of our data.

We distribute this proprietary market information to both market participants and non-participants through a number of proprietary products. We use our broad distribution network of more than 2,000 market data distributors to deliver data regarding our market depth, index values, mutual fund valuation, order imbalances, market sentiment and other analytical data. We offer a range of proprietary data products, including NASDAQ TotalView, our flagship market depth quote product. TotalView shows subscribers quotes, orders and total anonymous interest at every price level in The NASDAQ Stock Market for NASDAQ-listed securities and critical data for the Opening, Closing, Halt and IPO Crosses.

TotalView is offered through distributors to professional subscribers for a monthly fee per terminal and to non-professional subscribers for a lower monthly fee per terminal. We also offer a TotalView enterprise license to facilitate broad based distribution of this data to large audiences. In addition, we charge the distributor a monthly distributor fee.

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We operate several other proprietary services and data products to provide market information, which include:

- NASDAQ Last Sale, launched in 2008, to provide broad based and universal access to real-time last sale information via internet portals;
- NASDAQ Market Replay, launched in 2008, as a powerful replay and analysis tool allowing users to view order book and trade data for NASDAQ, NYSE and NYSE Alternext listed securities at any point in time;
- NASDAQ OMX DataStore, one aspect of NASDAQ OMX's Web 2.0 initiative to transform the market data industry through use of plug-and-play technology to deliver new proprietary information content;
- Mutual Fund Quotation Service, a listing service for over 25,000 mutual funds, money market funds and unit investment trusts that supports fund data, including net asset values, and capital gains and dividend income distribution and provides print and electronic media exposure for the funds;
- Mutual Fund Dissemination Service, a service that facilitates the real-time and end-of-day recap dissemination of all mutual fund pricing information and is used by data vendors and media to receive complete net asset value data on funds listed with us;
- Global Index Dissemination Service, a real-time data feed that carries the values for a number of broad-based and sector indexes and ETFs, developed in 2008 for release in 2009; and
- NASDAQ OMX Trader.com, a financial website that provides broker-dealers and market data vendors with information and data regarding our corporate initiatives (such as Open, Closing, Halt and IPO Crosses) and other products and services for a monthly subscription fee.

*European Market Data Products.* Nordic and Baltic market data products and services provide critical market transparency to the professional and non-professional investors that participate in the NASDAQ OMX Nordic and NASDAQ OMX Baltic marketplaces and, at the same time, give investors greater insight into these markets.

Information products and services are based on the trading information from the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic for three classes of securities: equities, bonds and derivatives instruments. We provide varying levels of quote and trade information to market participants and to data distributors, who in turn sell subscriptions for this information to the public. Revenues from European market data are generated primarily based on the number of data subscribers and distributors of our data.

We provide a wide range of data products including products in real-time, some with a time delay or in batch delivery. These products and services are packaged for market professionals as well as for private individuals, and include real-time information on market depth, specific transactions and share-price trends, the compilation and calculation of reference information such as indexes and the presentation of statistics.

Significant European market data products include:

- Nordic Equity TotalView provides full market insight, with 20 level order book, news and analysis data for all Nordic equities. The product also includes index values and weights and liquidity measure indicators;
- Nordic Derivative Level 2 provides listing details, trade information, derived information and order book information with the five best levels of bid and ask prices with the respective total quantity;
- Nordic Fixed Income Level 2 provides listing details, order book information, bid and ask quotes for up to five levels, trade information, derived information, indicative bid and ask quotes, daily turnover statistics and company disclosures;

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- Corporate Action and Accounting Data; and
- European Last Sale, launched in 2008 (along with the NASDAQ Last Sale Product in the U.S.), to provide broad based and universal access to real-time last sale information via internet portals.

### **Broker Services**

Our Broker Services operations offer technology and customized securities administration solutions to financial participants in the Nordic market and in the United Kingdom. The primary services include flexible back-office systems. Our services allow customers to entirely or partly outsource their company's back-office functions.

We offer customer and account registration, business registration, clearing and settlement, corporate action handling for reconciliations and reporting to authorities. Available services also include direct settlement with the Nordic central securities depositories, real-time updating and communication via the Society for Worldwide Interbank Financial Telecommunication, or SWIFT, to deposit banks.

### **Issuer Services**

Our Issuer Services segment includes our Global Listing Services and Global Index Group businesses. We offer capital raising solutions to companies around the globe and have more worldwide listings than any other global exchange group—over 3,800 companies representing \$3.2 trillion in total market value as of December 31, 2008.

We operate a variety of listing platforms around the world to provide multiple global capital raising solutions for private and public companies. Our main listing markets are The NASDAQ Stock Market and the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic. As a strategic partner in Dubai's international financial exchange, NASDAQ OMX facilitates access to issuers to the Middle Eastern capital markets through NASDAQ Dubai. In addition, we offer a consolidated global listing application to companies to enable them to apply for listing on any NASDAQ OMX market, including The NASDAQ Stock Market and the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic, as well as NASDAQ Dubai.

### **Global Listing Services**

*U.S. Listings.* Companies listed on The NASDAQ Stock Market represent a diverse array of industries including telecommunication services and information technology, financial services, healthcare, consumer products, industrials and energy.

Companies seeking to list securities on The NASDAQ Stock Market must meet minimum listing requirements, including specified financial and corporate governance criteria. Once listed, companies must meet continued listing standards. The NASDAQ Stock Market currently has three listing tiers: The NASDAQ Global Select Market, The NASDAQ Global Market and The NASDAQ Capital Market. All three market tiers maintain rigorous listing and corporate governance standards (both initial and ongoing) and issuers listing on these markets have the opportunity to leverage an array of NASDAQ OMX corporate services.

As of December 31, 2008, a total of 3,023 companies listed securities on The NASDAQ Stock Market, with 1,288 listings on The NASDAQ Global Select Market, 1,222 on The NASDAQ Global Market and 513 on The NASDAQ Capital Market.

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We aggressively pursue new listings from companies, including those undergoing IPOs as well as companies seeking to switch from alternative exchanges. In 2008, The NASDAQ Stock Market attracted 177 new listings. Included in these listings were 13 IPOs, almost 46% of the total U.S. IPOs in 2008. The new listings were comprised of the following:

New Listings on The NASDAQ Stock Market	177
Switches from NYSE/NYSE Alternext and Dual Listings	61
IPOs	13
Upgrades from Over-the-Counter Bulletin Board (OTCBB)	45
ETFs, Structured Products and Other Listings	58

In 2008, the following nine NYSE-listed companies switched to The NASDAQ Stock Market, representing \$129.9 billion in market capitalization: News Corporation, Automatic Data Processing, Inc., CA, Inc., CME Group Inc., Jack in the Box Inc., Celera Corporation, Mylan Inc., Seagate Technology and Global-Tech Advanced Innovations Inc. A total of 51 companies switched from the American Stock Exchange (now renamed NYSE Alternext) to The NASDAQ Stock Market in 2008.

We charge issuers an initial listing fee, a listing of additional shares fee and an annual renewal fee. The initial listing fee for securities listed on The NASDAQ Stock Market includes a listing application fee and a total shares outstanding fee. The fee for listing of additional shares is based on the total shares outstanding, which we review quarterly. Annual renewal fees for securities listed on The NASDAQ Stock Market are based on total shares outstanding.

*Nordic and Baltic Listings.* We also offer listings on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic. As of December 31, 2008, a total of 824 companies listed securities on our Nordic and Baltic exchanges. Measured in terms of the market capitalization of listed companies, as of December 31, 2008, NASDAQ OMX Nordic was the largest marketplace in Europe for IT companies, the largest marketplace in the world for the paper industry, the second largest marketplace in the world for apparel retail and third largest marketplace in the world for industrial machinery.

Our European listing customers are organizations such as companies, funds or governments that issue and list securities on the exchanges of NASDAQ OMX Nordic and NASDAQ OMX Baltic. Customers issue securities in the forms of equities and depository receipts, warrants, ETFs, convertibles, rights, options, bonds and other fixed-income related products. In 2008, a total of 31 new companies were listed on our Nordic and Baltic exchanges.

For smaller companies and growth companies, we offer access to the financial markets through the NASDAQ OMX First North alternative marketplaces. NASDAQ OMX First North added 17 new companies in 2008.

*Corporate Services.* Our Corporate Services business provides customer support services, products and programs to companies, including companies listed on our exchanges. Through our corporate services offerings, companies gain access to innovative products and services that facilitate transparency, mitigate risk, maximize board efficiency and facilitate better corporate governance. Through our wholly-owned subsidiaries, we provide corporate services in key areas of focus:

- *Investor Relations.* We provide industry-leading investor relations and news distribution products designed to make it easier for companies to interact and communicate with analysts and investors while meeting corporate governance and disclosure requirements.
- *Market Monitoring.* We offer unique proprietary services that help companies monitor their stock and track peer performance. In November 2008, we acquired Bloom Partners, a leading market intelligence firm, enhancing our market monitoring services.

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- *Board Practice.* We offer board member recruiting and management solutions to ensure board member effectiveness.
- *Global Visibility.* We provide ways for companies to increase their visibility through our Marketsite offerings and access to discounts and special offers from other listed companies.
- *Risk Management.* We provide offerings intended to assist companies in risk management through our corporate insurance brokerage subsidiary offering executive liability risk management services.

*PORTAL and The PORTAL Alliance.* In addition to traditional public offerings, SEC Rule 144A provides public and private companies with another option for effectively raising capital at a lower cost and with fewer regulatory hurdles. We have managed the process to designate SEC Rule 144A unregistered securities as PORTAL securities since 1990.

In late 2007, we and a group of leading securities firms announced our intention to form The PORTAL Alliance, an open, industry-standard 144A equity trading platform with the goal of providing a better market for investors and issuers. The PORTAL Alliance members intend to develop a neutral process for investor qualification and tracking of transaction settlement and dissemination of issuer and trading information for Rule 144A securities. The PORTAL Alliance is expected to launch in 2009.

### **Global Index Group**

We are one of the world's leading index providers. We develop and license NASDAQ OMX branded indexes, associated derivatives and financial products as part of our Global Index business. We believe that these indexes and products leverage, extend and enhance the NASDAQ OMX brand. License fees for our trademark licenses vary by product based on assets, number or underlying dollar value of contracts issued. In addition to generating licensing revenues, these products, particularly mutual funds and ETFs, lead to increased investments in companies listed on The NASDAQ Stock Market, which enhances our ability to attract new U.S. listings.

Our flagship index, the NASDAQ-100 Index, includes the top 100 non-financial companies listed on The NASDAQ Stock Market. With the addition in 2008 of OMX and PHLX, we now have nearly 2,000 diverse indexes, with 53 launched in 2008. NASDAQ OMX indexes are the basis for over 1,000 financial products in 37 countries. In 2008, we licensed 16 new ETFs based on NASDAQ OMX indexes. We also license cash-settled options, futures and options on futures on our indexes.

### **Market Technology**

*Technology Solutions.* We are the world's leading technology solutions provider and partner to exchanges, alternative trading venues and clearing organizations. The systems solutions we offer support trading, clearing and settlement and information dissemination for many types of instruments, ranging from equities to complex derivative products. Furthermore, the solutions we offer can handle all classes of assets, including currencies, different types of interest-bearing securities, commodities and energy products.

In addition to systems solutions, we offer advisory services, facility management and systems integration and operations and support of all components included in a turn-key information technology solution for a marketplace. We currently manage operations for 17 marketplaces and our solutions enable efficient securities transactions for more than 70 marketplaces in over 50 countries, including markets operated by NASDAQ OMX. We are able to offer our customers analysis and advisory services on efficiency, as well as operational security and support in the creation of regional marketplaces.

Our trading solutions are sold throughout the world and are utilized by exchanges, alternative-trading venues and banks and securities brokers with marketplace offerings of their own. Our platforms are designed to meet client requirements as well as ensure the highest level of availability, security and reliability. NASDAQ

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OMX's trading solutions are utilized by, among others, the Australian Securities Exchange, Hong Kong Exchanges and Clearing, International Securities Exchange, or ISE, Plus Markets Group, SIX Swiss Exchange, Singapore Exchange and Wiener Börse.

In the post trade stage, we offer integrated systems solutions for clearing (risk management) and settlement (settlement and delivery) of both cash equities and derivatives to clearing organizations around the world. We also offer the systems for handling the administration of securities in securities depositories. These systems have been designed to be able to communicate with various trading systems and with other clearing or securities systems. Clearing and settlement solution customers include the Australian Securities Exchange, Hong Kong Exchanges and Clearing and Wiener Börse.

We offer standardized systems for disseminating raw data, such as prices, trades and order amounts, and refined data, such as indexes, to meet the extensive need for data for trading. Our information dissemination solution customers include ICAP, ISE, Singapore Exchange and Wiener Börse.

*Systems Integration, Operation and Support.* A central part of many projects is facility management and systems integration. This service is based on our many years of experience in operating marketplaces and implementing change projects involving technical infrastructure. Through our integration services, we can assume total responsibility for projects involving migration to a new system and the establishment of entirely new marketplaces. We also offer operation and support for the applications, systems platforms, networks and other components included in a turn-key information technology solution. By transferring the operation and support of systems to us, the customer can focus on its core operations and reduce its operational risk level. At the same time, economies of scale can be achieved, by allowing the customer access to existing, effective technology and infrastructure.

*Advisory Services.* Our advisory services are designed to support our customers' strategies and help them with critical decisions in a highly demanding business environment. Operating our own exchanges and in partnering with global technology customers, we continually gain insight on developments in the financial world. We understand first-hand how marketplaces operate, the challenges they face and the complex technology infrastructures that support them. Our consultants have deep experience in strategy, operations and change management, and are backed by the combined knowledge of NASDAQ OMX as well as a network of external experts in the exchange industry.

*Research and development.* We continuously develop our product offering to ensure our position as a market leader and driving force in the exchange industry. Investment decisions are made based on customer needs and general market trends.

This year we introduced a new technology roadmap for our next generation trading system, GENIUM. The roadmap builds on NASDAQ OMX's combined experience and insight gained from operating exchanges and in supporting the operations of more than 70 exchanges, clearing organizations and central securities depositories around the world. Two key assets will be leveraged to realize the new roadmap:

- INET, currently used by NASDAQ OMX for the U.S. equities markets and NASDAQ OMX Europe. Delivering sub-millisecond transaction speeds, the INET system is proven in handling trading volumes of more than five billion shares daily and routinely handles over 268,000 messages per second.
- CLICK, the world's most widespread trading system for integrated derivatives and equity trading, today powers derivatives trading on the exchanges of NASDAQ OMX Nordic and leading markets around the world, including Australian Securities Exchange, Hong Kong Exchanges and Clearing, ICAP, ISE, and Singapore Exchange. CLICK also offers integrated clearing functionality through SECUR.

GENIUM has been designed not only to be the world's fastest trading system, but also to combine innovative functionality with a modular approach to more efficiently manage change and create new advantages

to existing and new customers. The foundation for GENIUM is a common service delivery platform built for the exchange industry. It provides high performance transaction handling and availability as well as common functional features, like reference data and session management. The platform is based on industry standard operating environments and holds unified models for business and technical operations.

### **Intellectual property**

We own or have licensed rights to trade names, trademarks, domain names and service marks that we use in conjunction with our operations and services. We have registered many of our most important trademarks in the United States and in foreign countries. For example, our primary “NASDAQ” mark is a registered trademark in the United States and in over 50 other countries worldwide and the OMX trademark also has been registered worldwide. We also have trademark registrations for the most important names of NASDAQ OMX Nordic and our operations in Europe. Many of these trademarks are registered in a number of countries. An example of the registered trademarks used in our European operations include: OMX, GENIUM, SECUR, CLICK XT and EXIGO.

We also maintain copyright protection in our NASDAQ-branded materials and pursue patent protection for NASDAQ OMX-developed inventions and processes. Our patent department focuses on gaining patent protection for the software functionality that we develop in order for us to fully benefit from our research and development investments. Our patent department accomplishes this through the evaluation of inventions, the preparation, filing and prosecution of patent applications for inventions deemed worthwhile to pursue, the maintenance of granted patents, the coordination of information within the organization about patents and the monitoring of competitors for possible use of patented information.

### **Competition**

*Market Services.* The equity securities markets are intensely competitive. We compete in the U.S. against NYSE Euronext, BATS Exchange, regional exchanges and ECNs. In Europe, our major competitors include NYSE Euronext, Deutsche Börse, the London Stock Exchange Group plc, or LSE, the Spanish Exchanges and SIX Swiss Exchange. We also compete globally with other major exchanges around the world, including the Tokyo Stock Exchange, the Korea Exchange, the Hong Kong Stock Exchange, the Singapore Stock Exchange, the Shanghai Stock Exchange, the Sydney Stock Exchange, the Bombay Stock Exchange, the Sao Paulo Stock Exchange and the Toronto Stock Exchange. Competition also comes from broker-dealers and from off-board or OTC trading in the U.S. and elsewhere.

In bond trading, we compete in Europe with alternative marketplaces such as MTS. For derivatives products, competition comes in the form of trading and clearing that takes place through OTC trading, usually through banks and brokerage firms, or through trading and clearing competition with other exchanges. The competitive significance in Europe of these varied alternative trading venues is likely to increase in the future, with the regulatory environment in Europe becoming more favorable to alternative trading venues as a result of the reforms required by the Markets in Financial Instruments Directive, or MiFID, and a broader effort to increase competition in financial services.

Competition is based on a number of factors, including the quality of our technological and regulatory infrastructure, total transaction costs, the depth and breadth of liquidity, the quality of value-added customer services, reputation and cost of trade execution.

*Equity securities trading.* The U.S. marketplace continues to evolve as ECNs active in the equity trade execution business attract market participants' investment and become exchanges or acquire regional exchanges. Additional new entrants may emerge, potentially posing a competitive threat to more established industry participants. While many of the new entrants may have limited liquidity, some may attract significant levels of equity order volume through aggressive pricing and from volume originating with broker-dealer investors. In

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addition, there remains interest in electronic trading systems specializing primarily in large block trades, such as LiquidNet, Pipeline Trading and Investment Technology Group's POSIT platform. Also, regional exchanges, such as the International Securities Exchange, have agreed to be acquired by ECNs, with the objective of enabling them to better compete with other exchanges.

The European landscape is in its early days of adapting to the competitive forces released by MiFID in November 2007. Throughout Europe new multilateral trading facilities, or MTFs, are being created with the most prominent MTFs (Chi-X, Turquoise, NASDAQ OMX Europe, and BATS) launching in the United Kingdom and attracting a significant share of electronically matched volume. Trade reporting alternatives to incumbent exchanges, such as Markit BOAT, or BOAT, have also been launched. BOAT is currently the largest market trading reporting platform in Europe. Electronic trading systems interested in pursuing block business have long been active in Europe and are looking to grow their businesses under MiFID. Finally, smaller existing exchanges such as PLUS Markets and the Berliner Boerse are looking to enter new markets and expand their businesses. In the Nordics, a new MTF, Burgundy, has indicated that it intends to launch in 2009. These entrants pursue many of the same strategies to attract order flow as in the U.S., which include attractive pricing, participant investment, technological innovation, and pursuit of exchange status. Because of the success of the new entrants, incumbent exchanges have lowered prices, adopted new technology, and prepared to compete aggressively for trading volumes and revenue. While the state of competition in Europe remains evolutionary, the level of competition faced by incumbent national exchanges is clearly rising.

As a result of the conditions in the U.S. and Europe, we experience competition in our core trading activities such as execution services, quoting and trading capabilities, and reporting services. Many of our competitors have engaged in aggressive price competition by reducing the trade execution transaction fees they charge their customers. As a result of this competition, we significantly reduced the trade execution transaction fees we charge our customers in the past, particularly our large-volume customers. We periodically reexamine our pricing structure to ensure that our fees remain competitive.

*Derivatives.* Our principal competitors for trading options in the U.S. include the Chicago Board Options Exchange, or CBOE, ISE, NYSE ARCA, NYSE Alternext and the Boston Options Exchange, or BOX. Competition is focused on providing market participants with greater functionality, trading system stability, customer service, efficient pricing, and speed of execution. NASDAQ OMX operates two exchanges with different market structures. NASDAQ OMX PHLX operates a pro-rata hybrid electronic and floor based exchange and competes most directly with CBOE, ISE and NYSE Alternext. As a result of this competition, NASDAQ OMX PHLX added new functionality aimed at retail customers and reduced fees for our largest customers. The NASDAQ Options Market operates a price/time priority exchange and competes most directly with NYSE ARCA and the BOX. The NASDAQ Options Market competes primarily by providing meaningful price improvement to incoming orders and by offering a fast, stable trading system. During 2008, The NASDAQ Options Market increased the rebate it pays to liquidity providers on price improving execution to encourage price improvement.

MiFID does not address competition between derivatives markets to the extent that it addresses equities trading and consequently has been slower to affect competition in trading derivative securities. Exchange based competition for trading in European derivatives continues to occur mainly where there is competition in trading for the underlying equities and our competition for options on European equities is primarily with EUREX, LIFFE, EDX and, to a limited extent, the U.S. options exchanges. Such competition is limited to options on a small number of equity securities although these securities tend to be among the most active. New competition in this area is expected to come from Project Rainbow, a new dealer-sponsored derivative multi-lateral facility.

In addition to exchange based competition in derivatives we continue to face competition from OTC derivative markets. Bilateral and CCP-like innovations such as NYSE Euronext's Bclear and BEST-Execution Services (BEST)—which is a collaboration between the Dutch market's two largest providers of liquidity, BinckBank and Optiver—are also creating increasing competition for derivatives, mainly in the OTC and

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covered warrants markets. We market NASDAQ OMX's market operations, and trading and clearing services to these new entrants.

As trading in Europe evolves under MiFID, competition for trading volumes in derivatives will likely increase. Both current and potential competition requires us to constantly reassess our pricing and product offerings in order to remain competitive.

*Clearing.* In both the U.S. and Europe, equity clearing has been organized along national lines. Typically, a single clearing house would serve essentially all equity trading involving securities listed on exchanges within a nation's borders. Some countries, such as Sweden, do not have a clearing house at all. In some countries such as the U.S., the clearing house is part of the same organization as the Central Securities Depository, or CSD. In some, such as Germany, the clearing house and the stock exchange are part of the same corporate structure, and in others such as the U.K., the clearing house, exchange, and CSD are separate. Furthermore, there is a much shorter history of using CCP Services in European clearing than in the U.S. Regardless of past practice, competition is beginning to come to clearing in response to the European Code of Conduct in Clearing and Settlement in Europe and initiatives by NASDAQ OMX in the U.S. At this time, competition in clearing remains limited with a few new non-national clearing houses such as EMCF, X-Clear and EuroCCp being launched in Europe to serve non-national multilateral trading facilities. Our announced intention that the NASDAQ OMX Nordic exchanges will introduce a non-national central counterparty to our markets may spur competition for clearing services in Europe.

In the U.S., competition in equity clearing has been legislatively called for since 1975 but only recently have technological advances made competitive clearing in the U.S. a viable possibility. Should clearing competition become a vibrant reality in the U.S. or Europe it may have an impact on equity trading and on our business as clearing is a non-trivial cost of trade execution. We believe that clearing in both the U.S. and Europe will benefit from competition and intend to compete actively for clearing business.

*Market data services.* Our revenues from the sale of market data products and services are under competitive threat from other securities exchanges that trade NASDAQ-listed securities. Current SEC regulations permit these regional exchanges and FINRA's Alternative Display Facility to quote and trade NASDAQ-listed securities. Trade reporting facilities regulated by FINRA are also operated by The NASDAQ Stock Market and other exchanges. The UTP Plan entitles these exchanges, FINRA's Alternative Display Facility, and the trade reporting facilities to a share of UTP Plan tape fees, based on the formula required by Regulation NMS that takes into account both trading and quoting activity. In addition, The NASDAQ Stock Market similarly competes for the tape fees from the sale of information on NYSE- and NYSE Alternext-listed securities for those respective tape plans.

Participants in the tape plans have used tape fee revenues to establish payment for order flow arrangements with their members and customers. In January 2004, we implemented a new tiered pricing structure and the Nasdaq General Revenue Sharing Program, which provided incentives for quoting market participants to send orders and report trades to The NASDAQ Market Center. We continuously evaluate and refine both programs. To remain competitive, in July 2006, we changed the terms of the program and established a new Nasdaq Data Revenue Sharing Program. In January 2008, we again changed the terms of the program. We may adjust either program in the future to respond to competitive pressures.

The sale of our proprietary products are under competitive threat from alternative exchanges and trading venues that offer similar products at a lower price or free of charge. Our market data business competes with other exchanges and third party vendors in providing information to market participants. Consequently our data products must be competitive in speed, reliability, content and price to succeed in the marketplace. New exchanges and trading systems entering the market have recognized the strong connection between market data and transactions volume and new entrants could price their market data very aggressively in order to grow transactions volume thereby limiting our flexibility in pricing market data. Any action by a market participant to

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provide information to another exchange or market data vendor could have a negative impact on our data products. The market data business must also adapt to a rapidly changing information delivery technologies and constantly invest in innovative product design and development. Other market data providers may not face the regulatory obligations we face and may consequently be more flexible in pricing and more agile in deploying new products and business methods to our detriment.

*Listing and corporate services.* Our primary competitor for larger company listings in the U.S. on The NASDAQ Stock Market is the NYSE. The NASDAQ Stock Market also competes with NYSE Alternext for listing of smaller companies.

Competition for listings in Europe relates to the exchange choices available to companies considering a new or secondary listing. In addition to the larger exchanges, companies are able to consider smaller markets and quoting facilities, such as LSE's Alternative Investment Market, Euronext's Alternext, Deutsche Börse's Entry Standard, Borsa Italiana's Expandi Market, PLUS Markets plc, the Pink Sheets LLC and the Over-the-Counter Bulletin Board. Other exchanges in Sweden include the Nordic Growth Market and Aktietorget, which primarily serve companies with smaller market capitalizations.

In Europe, our main competitors for our company news service, a comprehensive communication service for listed companies on the NASDAQ OMX Nordic exchanges, are Cision and Hugin, the latter of which is owned by NYSE Euronext.

*Indexes.* The NASDAQ Stock Market is subject to intense competition for the listing of financial products from other exchanges. The indexes on which these products are based face competition from other indexes which can be considered competitive with NASDAQ OMX indexes. For example, there are a number of indexes that aim to track the technology sector and may from time to time have a high degree of correlation with the NASDAQ-100 Index and the NASDAQ Composite Index. We face competition from investment banks, markets or other product developers in designing products that meet investor needs.

*Market Technology.* Many exchanges, clearing organizations and securities depositories have traditionally developed their own technology systems for trading, clearing, settlement, depository and information dissemination internally, often assisted by consulting companies and local suppliers of components. The competitive landscape is changing and the implementation of third party solutions is growing more popular. Two types of competitors are emerging: other exchanges providing solutions, including NYSE Euronext, and pure technology providers focused on the exchange industry.

## **Regulation**

We are subject to extensive regulation in the United States and Europe.

### ***U.S. Regulation***

U.S. federal securities laws establish a two-tiered system for the regulation of securities markets, market participants and listed companies. The SEC occupies the first tier and has primary responsibility for enforcing federal securities laws. Self-Regulatory Organizations, or SROs, which are non-governmental organizations, occupy the second tier. SROs, such as national securities exchanges, are registered with the SEC and are subject to the SEC's extensive regulation and oversight.

This regulatory framework applies to our U.S. business in the following ways:

- regulation of our registered national securities exchanges; and
- regulation of our U.S. broker-dealer subsidiaries.

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The rules and regulations that apply to our business are focused primarily on safeguarding the integrity of the securities markets and of market participants and investors generally. While we believe that regulation improves the quality of exchanges and, therefore, our company, these rules and regulations are not focused on the protection of our stockholders. U.S. federal securities laws and the rules that govern our operations are subject to frequent change.

*Regulation of U.S. Exchanges.* With the registration of The NASDAQ Stock Market as a national securities exchange in 2006, we received our own SRO status through our exchange subsidiary, separate from that of FINRA. With the acquisitions of the Philadelphia Stock Exchange and the Boston Stock Exchange, we acquired additional SRO licenses. As SROs, each entity has separate rules pertaining to its members and listed companies regarding listing, membership and trading that are distinct and separate from those rules applicable to broker-dealers that are administered by FINRA. Broker-dealers may choose to become members of The NASDAQ Stock Market, NASDAQ OMX PHLX or NASDAQ OMX BX in addition to their other SRO memberships, including membership in FINRA.

All of our U.S. national securities exchanges are subject to the SEC's oversight, as prescribed by the Securities Exchange Act of 1934, or the Exchange Act, including periodic and special examinations by the SEC. Our exchanges also are potentially subject to regulatory or legal action by the SEC or other interested parties at any time in connection with alleged regulatory violations. We have been subject to a number of routine reviews and inspections by the SEC. To the extent such actions or reviews and inspections result in regulatory or other changes, we may be required to modify the manner in which we conduct our business, which may adversely affect our business. We are also subject to Section 17 of the Exchange Act, which imposes record-keeping requirements, including the requirement to make records available to the SEC for examination.

Section 19 of the Exchange Act provides that our exchanges must submit proposed changes to any of the SROs' rules, practices and procedures, including revisions to provisions of our certificate of incorporation and by-laws that constitute SRO rules, to the SEC. The SEC will typically publish the proposal for public comment, following which the SEC may approve or disapprove the proposal, as it deems appropriate. The SEC's action is designed to ensure that applicable SRO rules and procedures are consistent with the aims of the Exchange Act and its rules and regulations. In addition, pursuant to the requirements of the Exchange Act, our exchanges must file all proposals for a change in their pricing structure with the SEC.

SROs in the securities industry are an essential component of the regulatory scheme of the Exchange Act for providing fair and orderly markets and protecting investors. The Exchange Act and the rules thereunder impose on the SROs many regulatory and operational responsibilities, including the day-to-day responsibilities for market and broker-dealer oversight. In general, an SRO is responsible for regulating its members through the adoption and enforcement of rules and regulations governing the business conduct of its members.

NASDAQ OMX currently operates two equities and two options markets in the United States. We operate The NASDAQ Stock Market and The NASDAQ Options Market pursuant to The NASDAQ Stock Market's SRO license, the NASDAQ OMX BX equities market, launched in January 2009, pursuant to the NASDAQ OMX BX SRO license, and the NASDAQ OMX PHLX options market pursuant to the NASDAQ OMX PHLX SRO license. In addition, NASDAQ OMX BX regulates BOX pursuant to a regulatory services agreement between a subsidiary of NASDAQ OMX BX and BOX. NASDAQ OMX does not have an ownership interest in BOX, and we are compensated by BOX based on the cost of the regulatory services we provide to BOX.

FINRA provides regulatory services to the equities and options markets of The NASDAQ Stock Market and, once fully implemented in March 2009, the markets operated or regulated by NASDAQ OMX BX, including the regulation of trading activity and surveillance and investigative functions. We have a limited direct regulatory role in conducting real-time market monitoring rulemaking and certain membership functions through our MarketWatch department. Suspicious trading behavior discovered by our regulatory staff and all other employees of The NASDAQ Stock Market and the markets operated and regulated by NASDAQ OMX BX is referred to FINRA for further investigation.

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The regulatory group within NASDAQ OMX PHLX handles all regulatory operations for its options market, which trades options on equity securities, indexes, ETFs, and world currencies. The NASDAQ OMX PHLX options marketplace combines its highly sophisticated trading technology with a physical trading floor where the on-floor Surveillance Department monitors the open-outcry hybrid environment on a real time basis and acts in the capacity of options exchange officials, rendering decisions on trade-related rulings. Subsequently, the options reviews department performs all non-real-time trading analysis and surveillance. NASDAQ OMX PHLX also has an Examinations Department that conducts routine inspections of its member firms and monitors their financial condition for net capital requirements. These departments then refer unusual or suspicious activity to the Investigations Department that develops cases and ultimately to the Enforcement Department that prosecutes violations of exchange rules and applicable federal securities laws.

As of February 2009, NASDAQ OMX PHLX does not use FINRA for any material regulatory services besides the joint industry agreements and Rule 17d-2 agreements discussed below.

*Broker-dealer regulation.* NASDAQ OMX's broker-dealer subsidiaries are subject to regulation by the SEC, the SROs and the various state securities regulators. Nasdaq Execution Services, LLC currently operates as our routing broker for sending orders from The Nasdaq Market Center to other venues for execution. NASDAQ Options Services, LLC performs a comparable function with respect to routing of orders from The NASDAQ Options Market.

Nasdaq Execution Services is registered as a broker-dealer with the SEC and in all 50 states, the District of Columbia and Puerto Rico. It is also a member of The NASDAQ Stock Market, NASDAQ OMX BX, NASDAQ OMX PHLX, NYSE, NYSE Alternext, NYSE Arca, FINRA, BATS Exchange, CBOE, Chicago Stock Exchange, ISE and the National Stock Exchange.

NASDAQ Options Services is registered as a broker-dealer with the SEC and in all 50 states, the District of Columbia and Puerto Rico. It is also a member of The NASDAQ Stock Market, NASDAQ OMX PHLX, FINRA, NYSE Alternext, BOX, ISE and NYSE Arca.

The SEC, NYSE and FINRA adopt rules and examine broker-dealers and require strict compliance with their rules and regulations. The SEC, SROs and state securities commissions may conduct administrative proceedings which can result in censures, fines, the issuance of cease-and-desist orders or the suspension or expulsion of a broker-dealer, its officers or employees. The SEC and state regulators may also institute proceedings against broker-dealers seeking an injunction or other sanction. The SEC and SRO rules cover many aspects of a broker-dealer's business, including capital structure and withdrawals, sales methods, trade practices among broker-dealers, use and safekeeping of customers' funds and securities, record-keeping, the financing of customers' purchases, broker-dealer and employee registration and the conduct of directors, officers and employees. All broker-dealers have an SRO that is assigned by the SEC as the broker-dealer's designated examining authority, or DEA. The DEA is responsible for examining a broker-dealer for compliance with the SEC's financial responsibility rules. NYSE is Nasdaq Execution Services' current DEA and FINRA is NASDAQ Options Services' DEA.

As registered broker-dealer subsidiaries, Nasdaq Execution Services and NASDAQ Options Services are subject to regulatory requirements intended to ensure their general financial soundness and liquidity, which requires that they comply with certain minimum capital requirements. The SEC and FINRA impose rules that require notification when net capital falls below certain predefined criteria, dictate the ratio of debt to equity in the regulatory capital composition of a broker-dealer and constrain the ability of a broker-dealer to expand its business under certain circumstances. Additionally, the Uniform Net Capital Rule and FINRA rules impose certain requirements that may have the effect of prohibiting a broker-dealer from distributing or withdrawing capital and requiring prior notice to the SEC and FINRA for certain withdrawals of capital.

As of December 31, 2008, we were in compliance with all of such capital requirements.

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*Regulatory contractual relationships with FINRA.* The NASDAQ Stock Market and NASDAQ OMX BX have signed a series of regulatory service agreements covering the services FINRA provides to the respective SROs, including some of the regulatory services we perform for BOX. Under these agreements, FINRA personnel act as our agents in performing the regulatory functions outlined above. FINRA bills us a fee for each required service. These agreements have enabled us to reduce our headcount while ensuring that the markets for which we are responsible are properly regulated. However, our SROs retain ultimate regulatory responsibility for all regulatory activities performed under these agreements by FINRA. In addition, our options markets, including NASDAQ OMX PHLX, have entered into a joint agreement with the other options exchanges for conducting insider trading surveillance, but our SROs continue to monitor the activities conducted under the agreement and continue to have regulatory responsibility in this area.

Exchange Act Rule 17d-2 permits SROs to enter into agreements, commonly called Rule 17d-2 agreements, approved by the SEC with respect to enforcement of common rules relating to common members. Our SROs have entered into several such agreements under which we are relieved of regulatory responsibility:

- agreements with FINRA covering the enforcement of common rules, the majority of which relate to the regulation of members of The NASDAQ Stock Market and NASDAQ OMX BX;
- joint industry agreements with FINRA and NYSE Regulation covering responsibility for enforcement of insider trading rules;
- joint industry agreement with FINRA covering enforcement of rules related to equity sales practices and certain other non-market related rules; and
- joint industry agreement covering enforcement of rules related to options sales practices.

*Regulation NMS and Options Intermarket Linkage Plan.* We are subject to Regulation NMS for our cash equities markets, and our options markets have joined the Options Intermarket Linkage Plan. These are designed to facilitate the routing of orders among exchanges to create a national market system as mandated by the Exchange Act. One of the principal purposes of a national market system is to assure that brokers may execute investors' orders at the best market price. Both Regulation NMS and the Options Intermarket Linkage Plan require that exchanges avoid trade-throughs, locking or crossing of markets and provide market participants with electronic access to the best prices among the markets for the applicable equity or options order.

*CFTC Regulation.* With the acquisition of PHLX, we also acquired its subsidiary, NASDAQ OMX Futures Exchange, Inc. (formerly PBOT), a designated contract market under the Commodity Exchange Act. As a designated contract market, NFX is subject to regulatory oversight by the CFTC, an independent agency with the mandate to regulate commodity futures and option markets in the U.S. NFX currently lists trading futures contracts on stock indexes, foreign currencies and interest rate swaps. The National Futures Association provides certain regulatory services to NFX pursuant to a Regulatory Services Agreement. The CFTC also regulates IDCH, a designated clearing organization under the Commodity Exchange Act that is wholly owned by IDCG. IDCH clears interest rate swap futures contracts listed by NFX. NFA also provides regulatory services to IDCH.

### **European regulation**

Recent directives from the European Union have focused on the harmonization of regulation with respect to financial services, offering, listing and trading of securities and market abuse. These directives are in turn providing opportunities for companies such as ours. As the regulatory environment continues to change and related opportunities arise, we intend to use our position in the industry to continue product development, and ensure that the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic maintain favorable liquidity and offer efficient trading. One such opportunity that has been utilized is the approval of our multilateral trading facility, NASDAQ OMX Europe, in the U.K.

Confidence in capital markets is paramount for trading to function properly. NASDAQ OMX Nordic carries out market regulation through an independent unit that is separated from the business operations. Our

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surveillance consists of three surveillance departments, one at each NASDAQ OMX Nordic exchange in Sweden, Finland and Denmark, and separate surveillance functions at NASDAQ OMX Iceland. These departments are in turn organized into two groups or functions: one for the listing of instruments and surveillance of companies (issuer surveillance) and one for surveillance of trading (trading surveillance). In Iceland, the surveillance activities are carried out by specially appointed persons. In addition, there are special personnel who carry out surveillance activities at each of the three Baltic Exchanges. Currently, there are two surveillance committees at NASDAQ OMX Nordic, one in Sweden and one in Finland. In Sweden and Finland, decisions to list new companies are made by the listing committees of the exchanges. In Denmark and Iceland, listing decisions are made by the President of the exchange, a duty delegated by the board of NASDAQ OMX Nordic Copenhagen and NASDAQ OMX Iceland, respectively.

If there is suspicion that a listed company or member has acted in breach of exchange regulations, the matter is dealt with by the market regulation division. Serious breaches are considered by the respective disciplinary committee in Sweden and Finland. In Denmark, all matters are dealt with by the surveillance department. In Iceland, enforcement committees handle all breaches of exchange regulations, while disciplinary committees handle the determination of fines. Suspected insider trading is reported to the appropriate authorities in the respective country or countries.

We continue the harmonization of the structure and processes for market regulation in the Nordic region. When NASDAQ OMX Nordic was launched, the listing requirements for our exchanges in Sweden, Denmark and Finland were harmonized. NASDAQ OMX Iceland adopted the harmonized requirements in April 2007.

The entities that operate trading venues in the Nordic and Baltic countries are each subject to local regulation. In Sweden, general supervision of the exchange market operated by NASDAQ OMX Stockholm is carried out by the Swedish Financial Supervisory Authority, or SFSA, while NASDAQ OMX Stockholm's role as central counterparty in the clearing of derivatives is overseen by the SFSA and the Swedish central bank, Riksbanken. Additionally, as a function of the Swedish two-tier supervisory model, certain surveillance in relation to the exchange market is carried out by us, acting through our surveillance division.

NASDAQ OMX Stockholm's exchange and clearing activities are regulated primarily by the Swedish Securities Markets Act 2007:528, or SSMA, which sets up basic requirements regarding the board of the exchange or clearinghouse and its share capital, and which also outlines the conditions on which exchange and clearing licenses are issued. The SSMA also provides that any changes to the exchange's articles of association following initial registration must be approved by the SFSA.

With respect to ongoing operations, the SSMA requires exchanges to conduct their activities in an "honest, fair and professional manner, and in such a way as to maintain public confidence in the securities markets." When operating a regulated market, an exchange must apply the principles of free access (i.e., that each person which meets the requirements established by law and by the exchange may participate in trading), neutrality (i.e., that the exchange's rules for the regulated market are applied in a consistent manner to all those who participate in trading) and transparency (i.e., that the participants must be given speedy, simultaneous and correct information concerning trading and that the general public must be given the opportunity to access this information). Additionally, the exchange operator must identify and manage the risks which may arise in its operations, use secure technical systems and identify and handle the conflicts of interest which may arise between the exchange or its owners' interests and the interest in safeguarding effective risk management and secure technical systems. Similar requirements are set up by the SSMA in relation to clearing operations.

The SSMA also contains the framework for both the SFSA's supervisory work in relation to exchanges and clearinghouses and the surveillance to be carried out by the exchanges themselves. The latter includes the requirement that an exchange should have "an independent surveillance function with sufficient resources and powers to meet the exchange's obligations." That requires the exchange to, among other things, supervise trading and price information, compliance with laws, regulations and good market practice, participant compliance with

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trading participation rules, financial instrument compliance with relevant listing rules and the extent to which issuers meet their obligation to submit regular financial information to relevant authorities. As mentioned above, this function is carried out by our surveillance division, which consists of three separate departments at each of the exchanges in Stockholm, Copenhagen and Helsinki, as well as separate surveillance functions at the exchanges on Iceland and in the Baltic states.

The regulatory environment in the other Nordic and Baltic countries in which a NASDAQ OMX entity has a trading venue is broadly similar to the regulatory environment in Sweden. Since 2005, there has been a Memorandum of Understanding between the SFSA and the main supervisory authorities in Denmark and Finland, which looks to safeguard effective and comprehensive supervision of NASDAQ OMX Nordic and the systems operated by it, and to ensure a common supervisory approach.

### **Employees**

As of December 31, 2008, we had 2,507 employees, of which 1,149 were based in the U.S. and 1,358 were based outside of the U.S. None of our U.S. employees is subject to collective bargaining agreements or is represented by a union. Approximately 141 employees based in Denmark and Finland are covered by local union agreements.

### **NASDAQ OMX Website and Availability of SEC Filings**

We file periodic reports, proxy statements and other information with the SEC. The public may read and copy any materials we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC (such as us). The address of that site is <http://www.sec.gov>.

Our website is [www.nasdaqomx.com](http://www.nasdaqomx.com). Information on our website is not a part of this Form 10-K. We will make available free of charge on our website, or provide a link to, our Forms 10-K, Forms 10-Q and Forms 8-K and any amendments to these documents, that are filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. To access these filings, go to NASDAQ OMX's website and click on "Investor Relations," then click on "Financial Information," then click on "SEC Filings."

We intend to use our website, [www.nasdaqomx.com](http://www.nasdaqomx.com), as a means of disclosing material non-public information and for complying with disclosure obligations under SEC Regulation FD. These disclosures will be included on our website under "Investor Relations—Events and Presentations."

### **Item 1A. Risk Factors.**

*The risks and uncertainties described below are not the only ones facing us. Additional risks and uncertainties not presently known to us or that we currently believe to be immaterial may also adversely affect our business. If any of the following risks actually occur, our business, financial condition, or operating results could be adversely affected.*

#### **Risks Relating to our Business**

***We may not be able to successfully integrate our recently acquired businesses, which may result in an inability to realize the anticipated benefits of our acquisitions.***

We continue to rationalize, coordinate and integrate the operations of our recently acquired businesses. This process involves complex technological, operational and personnel-related challenges, which are time-consuming

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and expensive and may disrupt our business. The difficulties, costs and delays that could be encountered may include:

- unforeseen difficulties, costs or complications in combining the companies' operations, which could lead to us not achieving the synergies we anticipate;
- unanticipated incompatibility of systems and operating methods;
- inability to use capital assets efficiently to develop the business of the combined company;
- the difficulty of complying with government-imposed regulations in both the U.S. and Europe, which may be different from each other;
- resolving possible inconsistencies in standards, controls, procedures and policies, business cultures and compensation structures among the combined companies;
- the diversion of management's attention from ongoing business concerns and other strategic opportunities;
- the integration of the respective businesses, operations and workforces;
- unforeseen difficulties in operating acquired businesses in parallel with similar businesses that we operated previously;
- unforeseen difficulties in operating businesses we have not operated before;
- unanticipated difficulty of integrating multiple acquired businesses simultaneously;
- the retention of key employees and management;
- the implementation of disclosure controls, internal controls and financial reporting systems at non-U.S. subsidiaries to enable us to comply with U.S. generally accepted accounting principles, or U.S. GAAP, and U.S. securities laws and regulations, including the Sarbanes Oxley Act of 2002, required as a result of our status as a reporting company under the Exchange Act;
- the coordination of geographically separate organizations;
- the coordination and consolidation of ongoing and future research and development efforts;
- possible tax costs or inefficiencies associated with integrating the operations of the combined company;
- pre-tax restructuring and revenue investment costs;
- the retention of strategic partners and attracting new strategic partners; and
- negative impacts on employee morale and performance as a result of job changes and reassignments.

For these reasons, we may not achieve the anticipated financial and strategic benefits from our recent acquisitions. Any actual cost savings and synergies may be lower than we currently expect and may take a longer time to achieve than we currently anticipate, and we may fail to realize the anticipated benefits of the recent acquisitions.

### ***The global financial and credit market crises are ongoing and may adversely affect our business.***

Ongoing global financial turmoil has reduced the availability, and increased the cost, of credit and capital and reduced the value of financial assets. The economy has entered a recession. We continue to monitor the effects on our business of these events. The ongoing turmoil could reduce customer demand for our services and the ability of our customers, lenders and other counterparties to meet their obligations to us. For example, the consequences of a prolonged recession may include a decline in trading volume, deterioration of the economic welfare of our listed companies and a reduction in the demand for our products, including our market data, indexes and market technology.

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***We will need to invest in our operations to integrate our recent acquisitions and to maintain and grow our business, and we may need additional funds, which may not be readily available.***

We depend on the availability of adequate capital to maintain and develop our business. Although we believe that we can meet our current capital requirements from internally generated funds, cash on hand and available borrowings under our existing credit facility, if the capital and credit markets continue to experience volatility, access to capital or credit may not be available on terms acceptable to us or at all. Limited access to capital or credit could have an impact on our ability to refinance debt, maintain our credit rating, meet our regulatory capital requirements, engage in strategic initiatives, make acquisitions or strategic investments in other companies or react to changing economic and business conditions. If we are unable to fund our capital or credit requirements, it could have an adverse effect on our business, financial condition and operating results.

In addition to our debt obligations, we will need to continue to invest in our operations for the foreseeable future to integrate our recently acquired businesses. If we do not achieve the expected operating results, we will need to reallocate our cash resources. This may include borrowing additional funds to service debt payments, which may impair our ability to make investments in our business or to integrate the recently acquired businesses.

Should we need to raise funds through issuing additional equity, our equity holders will suffer dilution. Should we need to raise funds through incurring additional debt, we may become subject to covenants even more restrictive than those contained in the indenture governing our notes or our other debt instruments. Furthermore, if adverse economic conditions persist or worsen, we could experience decreased revenues from our operations which could affect our ability to satisfy financial and other restrictive covenants to which we are subject under our existing indebtedness.

***Our leverage limits our financial flexibility, increases our exposure to weakening economic conditions and may adversely affect our ability to obtain additional financing.***

Our indebtedness as of December 31, 2008 was approximately \$2.5 billion. In connection with the closing of our business combination with OMX AB on February 27, 2008, we incurred a significant amount of indebtedness, including the issuance of \$475 million aggregate principal amount of 2.50% convertible senior notes due 2013 and the borrowing of \$1,050.0 million of senior secured loans under our credit facilities. On July 24, 2008 in connection with our acquisition of PHLX, we borrowed an additional \$650.0 million of senior secured loans under our credit facilities. On August 27, 2008, in connection with our acquisition of certain businesses of Nord Pool, we borrowed an additional \$300.0 million of senior secured loans under our credit facilities. We may also borrow up to an additional \$75.0 million under a revolver that is part of our credit facilities.

Our leverage could:

- reduce funds available to us for operations and general corporate purposes or for capital expenditures as a result of the dedication of a substantial portion of our consolidated cash flow from operations to the payment of principal and interest on our indebtedness;
- increase our exposure to a continued downturn in general economic conditions;
- place us at a competitive disadvantage compared with our competitors with less debt; and
- affect our ability to obtain additional financing in the future for refinancing indebtedness, acquisitions, working capital, capital expenditures or other purposes.

In addition, we must comply with the covenants in our credit facilities. Among other things, these covenants restrict our ability to grant liens, incur additional indebtedness, pay dividends, sell assets, make certain payments, conduct transactions with affiliates and merge or consolidate. Failure to meet any of the covenant terms of our

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credit facilities could result in an event of default. If an event of default occurs, and we are unable to receive a waiver of default, our lenders may increase our borrowing costs, restrict our ability to obtain additional borrowings, accelerate all amounts outstanding or enforce their interest against all collateral pledged.

### ***A decrease in trading volume will decrease our trading revenues.***

Trading volume is directly affected by economic, political and market conditions, broad trends in business and finance, unforeseen market closures or other disruptions in trading, the level and volatility of interest rates, inflation, changes in price levels of securities and the overall level of investor confidence. The current recession may reduce trading volumes across our markets. Because a significant percentage of our revenues is tied directly to the volume of securities traded on our markets, it is likely that a general decline in trading volumes would lower revenues and may adversely affect our operating results. Declines in volumes may also impact our market share or pricing structures.

### ***Current economic conditions could adversely affect our market data revenues.***

Market data revenues may be significantly affected by the global economic and credit markets crises. Professional subscriptions to our market data are at risk due to the extensive layoffs and staff reductions announced throughout the financial services industry. As these reductions occur, we may see significant reductions in our professional user revenue from our market data. While volatility in the markets may help the non-professional segment of our market data subscribers, the global loss of wealth and the steep decline in markets may cause a reduction in the number of non-professional investors who leave their investments in the market. Therefore, we may see a declining population of non-professional investors, which could result in lower non-professional subscriptions to our market data.

### ***Declines in the initial public offering market could have an adverse effect on our revenues.***

The pace of initial public offerings has declined to levels not seen since the 1970s. The outlook for recovery in the market for initial public offerings is closely tied to the availability of risk capital which may not return to historic levels for some time following the 2008 credit crisis. Stagnation or decline in the initial public offering market will impact the number of new listings on The NASDAQ Stock Market and the exchanges comprising NASDAQ OMX Nordic and NASDAQ OMX Baltic, and thus our related revenues. We recognize revenue from new listings on The NASDAQ Stock Market on a straight-line basis over an estimated six-year service period. As a result, a stagnant market for initial public offerings could cause a decrease in deferred revenues for future years. Furthermore, as initial public offerings are typically actively traded following their offering date, a prolonged decrease in the number of initial public offerings could negatively impact the growth of our transactions revenues.

### ***The global economic turmoil may affect the ability of our listed companies to comply with our listing requirements.***

Global economic conditions may jeopardize the ability of our listed companies to comply with the continued listing requirements of our exchanges. For example, companies listed on The NASDAQ Stock Market are required to achieve at least a \$1 closing bid price for a period of 30 consecutive business days, and listed companies are also required to comply with thresholds regarding the market level of their publicly held shares. Given the current extraordinary market conditions, The NASDAQ Stock Market has temporarily suspended these requirements, with the approval of the SEC, until April 19, 2009. If global economic conditions do not improve by this deadline and we are unable to further extend the suspension of our listing requirements, we may see an increase in companies delisting from our markets, either voluntarily or involuntarily. A reduction in the number of our listed companies could adversely affect our business, financial condition and operating results.

***The securities market business is highly competitive.***

We face competition from numerous entities in the securities market industry, including competition for trading services, listings, and indexes from other exchanges and market centers. This competition includes both product and price competition and could increase as a result of the registration of new exchanges and market centers in the United States and Europe.

In addition, the liberalization and globalization of world markets have resulted in greater mobility of capital, greater international participation in local markets and more competition. Both in the U.S. and in other countries, the competition among exchanges and other execution venues has become more intense.

In the last several years, the structure of the securities industry has changed significantly through demutualizations and consolidations. In response to growing competition, many marketplaces in both Europe and the United States have demutualized to provide greater flexibility for future growth. The securities industry is also experiencing consolidation, creating a more intense competitive environment. In addition, a high proportion of business in the securities market is becoming increasingly concentrated in a smaller number of institutions and our revenue may therefore become concentrated in a smaller number of customers.

Examples of these new competitive forces include:

- the creation of NYSE Euronext, Inc. in April 2007 and its subsequent acquisition of Amex;
- ECNs operating in the U.S. cash equities trading market, such as Direct Edge and Lava Flow;
- new U.S. exchanges, such as BATS;
- the announced acquisition of the equity exchange business of the International Securities Exchange by the Direct Edge ECN;
- the combination of Deutsche Börse AG and International Securities Exchange Holdings, Inc.;
- active alternative equity trading platforms in Europe such as Equiduct, Chi-X, Turquoise, BATS and Plus Markets;
- active alternative trade reporting platforms in Europe such as Reuters Trade Publication and Markit BOAT;
- a number of investment banks have announced a multilateral trading facility in the Nordic region, also known as Burgundy;
- a number of investment banks have announced alternative derivative trading platforms in Europe such as Rainbow and Best;
- the announced launch of multilateral equity trading facilities in Europe backed by incumbent exchanges, such as Baikal and NYSE Arca Europe, by the LSE and NYSE Euronext, respectively;
- the trend toward partial re-mutualization, whereby exchanges, ECNs, and multilateral trading facilities have investment agreements with other participants in the securities industry;
- the globalization of electronic trading systems specializing in large volume trades, such as LiquidNet, Pipeline Trading and Investment Technology Group's POSIT platform; and
- global electronic interdealer brokers, such as ICAP.

Because of these market trends, we face intense competition. Competitors may develop market trading platforms that are more competitive than ours. If we are unable to compete successfully in this environment, our business, financial condition and operating results will be adversely affected.

***Price competition has affected and could continue to affect our business.***

The securities trading industry is characterized by intense price competition. We have in the past lowered prices and in the U.S. increased market data rebates for trade executions to attempt to gain or maintain market share. These strategies have not always been successful and have at times hurt operating performance. Additionally, we have also been, and may once again be, required to adjust pricing to respond to actions by competitors, which adversely impacts operating results. We are also subject to potential price competition from new competitors and from new and existing regulated markets and multilateral trading facilities.

The securities trading industry also competes with respect to the pricing of market data. In addition, we are subject to price competition with respect to products for pre-trade book data and for post-trade last sale data. In the future, our competitors may offer market data rebates for quotes and trades on their systems. The success of competitors for trade executions, pressure from users for lower data fees and regulatory changes could also affect our non-U.S. market data business.

Our U.S. trade reporting facility (which we operate jointly with FINRA for the purpose of accepting reports of off-exchange trades) faces competition from the trade reporting facility operated jointly with FINRA by the NYSE. Our U.S. trade reporting facility also faces competition from FINRA's alternative display facility. Our competitors' market data rebate programs for trade reporting could lead to a loss of market share and decreased revenues.

***We face significant competition in our securities trading business, which could reduce our transactions and trade reporting revenues and negatively impact our financial results.***

The NASDAQ Stock Market competes for trading of securities listed on NASDAQ, NYSE and NYSE Alternext. Any decision by market participants to quote, execute or report their trades in the U.S. through other exchanges, ECNs or the alternative display facility maintained by FINRA, could have a negative impact on our share of quotes and trades in securities traded through our platform. In particular, NYSE Euronext has enhanced its electronic trading capabilities, which compete directly with ours and may result in NYSE Euronext's trading volume increasing to our detriment. The acquisition of Amex enhances NYSE Euronext's scale in U.S. options, ETFs, closed-end funds, structured products and cash equities. If NYSE Euronext or any other competitor succeeds in attracting disproportionately more trading volume, this may have a negative impact on our business, financial condition and operating results.

The exchanges comprising NASDAQ OMX Nordic and NASDAQ OMX Baltic and our multilateral trading facility, NASDAQ OMX Europe, also compete for the trading of securities. Any decision by market participants to quote, execute or report their trades in Europe through another regulated market or multilateral trading facility could have a negative impact on our share of quotes and trades in securities traded through the exchanges comprising NASDAQ OMX Nordic and NASDAQ OMX Baltic and through NASDAQ OMX Europe.

***The implementation of MiFID increases competition for quoting, trade execution and reporting revenues in Europe.***

Our competitive position could be adversely affected by legislation and regulation implementing MiFID, which required all European Union countries to have MiFID regulation in force by November 1, 2007. MiFID is intended to create a unified European financial services market, with common regulation regarding investments and trading in European Union countries. MiFID enables greater transparency and competition among exchanges (regulated markets), investment firms and banks that internalize their order flow (systematic internalizers), and multilateral trading facilities. MiFID encourages competition for quotation, trade execution, trade reporting and market data distribution and introduces a European-wide requirement for best execution by requiring investment firms to establish and publish execution policies for all traded instruments.

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MiFID provides that trades may be executed on regulated markets, on multilateral trading facilities via over-the-counter trading or through systematic internalization. As a result, MiFID creates an opportunity for exchanges, new multilateral trading facilities, over-the-counter and internalization arrangements to be developed on either a single country or a pan-European basis, thereby removing entry barriers and facilitating entry of alternative off-exchange trading facilities and increasing the attractiveness of such alternative facilities to users. In addition, investment firms will have to ensure that they obtain the “best execution” conditions for their clients, and will therefore have to direct orders to the most favorable execution venue, without any regulatory incentive to favor established regulated markets.

Taken together, these changes to the regulatory environment are making it easier for multilateral trading facilities to establish themselves in Europe as low-cost alternatives to regulated exchanges, thereby increasing the level of competition with and between market operators. The exchanges comprising NASDAQ OMX Nordic and NASDAQ OMX Baltic face competition from other exchanges as well as from multilateral trading facilities and alternative trading systems, and this competition may intensify in the near future especially as technological advances create pressure to reduce the costs of trading. Increased competition from alternative trading facilities and operators could cause us to lose market share or to lower our fees in order to remain competitive, either of which could lead to lower revenues and/or lower margins, harming profitability.

### ***The market data business faces significant competitive threats.***

The quality of our market data products is closely related to our transactions business. Maintaining or increasing our transactions market share in all our operating environments is important to the success of many of our market data products.

In addition, our market data business competes with other exchanges and third party vendors in providing information to market participants. Consequently our data products must be competitive in speed, reliability, content and price to succeed in the marketplace. New exchanges and trading systems entering the market have recognized the strong connection between market data and transactions volume and new entrants could price their market data very aggressively in order to grow transactions volume thereby limiting our flexibility in pricing market data. Any action by a market participant to provide information to another exchange or market data vendor could have a negative impact on our data products. The market data business must also adapt to a rapidly changing information delivery technologies and constantly invest in innovative product design and development. Other market data providers may not face the regulatory obligations we face and may consequently be more flexible in pricing and more agile in deploying new products and business methods to our detriment.

### ***We must adapt to significant competition in our listing businesses.***

We must adapt to significant competition in our listing businesses from other exchanges. NYSE Euronext’s recent mergers and acquisitions has created a strong competitor of The NASDAQ Stock Market for listings of larger domestic and international companies. The exchanges comprising NASDAQ OMX Nordic and NASDAQ OMX Baltic face competition from various European exchanges. In addition, on occasion, issuers may transfer their listings from our markets to other venues. While the reduction in initial listings or the loss of one or more large issuers could decrease our listing revenues, it could cause an even more significant decrease in revenues from the quoting, reporting and trading of those issuers’ securities.

### ***Our revenues may be affected by competition in the business for indexes, associated derivatives and other financial products.***

We have grown the business of our Global Index Group, which creates indexes and licenses them for NASDAQ OMX branded financial products. These financial products are subject to intense competition from other ETFs, derivatives and structured products as investment alternatives. Our revenues may be adversely affected by increasing competition from competitors’ financial products and/or indexes designed to replicate or

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correlate with the performance of our indexes. In addition, the legal and regulatory climate, which supports the licensing of these indexes, has changed in a manner that may adversely impact our ability to successfully license our indexes. Further, many other entrants have recently emerged who not only compete with us for future growth opportunities, but who may also introduce indexes that erode the position of our current offerings, thereby adversely affecting our business, financial condition and operating results.

### ***Our revenues may be affected by competition in the business for market technology.***

We have a significant market technology business, which provides technology, operating, and advisory services for exchanges and markets around the world. The technology business is subject to intense competition from other exchanges, specialized market technology companies, and large generalized technology providers. Our revenues may be adversely affected by increasing competition from competitors whose offerings may be technologically superior, more attractively priced, or offer strategic benefits not directly related to product performance. Further, any intellectual property protections we may have on our market technologies may not be adequate to prevent key employees from departing and entering into direct competition with us. In addition, the legal and regulatory constraints on technology exports may limit which market technologies we can offer for sale.

### ***We may experience fluctuations in our operating results, which may adversely affect the market price of our common stock.***

The financial services industry is risky and unpredictable and is directly affected by many national and international factors beyond our control, including:

- economic, political and geopolitical market conditions;
- natural disasters, terrorism, war or other catastrophes;
- broad trends in industry and finance;
- changes in price levels and volatility in the stock markets;
- the level and volatility of interest rates;
- changes in government monetary or tax policy;
- other legislative and regulatory changes;
- the perceived attractiveness of the U.S. or European capital markets; and
- inflation.

Any one of these factors could have a material adverse effect on our business, financial condition and operating results by causing a substantial decline in the financial services markets and reduced trading volume.

Additionally, since borrowings under our credit facilities bear interest at variable rates, any increase in interest rates on debt that we have not fixed using interest rate hedges will increase our interest expense and reduce our cash flow. Other than variable rate debt, we believe our business has relatively large fixed costs and low variable costs, which magnifies the impact of revenue fluctuations on our operating results. As a result, a decline in our revenue may lead to a relatively larger impact on operating results. A substantial portion of our operating expenses will be related to personnel costs, regulation and corporate overhead, none of which can be adjusted quickly and some of which cannot be adjusted at all. Our operating expense levels will be based on our expectations for future revenue. If actual revenue is below management's expectations, or if our expenses increase before revenues do, both revenues less liquidity rebates, brokerage, clearance and exchange fees and operating results would be materially and adversely affected. Because of these factors, it is possible that our operating results or other operating metrics may fail to meet the expectations of stock market analysts and investors. If this happens, the market price of our common stock may be adversely affected.

***We may not be able to keep up with rapid technological and other competitive changes affecting our industry.***

The markets in which we compete are characterized by rapidly changing technology, evolving industry standards, frequent enhancements to existing products and services, the introduction of new services and products and changing customer demands. If our platforms fail to function as expected, our business would be negatively affected. In addition, our business, financial condition and operating results may be adversely affected if we cannot successfully develop, introduce or market new services and products or if we need to adopt costly and customized technology for our services and products. Further, our failure to anticipate or respond adequately to changes in technology and customer preferences, especially in our market technology business, or any significant delays in product development efforts, could have a material adverse effect on our business, financial condition and operating results.

***System limitations, failures or security breaches could harm our business.***

Our businesses depend on the integrity and performance of the computer and communications systems supporting them. If our systems cannot expand to cope with increased demand or otherwise fail to perform, we could experience unanticipated disruptions in service, slower response times and delays in the introduction of new products and services. These consequences could result in trade outages, lower trading volumes, financial losses, decreased customer service and satisfaction and regulatory sanctions. NASDAQ and the exchanges comprising NASDAQ OMX Nordic and NASDAQ OMX Baltic experienced occasional systems failures and delays in the past and could experience future systems failures and delays.

If our trading volume increases unexpectedly, we will need to expand and upgrade our technology, transaction processing systems and network infrastructure. We do not know whether we will be able to accurately project the rate, timing or cost of any increases, or expand and upgrade our systems and infrastructure to accommodate any increases in a timely manner.

Our systems and operations also are vulnerable to damage or interruption from human error, natural disasters, power loss, sabotage or terrorism, computer viruses, intentional acts of vandalism and similar events. We have programs in place to identify and minimize our exposure to these vulnerabilities and work in collaboration with the technology industry to share corrective measures with our business partners. Although we currently maintain and expect to maintain multiple computer facilities that are designed to provide redundancy and back-up to reduce the risk of system disruptions and have facilities in place that are expected to maintain service during a system disruption, such systems and facilities may prove inadequate. Any system failure that causes an interruption in service or decreases the responsiveness of our services could impair our reputation, damage our brand name and negatively impact our business, financial condition and operating results.

***We are subject to risks relating to litigation, potential securities law liability and other liability.***

Many aspects of our business potentially involve substantial liability risks. Although we are immune from private suits for self-regulatory organization activities, this immunity only covers certain of our activities, and we could be exposed to liability under national and local laws, court decisions and rules and regulations promulgated by regulatory agencies.

In the U.S., we are subject to oversight by the SEC, and our subsidiaries NFX and IDCG are subject to oversight by the CFTC. In the case of non-compliance with our obligations under either the securities or commodities laws, we could be subject to investigation and judicial or administrative proceedings that may result in substantial penalties.

Our non-U.S. business is regulated both at the national level in several countries and at the European Union level. Implementation and application of these regulations may be undertaken by one or more regulatory authorities, which may challenge compliance with one or more aspects of such regulations. If a regulatory authority makes a finding of non-compliance, conditional fines can be imposed and our licenses can be revoked.

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Some of our other liability risks arise under the laws and regulations relating to the insurance, tax, anti-money laundering, technology export, foreign asset controls and foreign corrupt practices areas. Liability could also result from disputes over the terms of a trade, claims that a system failure or delay cost a customer money, claims we entered into an unauthorized transaction or claims that we provided materially false or misleading statements in connection with a securities transaction. As we intend to defend any such litigation actively, significant legal expenses could be incurred.

***The regulatory framework under which we operate and new regulatory requirements or new interpretations of existing regulatory requirements could require substantial time and resources for compliance, which could make it difficult and costly for us to operate our business.***

Our business is subject to extensive regulation. Under current U.S. federal securities laws, changes in NASDAQ's rules and operations, including our pricing structure, must be reviewed and in many cases explicitly approved by the SEC. The SEC may approve, disapprove, or recommend changes to proposals that we submit. In addition, the SEC may delay either the approval process or the initiation of the public comment process. Any delay in approving changes, or the altering of any proposed change, could have an adverse effect on our business, financial condition and operating results. We must compete not only with ECNs that are not subject to the same SEC approval process but also with other exchanges that have lower regulation and surveillance costs than us. There is a risk that trading will shift to exchanges that charge lower fees because, among other reasons, they spend significantly less on regulation.

In addition, our registered broker-dealer subsidiaries, Nasdaq Execution Services, LLC and NASDAQ Option Services, LLC are subject to regulation by the SEC, FINRA and other self-regulatory organizations. These subsidiaries are subject to regulatory requirements intended to ensure their general financial soundness and liquidity, which require that they comply with certain minimum capital requirements. The SEC and FINRA impose rules that require notification when net capital falls below certain predefined criteria, dictate the ratio of debt to equity in the regulatory capital composition of a broker-dealer and constrain the ability of a broker-dealer to expand its business under certain circumstances. Additionally, the Uniform Net Capital Rule and NYSE and FINRA rules impose certain requirements that may have the effect of prohibiting a broker-dealer from distributing or withdrawing capital and requiring prior notice to the SEC, the NYSE and FINRA for certain withdrawals of capital. Any failure to comply with these broker-dealer regulations could have a material adverse effect on the operation of our business, financial condition and operating results.

Our non-U.S. business is subject to regulatory oversight in all the countries in which we operate regulated businesses, such as operating exchanges or CSDs. The countries in which we currently operate regulated businesses are Sweden, Finland, Denmark, Iceland, Estonia, Lithuania, Latvia, Armenia, Switzerland and the United Kingdom.

In all the aforementioned countries, we have received authorization from the relevant authorities to conduct our regulated business activities. The authorities may revoke this authorization if we do not suitably carry out our regulated business activities. The authorities are also entitled to request that we adopt measures in order to ensure that we continue to fulfill the authorities' requirements.

Furthermore, we hold minority stakes in other regulated entities, and certain of our customers operate in a highly regulated industry. Regulatory authorities with jurisdiction over our non-U.S. entities could impose regulatory changes that could impact the ability of our customers to use our European exchanges or NASDAQ OMX Europe. The loss of a significant number of customers or a reduction in trading activity on any of our European exchanges or NASDAQ OMX Europe as a result of such changes could have a material adverse effect on our business, financial condition and operating results.

***Regulatory changes and changes in market structure, especially in response to the global economic crisis, could have a material adverse effect on our business.***

In recent years, the securities trading industry and, in particular, the securities markets, have been subject to significant regulatory changes. Moreover, in the past few months, the securities markets have been the subject of increasing governmental and public scrutiny in response to the global economic crisis. During the next year, it is likely that there will be significant changes in our regulatory environment, although we cannot predict the nature of these changes or their impact on our business at this time.

Our market participants also operate in a highly regulated industry. The SEC, the Swedish Financial Supervisory Authority, or SFSA, and other regulatory authorities could impose regulatory changes that could impact the ability of our market participants to use The NASDAQ Stock Market, our European exchanges or NASDAQ OMX Europe or could adversely affect The NASDAQ Stock Market, our European exchanges or NASDAQ OMX Europe. Regulatory changes by the SEC, the SFSA or other regulatory authorities could result in the loss of a significant number of market participants or a reduction in trading activity on The NASDAQ Stock Market, our European exchanges or NASDAQ OMX Europe.

***We have self-regulatory obligations and also operate for-profit businesses, and these two roles may create conflicts of interest.***

We have obligations to regulate and monitor activities on our markets and ensure compliance with applicable law and the rules of our markets by market participants and listed companies. In the U.S., the SEC staff has expressed concern about potential conflicts of interest of “for-profit” markets performing the regulatory functions of a self-regulatory organization. Although The NASDAQ Stock Market and, once fully implemented in March 2009, the markets operated or regulated by NASDAQ OMX BX, outsource the majority of their market regulation functions to FINRA, we do perform regulatory functions related to our listed companies and our markets. Any failure by us to diligently and fairly regulate our markets or to otherwise fulfill our regulatory obligations could significantly harm our reputation, prompt SEC scrutiny and adversely affect our business and reputation.

The exchanges comprising NASDAQ OMX Nordic and NASDAQ OMX Baltic also monitor trading on those exchanges and compliance with listing standards. They monitor the listing of equities and other financial instruments. The prime objective of such monitoring activities is to maintain confidence in the exchanges among the general public. The monitoring functions within the exchanges comprising NASDAQ OMX Nordic and NASDAQ OMX Baltic are the responsibility of the surveillance departments or other surveillance personnel. The surveillance departments or personnel are intended to strengthen the integrity of and confidence in the exchanges comprising NASDAQ OMX Nordic and NASDAQ OMX Baltic and to avoid conflicts of interest. Any failure to diligently and fairly regulate the exchanges comprising NASDAQ OMX Nordic and NASDAQ OMX Baltic could significantly harm our reputation, prompt scrutiny from regulators and adversely affect our business and reputation.

***Regulatory changes may have an adverse impact on our market data fees.***

A significant percentage of our market data revenue in the U.S. is derived from products subject to the three consolidated market information plans. As the formulas governing revenue allocations by those plans are subject to regulatory oversight, our revenue from the plans is at risk to any change in U.S. regulatory policy. In Europe, active regulatory discussions about the distribution of exchange information through consolidated plans may lead to policy decisions which negatively impact our market data revenues.

***We are exposed to counterparty risk for all transactions that are cleared through our markets.***

We clear a range of equity-related and fixed-income-related derivative products. We assume the counterparty risk for all transactions that are cleared through our markets and guarantee that our cleared contracts

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will be honored. We enforce minimum financial and operational criteria for membership eligibility, require members and investors to provide collateral, and maintain established risk policies and procedures to ensure that the counterparty risks are properly monitored and pro-actively managed; however, none of these measures provides absolute assurance against defaults by our counterparties on their obligations. No guarantee can be given that the collateral provided will at all times be sufficient. Although we maintain clearing capital resources to serve as an additional layer of protection to help ensure that we are able to meet our obligations, these resources may not be sufficient. In addition, our high leverage could limit our flexibility in the operation of our clearing business.

### ***We are exposed to credit risk from third parties, including customers, counterparties and clearing agents.***

We are exposed to credit risk from third parties, including customers, counterparties and clearing agents. These parties may default on their obligations to us due to bankruptcy, lack of liquidity, operational failure or other reasons.

Our subsidiaries, Nasdaq Execution Services and NASDAQ Options Services may be exposed to credit risk, due to the default of trading counterparties, in connection with the clearing and routing services Nasdaq Execution Services and NASDAQ Options Services provides for our trading customers. System trades in NASDAQ-listed securities, NYSE-listed securities and trades routed to other market centers for members of The NASDAQ Stock Market are cleared by Nasdaq Execution Services, as a member of the National Securities Clearing Corporation, or NSCC. System trades in derivative contracts for the opening and closing cross and trades routed to other market centers are cleared by NASDAQ Options Services, as a member of the OCC. Pursuant to the rules of the NSCC and Nasdaq Execution Services' clearing agreement, Nasdaq Execution Services is liable for any losses incurred due to counterparty or a clearing agent's failure to satisfy its contractual obligations, either by making payment or delivering securities. Pursuant to the rules of the OCC and NASDAQ Options Services' clearing agreement, NASDAQ Options Services is also liable for any losses incurred due to counterparty or a clearing agent's failure to satisfy its contractual obligations, either by making payment or delivering securities. Adverse movements in the prices of securities and derivative contracts that are subject to these transactions can increase our credit risk. Credit difficulties or insolvency or the perceived possibility of credit difficulties or insolvency of one or more larger or visible market participants could also result in market-wide credit difficulties or other market disruptions.

In addition, through our NASDAQ OMX Stockholm clearing operations, we act as a counterparty in each transaction and thereby guarantee the fulfillment of each contract. We are required to pledge collateral for commitments with other clearinghouses.

We also have credit risk related to transaction fees that are billed to customers on a monthly basis, in arrears. Our customers are financial institutions whose ability to satisfy their contractual obligations may be impacted by volatile securities markets.

Credit losses such as those described above could adversely affect our consolidated financial position and results of operations.

### ***Failure to attract and retain key personnel may adversely affect our ability to conduct our business.***

Our future success depends, in large part, upon our ability to attract and retain highly qualified professional personnel. Competition for key personnel in the various localities and business segments in which we operate is intense. Our ability to attract and retain key personnel, in particular senior officers, will be dependent on a number of factors, including prevailing market conditions and compensation packages offered by companies competing for the same talent. There is no guarantee that we will have the continued service of key employees who we rely upon to execute our business strategy and identify and pursue strategic opportunities and initiatives. In particular, we may have to incur costs to replace senior executive officers or other key employees who leave,

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and our ability to execute our business strategy could be impaired if we are unable to replace such persons in a timely manner.

We are highly dependent on the continued services of Robert Greifeld, our Chief Executive Officer, and Magnus Böcker, our President, and other executive officers and key employees who possess extensive financial markets knowledge and technology skills. We do not have employment agreements with some of these key executive officers. We do not maintain “key person” life insurance policies on any of our executive officers, managers, key employees or technical personnel. The loss of the services of these persons for any reason, as well as any negative market or industry perception arising from those losses, could have a material adverse effect on our business, financial condition and operating results.

### ***Failure to protect our intellectual property rights could harm our brand-building efforts and ability to compete effectively.***

To protect our intellectual property rights, we rely on a combination of trademark laws, copyright laws, patent laws, trade secret protection, confidentiality agreements and other contractual arrangements with our affiliates, clients, strategic partners and others. The protective steps that we take may be inadequate to deter misappropriation of our proprietary information. We may be unable to detect the unauthorized use of, or take appropriate steps to enforce, our intellectual property rights.

We have registered, or applied to register, our trademarks in the United States and in over 50 foreign jurisdictions and have pending U.S. and foreign applications for other trademarks. We also maintain copyright protection on our branded materials and pursue patent protection for software products, inventions and other processes developed by us. We also hold a number of patents, patent applications and licenses.

Effective trademark, copyright, patent and trade secret protection may not be available in every country in which we offer our services. Failure to protect our intellectual property adequately could harm our brand and affect our ability to compete effectively. Further, defending our intellectual property rights could result in the expenditure of significant financial and managerial resources.

### ***Damage to our reputation could have a material adverse effect on our businesses.***

One of our competitive strengths is our strong reputation and brand name. Various issues may give rise to reputational risk, including issues relating to:

- the representation of our business in the media;
- the accuracy of our financial statements and other financial and statistical information;
- the accuracy of our financial guidance or other information provided to our investors;
- the quality of our corporate governance structure;
- the quality of our products, including the reliability of our transaction-based business, the accuracy of the quote and trade information provided by our market data business and the accuracy of calculations used by our Global Index Group for indexes and unit investment trusts;
- any negative publicity surrounding our listed companies;
- security breaches, including any unauthorized delivery of proprietary data to third parties or physical security breaches;
- management of our outsourcing partnerships, especially our relationship with FINRA; and
- any misconduct or fraudulent activity by our employees or other persons formerly or currently associated with us.

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Damage to our reputation could cause some issuers not to list their securities on our exchanges, as well as reduce the trading volume on our exchanges or cause us to lose customers in our market data, index or market technology businesses. This, in turn, may have a material adverse effect on our business, financial condition and operating results.

***We are a holding company that depends on cash flow from our subsidiaries to meet our obligations, and any restrictions on our subsidiaries' ability to pay dividends or make other payments to us may have a material adverse effect on our results of operations and financial condition.***

We are a holding company with no direct operating businesses other than the equity interests of our subsidiaries. We require dividends and other payments from our subsidiaries to meet cash requirements or to pay dividends. Minimum capital requirements mandated by regulatory authorities having jurisdiction over some of our regulated subsidiaries indirectly restrict the amount of dividends paid upstream. If our subsidiaries are unable to pay dividends and make other payments to us when needed, we may be unable to satisfy our obligations, which would have a material adverse effect on our business, financial condition and operating results.

***Future acquisitions, partnerships and joint ventures may require significant resources and/or result in significant unanticipated losses, costs or liabilities.***

Over the past year, our business combination with OMX AB, as well as our acquisitions of PHLX, BSX, certain businesses of Nord Pool and Bloom Partners have been significant factors in our growth. Although we cannot predict our rate of growth as the result of acquisitions with complete accuracy, we believe that additional acquisitions or entering into partnership and joint ventures will be important to our growth strategy. Many of the other potential purchasers of assets in our industry have greater financial resources than we have. Therefore, we cannot be sure that we will be able to complete future acquisitions on terms favorable to us.

We may finance future acquisitions by issuing additional equity and/or debt. The issuance of additional equity in connection with any such transaction could be substantially dilutive to existing shareholders. The issuance of additional debt could increase our leverage substantially. In addition, announcement or implementation of future transactions by us or others could have a material effect on the price of our common stock. We could face financial risks associated with incurring additional debt, particularly if the debt results in significant incremental leverage. Additional debt may reduce our liquidity, curtail our access to financing markets, impact our standing with credit agencies and increase the cash flow required for debt service. Any incremental debt incurred to finance an acquisition could also place significant constraints on the operation of our business.

These equity, debt and managerial commitments may impair the operation of our businesses. Furthermore, any future acquisitions of businesses or facilities could entail a number of additional risks, including:

- problems with effective integration of operations;
- the inability to maintain key pre-acquisition business relationships;
- increased operating costs;
- the diversion of our management team from its other operations;
- problems with regulatory bodies;
- exposure to unanticipated liabilities;
- difficulties in realizing projected efficiencies, synergies and cost savings; and
- changes in our credit rating and financing costs.

***Our non-U.S. business operates in various emerging markets that are subject to greater political, economic and social uncertainties than developed countries.***

The operations of our non-U.S. business are subject to the risk inherent in international operations, including but not limited to, risks with respect to operating in Iceland, the Baltics, Central and Eastern Europe, the Middle East and Asia. Some of these economies may be subject to greater political, economic and social uncertainties than countries with more developed institutional structures. Political, economic or social events or developments in one or more of these countries could adversely affect our operations and financial results.

***We have invested substantial capital in system platforms, and a failure to successfully implement such systems could adversely affect our business.***

In our technology operations, we have invested substantial amounts in the development of system platforms. Although investments are carefully planned, there can be no assurance that the demand for such platforms will justify the related investments and that the future levels of orders will be sufficient to generate an acceptable return on such investments. If we fail to generate adequate revenue from planned system platforms, or if we fail to do so within the envisioned timeframe, it could have an adverse effect on our results of operations and financial condition.

***Because we have operations in several countries, we are exposed to currency risk.***

We have operations in the U.S., several of the Nordic and Baltic markets, the U.K. and many other foreign countries. We therefore have significant exposure to exchange rate movements between the Swedish Krona, Danish Krone, Icelandic Króna, Norwegian Krone, British Pound Sterling, Euro, U.S. dollar and other foreign currencies. Significant inflation or disproportionate changes in foreign exchange rates with respect to one or more of these currencies could occur as a result of general economic conditions, acts of war or terrorism, changes in governmental monetary or tax policy or changes in local interest rates. These exchange rate differences will affect the translation of our non-U.S. results of operations and financial condition into U.S. dollars as part of the preparation of our consolidated financial statements.

***Our investment in NASDAQ Dubai may be unsuccessful and could harm us in other ways.***

In exchange for \$50 million and the entry into certain licensing and technology agreements, we have acquired 33 1/3% of the outstanding equity of NASDAQ Dubai. We have also committed to providing additional capital of up to \$25 million to NASDAQ Dubai under certain circumstances. Our investment in NASDAQ Dubai may not result in a return. Additionally, the licensing and technology agreements we have entered into with NASDAQ Dubai may have an adverse effect on our brand and on us. We may not be able to terminate these agreements or end our association with NASDAQ Dubai in a manner that would prevent lasting and potentially significant harm to our brand and reputation, particularly in certain key emerging markets. Our agreements with NASDAQ Dubai also prevent or limit us from seeking opportunities to grow our business in certain regions, and this may have a negative impact on us in the future.

***We may incur goodwill or intangible asset impairment charges in the future.***

Our business acquisitions typically result in the recording of goodwill and intangible assets, and the recorded values of those assets may become impaired in the future. As of December 31, 2008, goodwill totaled approximately \$5.4 billion and intangible assets, net of accumulated amortization, totaled approximately \$1.8 billion. The determination of the value of such goodwill and intangible assets requires management to make estimates and assumptions that affect our consolidated financial statements. We are required to test goodwill for impairment at the reporting unit level annually, or in interim periods if certain events occur indicating that the carrying value may be impaired. We assess potential impairments to goodwill and indefinite-lived intangible assets when there is evidence that events or changes in circumstances indicate that the carrying amount of an

asset may not be recovered. Our judgments regarding the existence of impairment indicators and future cash flows related to goodwill and intangible assets are based on operational performance of our acquired businesses, market conditions, relevant trading multiples of comparable companies, the trading price of our common stock and other factors. Although there are inherent uncertainties in this assessment process, the estimates and assumptions we use are consistent with our internal planning. However, disruptions to our business, such as continued economic weakness and unexpected significant declines in operating results of reporting units, may result in our having to perform a goodwill impairment test for some or all of our reporting units prior to the required annual assessment. These types of events and the resulting analysis could result in goodwill or intangible asset impairment charges in the future. For goodwill, if the fair value of the reporting unit is less than its carrying value, an impairment loss is recorded to the extent that the fair value of the goodwill is less than the carrying value. For indefinite-lived intangible assets, impairment exists if the carrying value of the intangible asset exceeds its fair value.

***Charges to earnings resulting from acquisition, restructuring and integration costs may materially adversely affect the market value of our common stock.***

In accordance with U.S. GAAP, we are accounting for the completion of our acquisitions using the purchase method of accounting. We are allocating the total estimated purchase prices to net tangible assets, amortizable intangible assets and non-amortized intangibles, and based on their fair values as of the date of completion of the acquisitions, recording the excess of the purchase price over those fair values as goodwill. Our financial results, including earnings per share, could be adversely affected by a number of financial adjustments required by U.S. GAAP including the following:

- we will incur additional amortization expense over the estimated useful lives of certain of the intangible assets acquired in connection with the acquisitions during such estimated useful lives;
- we may have additional depreciation expense as a result of recording purchased tangible assets at fair value, in accordance with U.S. GAAP, as compared to book value as recorded;
- to the extent the value of goodwill or intangible assets with indefinite lives becomes impaired, we may be required to incur material charges relating to the impairment of those assets; and
- we will incur certain adjustments to reflect the financial condition and operating results under U.S. GAAP and U.S. dollars.

We have incurred costs associated with the acquisitions, including financial advisors' fees and legal and accounting fees. In addition, we expect to incur costs associated with realizing synergies from the acquisitions. These costs may be substantial and may include those related to the severance and stock option acceleration provisions of employee benefit plans, as well as other exit costs. We face potential costs related to employee retention and deployment of physical capital and other integration costs. We have not yet determined the final amount of these costs. Costs that are not directly related to the acquisitions, including retention and integration costs, will be recorded as incurred and will negatively impact earnings, which could have a material adverse effect on our operating results and the price of our common stock.

In addition, from the date of the completion of the acquisitions, our results of operations include the acquired entities' operating results, presented in accordance with U.S. GAAP. Certain of the acquired entities' historical consolidated financial statements have been prepared in accordance with IFRS, which differ in certain material respects from U.S. GAAP. For instance, U.S. GAAP requires OMX to recognize revenue under certain of its technology contracts over the term of the contract rather than at the beginning of the contract. Accordingly, the U.S. GAAP presentation of OMX's results of operations may not be comparable to OMX AB's historical financial statements.

## **Risks Relating to an Investment in Our Common Stock**

### ***Volatility in our stock price could adversely affect our stockholders.***

The market price of our common stock is likely to be volatile. Broad market and industry factors may adversely affect the market price of our common stock, regardless of our actual operating performance. Factors that could cause fluctuations in our stock price may include, among other things:

- actual or anticipated variations in our quarterly operating results;
- changes in financial estimates by us or by any securities analysts who might cover our common stock;
- conditions or trends in our industry, including trading volumes, regulatory changes or changes in the securities marketplace;
- conditions or trends in the credit markets;
- announcements by us or our competitors of significant acquisitions, strategic partnerships or divestitures;
- announcements of investigations or regulatory scrutiny of our operations or lawsuits filed against us;
- additions or departures of key personnel; and
- sales of our common stock, including sales of our common stock by our directors and officers, significant stockholders or our strategic investors.

### ***The market price of our common stock could be negatively affected by sales of substantial amounts of our common stock in the public markets.***

Sales of a substantial number of shares of our common stock in the public markets, or the perception that these sales might occur, could cause the market price of our common stock to decline or could impair our ability to raise capital through a future sale of, or pay for acquisitions using, our equity securities. As of December 31, 2008, there were 201,896,700 shares of our common stock outstanding. All of our common stock is freely transferable, except shares held by our “affiliates,” as defined in Rule 144 under the Securities Act.

The number of freely transferable shares of our common stock will increase upon any exercise of outstanding options pursuant to our stock compensation and stock award plan for our employees. There were 5,588,936 million options exercisable as of December 31, 2008 at a weighted average exercise price of \$10.38. The number of shares of our common stock outstanding will also increase upon any conversion of our 3.75% convertible notes held by Silver Lake Partners, or SLP, and VAB Investors LLC, or VAB, and their respective affiliates, which are currently convertible at a conversion price of \$14.50 per share into approximately 8,281,162 shares of our common stock. We have registered the shares underlying SLP, VAB and their affiliates’ notes, as well as shares of common stock they hold outright, on a Form S-3 registration statement, and those shares are freely transferable if sold pursuant to the registration statement.

It is our intent and policy to settle the principal amounts of the 2.50% convertible notes in cash, which will not impact the number of shares of our common stock. However, we have the option to settle the conversion premium in shares of our common stock or cash. The conversion rate will initially be 18.1386 shares of common stock per \$1,000 principal amount of notes, which is equivalent to a conversion price of \$55.13 per share of common stock.

### ***Provisions of our certificate of incorporation, by-laws, approved exchange rules (including provisions included to address SEC concerns) and Delaware law could delay or prevent a change in control of us and entrench current management.***

Our organizational documents place restrictions on the voting rights of certain stockholders. Our certificate of incorporation limits the voting rights of persons (either alone or with related parties) owning more than 5% of

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the then outstanding votes entitled to be cast on any matter to 5% of voting power, other than any other person as may be approved by our board of directors prior to the time such person owns more than 5% of the then outstanding votes entitled to be cast on any matter. Any change to the 5% voting limitation would require SEC approval.

In response to the SEC's concern about a concentration of our ownership, NASDAQ's rules include a rule prohibiting any NASDAQ member or any person associated with a member from beneficially owning more than 20% of our outstanding voting interests. SEC consent would be required before any investor could obtain more than a 20% voting interest in us. NASDAQ's rules also require the SEC's approval of any business ventures with one of our members, subject to exceptions.

Our organizational documents contain provisions that may be deemed to have an anti-takeover effect and may delay, deter or prevent a change of control of us, such as a tender offer or takeover proposal that might result in a premium over the market price for our common stock. Additionally, certain of these provisions make it more difficult to bring about a change in the composition of our board of directors, which could result in entrenchment of current management.

Our certificate of incorporation and by-laws:

- require supermajority stockholder approval to remove directors;
- do not permit stockholders to act by written consent or to call special meetings;
- require certain advance notice for director nominations and actions to be taken at annual meetings;
- require supermajority stockholder approval with respect to certain amendments to our certificate of incorporation and by-laws (including in respect of the provisions set forth above); and
- authorize the issuance of undesignated preferred stock, or "blank check" preferred stock, which could be issued by our board of directors without stockholder approval.

Section 203 of the Delaware General Corporation Law imposes restrictions on mergers and other business combinations between us and any holder of 15% or more (or, in some cases, a holder who previously held 15% or more) of our common stock. In general, Delaware law prohibits a publicly held corporation from engaging in a "business combination" with an "interested stockholder" for three years after the stockholder becomes an interested stockholder, unless the corporation's board of directors and stockholders approve the business combination in a prescribed manner.

### **Item 1B. Unresolved Staff Comments.**

None.

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### Item 2. Properties.

The following is a description of our principal properties.

<u>Location</u>	<u>Use</u>	<u>Size (approximate, in square feet)</u>	<u>Type of possession</u>
New York, New York	Location of MarketSite	26,000	Lease
New York, New York	U.S. headquarters	115,000	Subleased from FINRA with 17,931 square feet leased back to FINRA
New York, New York	General office space	53,000	Subleased to third parties
New York, New York	General office space	48,000	Lease
Philadelphia, Pennsylvania	Location of NASDAQ OMX PHLX	129,000	Lease
Rockville, Maryland	General office space	78,000	Lease
Shelton, Connecticut	General office space	29,000	Lease
Stockholm, Sweden	European headquarters	409,000	Lease
London, England	Location of NASDAQ OMX Europe	71,000	Lease
Helsinki, Finland	General office space	39,000	Lease
Copenhagen, Denmark	General office space	35,000	Lease

We also maintain local headquarters in each of the other European countries where we operate an exchange and office space in countries in which we conduct sales and operations, including Armenia, Australia, Canada, China, Estonia, Hong Kong, Iceland, India, Italy, Japan, Latvia, Lithuania, Norway, Scotland and Singapore.

In addition to the above, we currently lease administrative, sales and disaster preparedness facilities in California, Florida, Illinois, Massachusetts, Minnesota, New Jersey, Oregon and Washington, DC.

Generally, our properties are not earmarked for use by a particular segment; instead, most of our properties are used by two or more segments.

### Item 3. Legal Proceedings.

We are not currently a party to any litigation that we believe could have a material adverse effect on our business, financial condition or operating results. However, from time to time, we have been threatened with, or named as a defendant in, lawsuits or involved in regulatory proceedings.

### Item 4. Submission of Matters to a Vote of Security Holders.

None.

**Part II****Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.****Market Information**

Our common stock has been listed on The Nasdaq Global Select Market (formerly The Nasdaq National Market) since February 10, 2005, under the ticker symbol "NDAQ." From July 1, 2002 through February 9, 2005, our common stock traded on the OTCBB under the symbol "NDAQ."

The following chart lists the quarterly high and low sales prices for shares of our common stock for 2008 and 2007. These prices are between dealers and do not include retail markups, markdowns or other fees and commissions and may not represent actual transactions.

	<u>High</u>	<u>Low</u>
<i>Fiscal 2008</i>		
Fourth quarter	\$ 34.88	\$ 14.96
Third quarter	38.81	22.76
Second quarter	42.29	26.47
First quarter	49.90	34.75
<i>Fiscal 2007</i>		
Fourth quarter	\$ 50.47	\$ 37.65
Third quarter	39.00	28.48
Second quarter	34.96	29.05
First quarter	37.45	26.57

As of February 13, 2009, we had approximately 1,142 holders of record of our common stock. As of February 13, 2009, the closing price of our common stock was \$21.39. Our credit facilities restrict our ability to pay dividends. Before our credit facilities were in place, it was not our policy to declare or pay cash dividends on our common stock.

**Issuer Purchases of Equity Securities**

Repurchases made in the fiscal quarter ended December 31, 2008 (in whole number of shares):

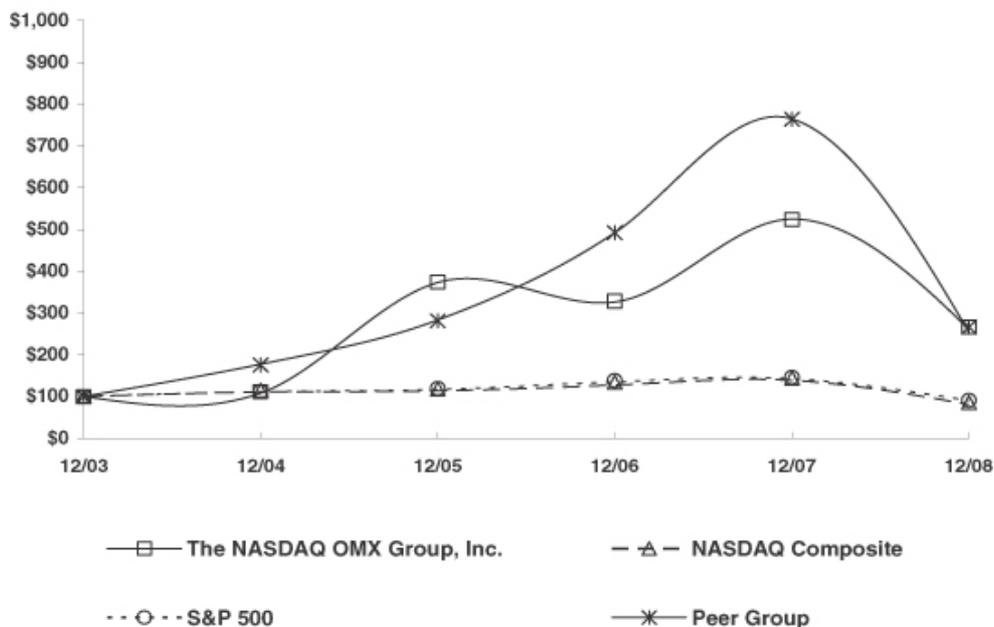
<u>Period</u>	<u>(a) Total Number of Shares (or Units) Purchased</u>	<u>(b) Average Price Paid per Share (or Units)</u>	<u>(c) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs</u>	<u>(d) Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Plans or Programs</u>
October 2008	1,009	\$ 30.58	—	—
November 2008	57	28.56	—	—
December 2008	7,555	26.21	—	—
Total	<u>8,621</u>	<u>\$ 26.74</u>	<u>—</u>	<u>—</u>

The shares repurchased during the fourth quarter of 2008 were acquired from employees in connection with the settlement of income tax and related benefit withholding obligations arising from vesting in restricted stock grants.

**PERFORMANCE GRAPH**

The following graph compares the total return of our common stock with certain indices and a peer group. These include the NASDAQ Composite Stock Index and the Standard & Poor's, or S&P, 500 Stock Index as well as the peer group. The peer group includes the CME Group Inc., Deutsche Börse AG, Intercontinental Exchange Inc., the London Stock Exchange Group plc, or LSE, and NYSE Euronext. Information for the indices and the peer group is provided from December 31, 2003 through December 31, 2008. The figures represented below assume an initial investment of \$100 in the common stock or index at the closing price on December 31, 2003 and the reinvestment of all dividends.

**COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN\***  
Among The NASDAQ OMX Group, Inc., The NASDAQ Composite Index,  
The S&P 500 Index And A Peer Group



\* \$100 invested on 12/31/03 in stock & index-including reinvestment of dividends.  
Fiscal year ending December 31.

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	12/03	12/04	12/05	12/06	12/07	12/08
The NASDAQ OMX Group, Inc.	100.00	107.94	372.28	325.82	523.70	261.48
NASDAQ Composite	100.00	110.08	112.88	126.51	138.13	80.47
S&P 500	100.00	110.88	116.33	134.70	142.10	89.53
Peer Group	100.00	177.11	282.36	491.76	763.99	253.45

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**Item 6. Selected Financial Data.**

On February 27, 2008, Nasdaq and OMX AB combined their businesses and Nasdaq was renamed The NASDAQ OMX Group, Inc. Under the purchase method of accounting, Nasdaq was treated as the accounting and legal acquirer in the business combination with OMX AB. We also completed our acquisitions of PHLX on July 24, 2008, BSX on August 29, 2008 and certain businesses of Nord Pool on October 21, 2008. These acquisitions also have been treated as purchases for accounting purposes, with NASDAQ OMX treated as the acquirer. On December 19, 2008, we purchased a majority stake in IDCG. The financial results of OMX are included in the consolidated financial results beginning on February 27, 2008. PHLX is included beginning July 24, 2008, BSX is included beginning August 29, 2008, certain businesses of Nord Pool are included beginning October 21, 2008 and IDCG is included beginning December 19, 2008.

The following table sets forth selected financial data on a historical basis for NASDAQ OMX. The following information should be read in conjunction with the consolidated financial statements and notes thereto of NASDAQ OMX included elsewhere in this Form 10-K.

**Selected Financial Data**

	Year Ended December 31,				
	2008	2007	2006	2005	2004
(in thousands, except share and per share amounts)					
<b>Statements of Income Data:</b>					
Total revenues <sup>(1)</sup>	\$ 3,648,693	\$ 2,436,592	\$ 1,657,776	\$ 879,919	\$ 540,441
Cost of revenues <sup>(1)</sup>	(2,188,615)	(1,624,353)	(970,381)	(353,908)	(55,845)
Revenues less liquidity rebates, brokerage, clearance and exchange fees	1,460,078	812,239	687,395	526,011	484,596
Total operating expenses	819,893	446,800	467,349	412,348	476,413
Net income from continuing operations	319,880	518,401	127,893	61,690	1,804
Net income from discontinued operations, net of taxes <sup>(2)</sup>	—	—	—	—	9,558
Net income	319,880	518,401	127,893	61,690	11,362
Net income (loss) applicable to common stockholders	319,880	518,401	127,203	55,093	(1,826)
Basic and diluted earnings (loss) per share:					
Basic earnings (loss) per share:					
Continuing operations	\$ 1.68	\$ 4.47	\$ 1.22	\$ 0.68	\$ (0.14)
Discontinued operations	—	—	—	—	0.12
Total basic earnings (loss) per share	<u>\$ 1.68</u>	<u>\$ 4.47</u>	<u>\$ 1.22</u>	<u>\$ 0.68</u>	<u>\$ (0.02)</u>
Diluted earnings (loss) per share:					
Continuing operations	\$ 1.58	\$ 3.46	\$ 0.95	\$ 0.57	\$ (0.14)
Discontinued operations	—	—	—	—	0.12
Total diluted earnings (loss) per share	<u>\$ 1.58</u>	<u>\$ 3.46</u>	<u>\$ 0.95</u>	<u>\$ 0.57</u>	<u>\$ (0.02)</u>
Weighted-average common shares outstanding for earnings (loss) per share:					
Basic	190,362,605	116,064,240	104,311,040	80,543,397	78,607,126
Diluted	204,514,862	152,528,691	144,228,855	111,913,715	78,607,126
	2008	2007	December 31, 2006	2005	2004
(in thousands)					
<b>Balance Sheets Data:</b>					
Cash and cash equivalents and financial investments <sup>(3)</sup>	\$ 793,065	\$ 1,325,314	\$ 1,950,204	\$ 344,606	\$ 233,099
Total assets <sup>(3)</sup>	12,694,875	2,979,397	3,716,452	2,046,786	814,820
Total long-term liabilities <sup>(3)</sup>	3,375,221	359,917	1,798,466	1,467,453	449,941
Total stockholders' equity	4,241,422	2,208,283	1,457,355	253,007	156,563

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- (1) Pursuant to Emerging Issues Task Force, or EITF, of the Financial Accounting Standards Board, or FASB, Issue No. 99-19, "Reporting Revenue Gross as a Principal versus Net as an Agent," or EITF 99-19, we record execution revenues from transactions on a gross basis in revenues and record related expenses as cost of revenues. We have recorded execution revenues related to the Brut and INET platforms on a gross basis since the related acquisitions, as Brut and INET have historically had risk as principal on transactions executed through their respective platforms. On February 1, 2006, Brut and INET merged together into a single broker-dealer, Brut, LLC, which was later renamed, Nasdaq Execution Services, LLC. Starting with the second quarter of 2005, we have reported execution revenues from transactions on our legacy platform on a gross basis in revenues and reported related expenses as cost of revenues, as we have certain risk associated with trade execution, subject to rule limitations and caps, as a result of our Limitation of Liability Rule and procedures. This change in presentation was implemented on a prospective basis beginning April 1, 2005 as required under U.S. GAAP, as a direct result of the rule change. This rule change did not have a material impact on the consolidated financial position or results of operations of NASDAQ OMX.
- (2) Net of tax provision for income taxes of \$5,595 in 2004.
- (3) At December 31, 2006, cash and cash equivalents and financial investments included our investment in the LSE, accounted for in accordance with Statement of Financial Accounting Standards, or SFAS, No. 115 "Accounting for Certain Investments in Debt and Equity Securities," or SFAS 115. See Note 7, "Financial Investments, at Fair Value," to the consolidated financial statements for further discussion. Unrealized gains and losses, including foreign currency gains, were included in accumulated other comprehensive income until the sale of the shares in September 2007. On September 25, 2007, we completed the sale of shares at that time representing 28.0% of the share capital of the LSE to Borse Dubai for \$1.6 billion in cash. We sold the remaining substantial balance of our holdings in the LSE in open market transactions for approximately \$193.5 million in cash on September 26, 2007 for total proceeds of \$1.8 billion. As a result of the sale, we recognized a \$431.4 million pre-tax gain which is net of \$18.0 million of costs directly related to the sale, primarily broker fees. On September 28, 2007, we used approximately \$1.1 billion of the proceeds from the above transactions to repay in full and terminate our credit facilities.

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

You should read the following discussion and analysis of the financial condition and results of operations of NASDAQ OMX in conjunction with our consolidated financial statements and related notes included in this Form 10-K, as well as the discussion under "Item 1A. Risk Factors."

### Overview

On February 27, 2008, Nasdaq and OMX AB combined their businesses and Nasdaq was renamed The NASDAQ OMX Group, Inc. Under the purchase method of accounting, Nasdaq was treated as the accounting and legal acquirer in the business combination with OMX AB. We also completed our acquisitions of PHLX on July 24, 2008, BSX on August 29, 2008 and certain businesses of Nord Pool on October 21, 2008. These acquisitions also have been treated as purchases for accounting purposes, with NASDAQ OMX treated as the acquirer. On December 19, 2008, we purchased a majority stake in IDCG. The financial results of OMX are included in the consolidated financial results beginning on February 27, 2008. PHLX is included beginning July 24, 2008, BSX is included beginning August 29, 2008, certain businesses of Nord Pool are included beginning October 21, 2008 and IDCG is included beginning December 19, 2008.

### Financial Highlights

The comparability of our operating results for the year ended December 31, 2008 to the same periods in 2007 and 2006 are significantly impacted by our business combination with OMX AB as well as our acquisition of PHLX. In our discussion and analysis of results of operations, we have quantified the contribution of additional revenues or expenses resulting from OMX and NASDAQ OMX PHLX operations wherever such amounts were material. While identified amounts may provide indications of general trends, the analysis cannot completely address the effects attributable to integration efforts.

The following pre-tax items impacted our 2008 results:

- Improved revenues less liquidity rebates, brokerage, clearance and exchange fees from our Market Services segment, which increased \$490.6 million, or 92.9%, to \$1,018.7 million in 2008, compared with \$528.1 million in 2007 due to the following:
  - Increases in the average daily share volume and trade execution market share for NYSE-listed securities and regional-listed securities, partially offset by higher cost of revenues; and
  - The inclusion of our European Market Services revenues in 2008 of \$324.3 million and NASDAQ OMX PHLX's revenues less liquidity rebates, brokerage, clearance and exchange fees of \$70.0 million.
- Increase in our Issuer Services segment revenues of \$46.7 million, or 16.4%, to \$330.6 million in 2008, compared with \$283.9 million in 2007, primarily due to the inclusion of European listing fees in 2008 of \$41.0 million.
- Market Technology revenues of \$106.2 million resulting from OMX operations since the date of the business combination.
- Increase in total operating expenses of \$373.1 million, or 83.5%, to \$819.9 million in 2008, compared with \$446.8 million in 2007, primarily due to the inclusion of OMX's operating expenses in 2008 of \$308.6 million and NASDAQ OMX PHLX's operating expenses of \$43.8 million.
- Loss on foreign currency contracts of \$57.9 million included in other income (expense), net in the Consolidated Statements of Income, primarily related to the Nord Pool transaction and losses on forward currency contracts used to limit our exposure to foreign currency exchange rate fluctuations on contracted revenue streams, partially offset by gains on foreign currency contracts related to our business combination with OMX AB.
- Asset impairment charges of \$42.2 million primarily related to a non-cash other-than-temporary impairment on a long-term available-for-sale investment security.

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These current and prior year items are discussed in more detail below.

### **Business Environment**

We serve listed companies, market participants and investors by providing high quality cash equity, fixed-income and derivative markets, thereby facilitating economic growth and corporate entrepreneurship. We also provide market technology to exchanges and markets around the world. In broad terms, our business performance is impacted by a number of drivers including macroeconomic events affecting the risk and return of financial assets, investor sentiment regarding the outlook for equity investments, government and private sector demands for capital, the regulatory environment for primary and secondary equity markets, and changing technology in the financial services industry. Our future revenues and net income will continue to be influenced by domestic and international trends including:

- The number of companies seeking equity financing, which is affected by factors such as investor demand, the global economy, alternative sources of financing, and tax and regulatory policies;
- Trading volumes, particularly in U.S. and Nordic equity and derivative securities, which are driven primarily by overall macroeconomic conditions;
- The loss of confidence in the credit markets, which has restricted availability of liquidity to technology customers, our suppliers, trading participants and listed companies from sources such as bank lending, the commercial paper market and the asset securitization market;
- The failure of certain market participants and the partial or complete takeover of financial institutions by national governments;
- The reduction in the ability of our fixed-income issuers to access the credit markets due to ratings downgrades or illiquidity in the market;
- The impact on the economic strength of technology customers and suppliers arising from the securities market declines and the economic slowdown;
- Competition for listings and trading executions related to pricing, and product and service offerings; and
- Other technological advancements and regulatory developments.

Currently our business drivers are characterized by historically high levels of investor uncertainty about the outlook for financial institutions and global economic growth, similarly high levels of market volatility, industry adaptation to major regulatory initiatives (particularly MiFID in the European economic area) and continued rapid evolution and deployment of new technology in the financial services industry. The business environment that influenced our financial performance during the full year 2008 can be characterized as follows:

- The slowest pace of equity issuance since the late 1970s with 13 IPOs in the U.S. and 19 on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic relative to the full year 2008;
- Continued reduced access to debt and equity capital for both new and established companies;
- Very strong 51% annual growth relative to the full year 2007 in equity matched trading volume in the U.S. driven by growth in our market share of NYSE- and regional-listed securities as well as market volatility;
- Higher levels of volatility, as well as decreasing trade size, also drove 16% growth relative to the full year 2007 in the number of equity transactions on our Nordic and Baltic exchanges, which was offset by a 28% decrease in the value of equity transactions caused in large part by falling equity prices;
- Our Nordic and Baltic exchanges experienced a 1% decline relative to the year 2007 in number of traded derivatives contracts in equity related products;
- There was a 12% increase relative to the full year of 2007 in number of cleared derivatives contracts in fixed-income related products on our Nordic and Baltic exchanges;

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- Intense competition among U.S. exchanges for both equity trading volume and listings and growing competition in Europe as new trading platforms, including NASDAQ OMX Europe, are launched in response to MiFID;
- Globalization of exchanges, customers and competitors extending the competitive horizon beyond national markets;
- Consolidation of major global customers as financial institutions are acquired, merge, and restructure; and,
- Market trends requiring continued investment in technology to meet customers' demands for speed, capacity, and reliability as markets adapt to a global financial industry, as increased numbers of new companies surface, and as emerging countries show ongoing interest in developing their financial markets.

### **2009 Outlook**

We closed several acquisitions and launched strategic initiatives during 2008 which should benefit us during the challenging economic environment anticipated for 2009. In 2008, more share value traded on The NASDAQ Stock Market than on any other single equities exchange in the world. Our platform has stood out as a reliable, flexible, and high capacity system delivering high levels of execution quality and speed under even the extremely demanding market conditions that existed in the second half of 2008. For the first time, we expanded the application of our U.S. INET trading system beyond U.S. cash equities with the launch of The NASDAQ Options Market and NASDAQ OMX Europe in 2008. The standout performance and flexibility of our technology has enabled us to enter new markets with a low cost and highly regarded platform offering strong performance to both existing and new clients and creating additional sales opportunities to both our Transactions Services and Market Data businesses.

Our experience with The NASDAQ Options Market and NASDAQ OMX Europe form the basis for our domestic outlook for 2009. Following our acquisition of BSX and SEC approval, we launched NASDAQ OMX BX in early 2009 to provide an additional quote for market participants who want to use NASDAQ OMX's high performance systems to post multiple protected quotes under Regulation NMS. We are also replacing the matching technology of NASDAQ OMX PHLX with a system based on INET technology like The NASDAQ Options Market. The use of INET technology enables us to continue to support the NASDAQ OMX PHLX options market structure as a complement to The NASDAQ Options Market but at significantly reduced technology-related cost. The acquisition of PHLX has opened up new content for enhancing our market data offerings and entering the clearing business for interest rate swaps. We also have announced our intention to enter the clearing business for cash equities as a result of our BSX acquisition.

Internationally, the business combination with OMX AB and the launch of NASDAQ OMX Europe open a number of additional opportunities. We are well underway in preparing to replace the matching technology of the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic with the INET technology platform which will provide the benefits of that system to these marketplaces. NASDAQ OMX Europe is continuing to expand and will benefit relative to many of its competitors from the cost savings associated with operating on a common INET technology with our other markets. Furthermore, we expect the extension of our world class technology systems such as INET across our global exchanges to further enhance our competitive position and to open new opportunities for technology sales. We have begun to leverage the opportunities in market data brought about by the breadth of NASDAQ OMX's data distribution capabilities by offering new data products to the customer base and by strengthening our direct relationships with those customers.

We believe that the challenging economic conditions ahead will likely have a negative impact on our business drivers and our operations. The relatively low prices of equity and turmoil in the banking industry will likely continue to negatively impact our Issuer Services segment by reducing the anticipated number of IPOs and capital formation more generally. We believe that in this challenging environment our aggressive steps in

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meeting our cost, revenue, and technology synergies will enable us to benefit from the acquisitions and initiatives undertaken in 2008. Our global brand has been enhanced from the business combination of Nasdaq and OMX AB, as well as our investment in NASDAQ Dubai, creating new business and strategic opportunities. We expect that we will continue to realize additional sources of revenue from enhanced product offerings and/or acquisitions which are complementary to our existing businesses.

### **Business Segments**

We manage, operate and provide our products and services in three business segments: Market Services, Issuer Services and Market Technology.

- The Market Services segment includes our U.S. and European Transaction Services businesses and our Market Data business, which are interrelated because the Transaction Services businesses generate the quote and trade information that we sell to market participants and data distributors. Market Services also includes our Broker Services business.
- The Issuer Services segment includes our Global Listing Services and the Global Index Group businesses. The companies listed on The NASDAQ Stock Market and the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic represent a diverse array of industries. This diversity of companies listed on NASDAQ OMX markets allows us to develop industry-specific and other indexes that we use to develop and license NASDAQ OMX branded indexes, associated derivatives and index products as part of our Global Index Group.
- The Market Technology segment provides technology solutions for trading, clearing and settlement, and information dissemination, and also offers facility management integration and advisory services.

Our management has allocated resources, assessed performance and manages these businesses as three separate segments. See Note 21, "Segments," to the consolidated financial statements for further discussion.

### **Sources of Revenues and Cost of Revenues**

#### ***Market Services Revenues***

##### *Transaction Services*

##### *U.S. Cash Equity Trading*

U.S. cash equity trading revenues are variable, based on service volumes, and recognized as transactions occur. We charge transaction fees for executing cash equity trades in NASDAQ-listed and other listed securities on The NASDAQ Stock Market as well as on orders that are routed to other market venues for execution.

We credit a portion of the per share execution charge to the market participant that provides the liquidity and record the liquidity rebate as a cost of revenues in the Consolidated Statements of Income. These liquidity rebates are paid on a monthly basis and the amounts due are included in accounts payable and accrued expenses in the Consolidated Balance Sheets. Also, we pay Section 31 fees to the SEC for supervision and regulation of securities markets. We pass these costs along to our customers through our cash equity trading fees. We collect the fees as a pass-through charge from organizations executing eligible trades on The NASDAQ Stock Market platform and we recognize these amounts in cost of revenues when invoiced. Section 31 fees received are included in cash and cash equivalents in the Consolidated Balance Sheets at the time of receipt and, as required by law, the amount due to the SEC is remitted semiannually and recorded as Section 31 fees payable to the SEC in the Consolidated Balance Sheets until paid. Since the amount recorded in revenues is equal to the amount recorded in cost of revenues, there is no impact on our revenues less liquidity rebates, brokerage, clearance and exchange fees. As we hold the cash received until payment to the SEC, we earn interest income on the related cash balances.

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We closed the acquisition of BSX in August 2008. We used the BSX license to create a second U.S. cash equities market, called NASDAQ OMX BX, which was launched in January 2009. With NASDAQ OMX BX, we offer a second quote within the U.S. equities marketplace, providing our customers enhanced trading choices and price flexibility. We expect to generate revenues for executing cash equity trades on NASDAQ OMX BX in the same manner as we do for trading on The NASDAQ Stock Market.

### *European Cash Equity Trading*

We charge transaction fees for executing trades on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic, as well as on NASDAQ OMX Europe. The transaction fee for executing trades on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic is charged per executed order and as per value traded. European cash equity trading revenues on NASDAQ OMX Europe are variable, based on service volumes, and recognized as transactions occur.

### *U.S. Derivative Trading*

U.S. derivative trading revenues are variable, based on service volumes, and recognized as transactions occur. The principal types of derivative contracts traded on NASDAQ OMX PHLX and The NASDAQ Options Market are equity options, index options and currency options. In the U.S., we also operate NFX, which offers trading for currency futures and other financial futures.

### *European Derivative Trading*

European derivative trading revenues are also variable, are based on service volumes and are recognized as transactions occur. Derivative trading is conducted on NASDAQ OMX Stockholm and NASDAQ OMX Copenhagen. The principal types of derivative contracts traded are stock options and futures, index options and futures, fixed-income options and futures and stock loans. On NASDAQ OMX Stockholm, we offer clearing services for fixed-income options and futures, stock options and futures and index options and futures by serving as the central counterparty. In doing so, we guarantee the completion of the transaction and market participants can thereby limit their counterparty risk. The fee for executing derivative trading on NASDAQ OMX Stockholm is an integrated fee for both trading and clearing service.

European derivative trading revenues also include commodities clearing revenues. NASDAQ OMX Commodities, together with third party partner Nord Pool, provides access to the world's largest power derivatives markets and one of Europe's largest carbon markets. NASDAQ OMX Commodities offers international derivatives and carbon products, operates a clearing business and offers consulting services to commodities markets globally. Nord Pool is responsible for exchange operations and trading activities, including ownership of Nordic derivatives products. Our clearing revenues from trading transactions on Nord Pool are variable, are based on service volumes and are recognized as transactions occur. We also have clearing revenues for contracts traded on the OTC derivative market which are recognized when contracts are registered for clearing.

### *Access Services*

We generate revenues by providing market participants with several alternatives for accessing our markets for a fee. The type of connectivity is determined by the level of functionality a customer needs. As a result, Access Services revenues vary depending on the type of connection provided to customers. We also earn revenues from annual and monthly exchange membership and registration fees. Revenues for providing access to our markets and revenues for monthly exchange membership and registration fees are recognized on a monthly basis as the service is provided. Revenues from annual fees for exchange membership and registration fees are recognized ratably over the following 12-month period.

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### Market Data

Market Data revenues are earned from U.S tape plans and U.S. and European market data products.

#### *Net U.S. Tape Plans*

Revenues from U.S. tape plans include eligible UTP Plan revenues which are shared among UTP Plan participants. Under the revenue sharing provision of the UTP Plan, we are permitted to deduct costs associated with acting as the exclusive Securities Information Processor from the total amount of tape fees collected. After these costs are deducted from the tape fees, we distribute to the respective UTP Plan participants, including The NASDAQ Stock Market, their share of tape fees based on a formula, required by Regulation NMS that takes into account both trading and quoting activity. In addition, all quotes and trades in NYSE- and NYSE Alternext-listed securities are reported and disseminated in real time, and as such, we share in the tape fees for information on NYSE- and NYSE Alternext-listed securities. Revenues from net U.S. tape plans are recognized on a monthly basis.

#### *U.S. Market Data Products*

We collect and process information and earn revenues as a distributor of our market data. We provide varying levels of quote and trade information to data distributors, who in turn sell subscriptions for this information to the public. We earn revenues primarily based on the number of data subscribers and distributors of our data. U.S. Market Data revenues are recognized on a monthly basis. These revenues, which are subscription based, are recorded net of amounts due under revenue sharing arrangements with market participants.

#### *European Market Data Products*

European Market Data revenues, which are subscription based, are generated primarily through the sale and distribution of trading information based on data generated through trading on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic and are recognized on a monthly basis.

### Broker Services

Our Broker Services operations offer technology and customized securities administration solutions to financial participants in the Nordic market and in the United Kingdom. The primary services offered include flexible back-office systems. Our services allow customers to entirely or partly outsource their company's back-office functions. Revenues from broker services are based on a fixed basic fee for administration or licensing, maintenance and operations, and a variable portion that depends on the number of transactions completed. Broker Services revenues are recognized on a continuous basis as services are rendered.

### **Issuer Services Revenues**

#### Global Listing Services

Listing Services revenues in the U.S. include annual renewal fees, listing of additional shares fees and initial listing fees. Annual renewal fees are recognized ratably over the following 12-month period. Listing of additional shares fees and initial listing fees are recognized on a straight-line basis over estimated service periods, which are four and six years, respectively, based on our historical listing experience, pursuant to the requirements of SAB Topic 13. European listing fees, which are comprised of issuers' revenues derived from annual fees received from listed companies on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic, are directly related to the listed companies' market capitalization. These revenues are recognized ratably over the following 12-month period.

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Global Listing Services revenues also include fees from Corporate Services which include commission income from Carpenter Moore's insurance agency business, subscription income from Shareholder.com and Directors Desk and fees from GlobeNewswire, formerly PrimeNewswire. For our insurance agency business, commission income is recognized when coverage becomes effective, the premium due under the policy is known or can be reasonably estimated, and substantially all required services related to placing the insurance have been provided. Fee income for services other than placement of insurance coverage is recognized as those services are provided. Broker commission adjustments and commissions on premiums billed directly by underwriters are recognized when such amounts can be reasonably estimated. Shareholder.com revenues are based on subscription agreements with customers. Revenues from subscription agreements are recognized ratably over the contract period, generally one year in length. As part of subscription services, customers are also charged usage fees based upon actual usage of the services provided. Revenues from usage fees and other services are recognized when earned. Directors Desk revenues are based on subscriptions for online services for directors. Subscriptions are one year in length and revenues are recognized ratably over the year. GlobeNewswire generates fees primarily from wire distribution services, and revenues are recognized as services are provided.

### Global Index Group

Global Index Group revenues include license fees for our trademark licenses related to index products linked to our indexes issued in the U. S. and abroad. We develop and license NASDAQ OMX branded indexes, associated derivatives and financial products as part of our Global Index Group business. We also generate revenues by licensing and listing third-party structured products and third-party sponsored ETFs. We primarily have two types of license agreements: transaction-based licenses and asset-based licenses. Transaction-based licenses are generally renewable long-term agreements. Customers are charged based on transaction volume or a minimum contract amount, or both. If a customer is charged based on transaction volume, we recognize revenue when the transaction occurs. If a customer is charged based on a minimum contract amount, we recognize revenue on a pro-rata basis over the licensing term. Asset-based licenses are also generally long-term agreements. Customers are charged based on a percentage of assets under management for licensed products, per the agreement, on a monthly or quarterly basis. These revenues are recorded on a monthly or quarterly basis over the term of the license agreement.

### **Market Technology Revenues**

The Market Technology segment delivers technology and services to marketplaces throughout the world. Market Technology provides technology solutions for trading, clearing and settlement, and information dissemination, and also offers facility management integration and advisory services. Revenues are derived from three primary sources: licensing, support and project revenues, facility management services revenues and other revenues. Revenues related to Market Technology are accounted for in accordance with SOP 97-2 and SOP 81-1, depending upon the terms of the Market Technology contracts.

We may customize our software technology and make significant modifications to the software to meet the needs of our customers. As such, we account for these Market Technology contracts pursuant to the provisions of SOP 81-1. Under contract accounting, total revenues and costs incurred for a customer under a customer contract are deferred and recognized over the final element, generally the post contract support period. We have included the deferral of this revenue in other liabilities and the deferral of costs in other assets in the Consolidated Balance Sheets.

We enter into sales arrangements with customers for software programs, support and other post-contract services. SOP 97-2 sets out precise requirements for establishing Vendor Specific Objective Evidence, or VSOE, for valuing elements of certain multiple-element arrangements. When VSOE for individual elements of an arrangement cannot be established in accordance with SOP 97-2, revenue is generally deferred and recognized over the term of the final element. We do not have VSOE for certain elements of certain multiple-element arrangements with customers. Therefore, as stated above, for contracts which are accounted for under contract

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accounting, total revenues and costs incurred for a customer under a customer contract are deferred and recognized over the post contract support period after the significant modifications have been completed.

License, support and project revenues are derived from the system solutions developed and sold by NASDAQ OMX. After we have developed and sold a system solution, the customer licenses the right to use the software. Each project involves individual adaptations to the specific requirements of the customer, for instance, relating to functionality and capacity. When NASDAQ OMX provides a system solution, it undertakes to upgrade, develop and maintain the system and receives regular support revenues for this work which is recognized over the contract period. Under contract accounting, where customization and significant modifications to the software are made to meet the needs of our customers, total revenues, as well as costs incurred, are deferred until the customization and significant modifications are complete and are then recognized over the support period.

Facility management services revenues are derived when NASDAQ OMX assumes responsibility for the continuous operation of a system platform for a customer and receives facility management services revenues which can be both fixed and volume-based. Facility management services revenues are recognized as services are rendered over the contract period after delivery has occurred.

Other revenues include amortization of the deferred revenue related to our contribution of technology licenses to NASDAQ Dubai. See “Equity Investment in NASDAQ Dubai,” of Note 3, “Business Combinations,” to the consolidated financial statements for further discussion of our transaction with NASDAQ Dubai. In addition, other revenues include advisory services that are recognized in revenue when earned.

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**NASDAQ OMX's Operating Results**

**Key Drivers**

The following table includes key drivers for our Market Services, Issuer Services, and Market Technology segments. In evaluating the performance of our business, our senior management closely watches these key drivers.

	Year Ended December 31,		
	2008	2007	2006
<b>Market Services</b>			
<b>Cash Equity Trading</b>			
Average daily share volume in NASDAQ securities (in billions)	2.28	2.17	2.01
Matched market share in NASDAQ securities <sup>(1)</sup>	43.2%	46.1%	48.5%
Market share reported to the FINRA/NASDAQ Trade Reporting Facility in NASDAQ securities <sup>(2)</sup>	22.6%	25.3%	—
Total market share in NASDAQ securities <sup>(3)</sup>	65.8%	71.4%	77.2%
Matched market share in NYSE securities <sup>(1)</sup>	22.2%	17.1%	10.4%
Market share reported to the FINRA/NASDAQ Trade Reporting Facility in NYSE securities <sup>(2)</sup>	19.3%	18.0%	—
Total market share in NYSE securities <sup>(3)</sup>	41.5%	35.1%	25.8%
Matched market share in NYSE Alternext (formerly Amex) and regional securities <sup>(1)</sup>	35.1%	33.3%	24.5%
Market share reported to the FINRA/NASDAQ Trade Reporting Facility in NYSE Alternext and regional securities <sup>(2)</sup>	16.2%	19.4%	—
Total market share in NYSE Alternext and regional securities <sup>(3)</sup>	51.4%	52.7%	46.4%
Matched share volume in all U.S.-listed equities (in billions)	665.9	442.0	331.0
Matched market share in all U.S.-listed equities <sup>(1)</sup>	29.8%	29.1%	27.3%
Average daily number of equity trades on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic	213,481	—	—
Average daily value of shares traded on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic (in billions)	\$ 5.0	—	—
<b>Derivative Trading</b>			
Average daily volume of U.S. equity contracts (in millions)	13.0	—	—
NASDAQ OMX PHLX matched market share of U.S. equity options	16.4%	—	—
The NASDAQ Options Market matched market share of U.S. equity options	1.0%	—	—
Average daily volume of equity and fixed-income contracts traded on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic	418,773	—	—
Average daily volume of Nordic equity contracts traded on EDX London	153,686	—	—
Average daily volume of Finnish option contracts traded on Eurex	73,870	—	—
<b>Issuer Services</b>			
Initial public offerings:			
NASDAQ	13	132	137
Exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic	17	—	—
New listings:			
NASDAQ <sup>(4)</sup>	177	290	285
Exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic	31	—	—
Number of listed companies:			
NASDAQ <sup>(5)</sup>	3,023	3,135	3,193
Exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic <sup>(6)</sup>	824	—	—
<b>Market Technology</b>			
Order intake (in millions) <sup>(7)</sup>	\$ 229.0	—	—
Total order value (in millions) <sup>(8)</sup>	\$ 358.8	—	—

(1) Transactions executed on NASDAQ's systems.

(2) Transactions reported to the FINRA/NASDAQ TRF.

(3) Transactions executed on NASDAQ's systems plus trades reported through the FINRA/NASDAQ TRF.

(4) New listings include IPOs, including those completed on a best efforts basis, issuers that switched from other listing venues, closed-end funds and separately listed ETFs.

(5) Number of listed companies for NASDAQ also includes separately listed ETFs.

(6) Represents companies listed on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic and companies on the alternative markets, NASDAQ OMX First North.

(7) Total contract value of orders signed.

(8) Represents total contract value of orders signed that are yet to be recognized as revenue.

[Table of Contents](#)**Segment Operating Results**

Of our total 2008 revenues of \$3,648.7 million, 87.9% was from our Market Services segment, 9.1% was from our Issuer Services segment, 2.9% was from our Market Technology segment and 0.1% related to other revenues. Of our total 2007 revenues of \$2,436.6 million, 88.3% was from our Market Services segment and 11.7% was from our Issuer Services segment. Of our total 2006 revenues of \$1,657.8 million, 84.9% was from our Market Services segment and 15.1% was from our Issuer Services segment.

The following table shows our total revenues, cost of revenues and revenues less liquidity rebates, brokerage, clearance and exchange fees by segment:

	Year Ended December 31,			Percentage Change	
	2008	2007 (in millions)	2006	2008 vs. 2007	2007 vs. 2006
Market Services	\$ 3,207.3	\$ 2,152.4	\$1,408.3	49.0%	52.8%
Issuer Services	330.6	283.9	249.0	16.4%	14.0%
Market Technology	106.2	—	—	#	—
Other	4.6	0.3	0.5	#	(40.0)%
Total revenues	<u>\$ 3,648.7</u>	<u>\$ 2,436.6</u>	<u>\$1,657.8</u>	<u>49.7%</u>	<u>47.0%</u>
Cost of revenues	(2,188.6)	(1,624.3)	(970.4)	34.7%	67.4%
Revenues less liquidity rebates, brokerage, clearance and exchange fees	<u>\$ 1,460.1</u>	<u>\$ 812.3</u>	<u>\$ 687.4</u>	<u>79.7%</u>	<u>18.2%</u>

# Denotes a variance equal to or greater than 100.0%.

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**MARKET SERVICES**

The following table shows total revenues less liquidity rebates, brokerage, clearance and exchange fees from our Market Services segment:

	Year Ended December 31,			Percentage Change	
	2008	2007 (in millions)	2006	2008 vs. 2007	2007 vs. 2006
<b>Transaction Services</b>					
<b>Cash Equity Trading Revenues:</b>					
U.S. cash equity trading <sup>(1)</sup>	\$ 2,411.6	\$ 1,806.3	\$1,121.2	33.5%	61.1%
Cost of revenues:					
Liquidity rebates	(1,717.8)	(1,049.8)	(644.9)	63.6%	62.8%
Brokerage, clearance and exchange fees <sup>(1)</sup>	(444.2)	(574.5)	(325.5)	(22.7)%	76.5%
Total U.S. cash equity cost of revenues	(2,162.0)	(1,624.3)	(970.4)	33.1%	67.4%
Net U.S. cash equity trading revenues	249.6	182.0	150.8	37.1%	20.7%
European cash equity trading	113.3	—	—	#	#
<b>Total cash equity trading revenues</b>	<b>362.9</b>	<b>182.0</b>	<b>150.8</b>	<b>99.4</b>	<b>20.7%</b>
<b>Derivative Trading Revenues:</b>					
U.S. derivative trading	92.4	—	—	#	#
Cost of revenues:					
Liquidity rebates	(26.5)	—	—	#	#
Brokerage, clearance and exchange fees	(0.1)	—	—	#	#
Total U.S. derivative trading cost of revenues	(26.6)	—	—	#	#
Net U.S. derivative trading revenues	65.8	—	—	#	#
European derivative trading	63.2	—	—	#	#
<b>Total derivative trading revenues</b>	<b>129.0</b>	<b>—</b>	<b>—</b>	<b>#</b>	<b>#</b>
<b>Access Services Revenues</b>	<b>99.2</b>	<b>77.0</b>	<b>57.5</b>	<b>28.8%</b>	<b>33.9%</b>
<b>Total Transaction Services revenues less liquidity rebates, brokerage, clearance and exchange fees</b>	<b>591.1</b>	<b>259.0</b>	<b>208.3</b>	<b>#</b>	<b>24.3%</b>
<b>Market Data</b>					
Net U.S. tape plans	145.6	149.9	128.9	(2.9)%	16.3%
U.S. market data products	106.7	89.6	69.6	19.1%	28.7%
European market data products	77.5	—	—	#	#
<b>Total Market Data revenues</b>	<b>329.8</b>	<b>239.5</b>	<b>198.5</b>	<b>37.7%</b>	<b>20.7%</b>
<b>Broker Services</b>	<b>42.6</b>	<b>—</b>	<b>—</b>	<b>#</b>	<b>#</b>
<b>Other Market Services</b>	<b>55.2</b>	<b>29.6</b>	<b>31.1</b>	<b>86.5%</b>	<b>(4.8)%</b>
<b>Total Market Services revenues less liquidity rebates, brokerage, clearance and exchange fees</b>	<b>\$ 1,018.7</b>	<b>\$ 528.1</b>	<b>\$ 437.9</b>	<b>92.9%</b>	<b>20.6%</b>

# Denotes a variance equal to or greater than 100.0%.

<sup>(1)</sup> Includes Section 31 fees of \$207.3 million in 2008, \$365.0 million in 2007 and \$170.6 million in 2006. The decrease in 2008 compared with 2007 is primarily due to rate reductions in 2008. The increase in 2007 compared to 2006 is primarily due to fees collected as a result of The NASDAQ Stock Market's operation as a national securities exchange for NASDAQ-listed securities beginning August 1, 2006 and for non-NASDAQ-listed securities beginning February 12, 2007. Section 31 fees are recorded as U.S. cash equity trading revenues with a corresponding amount recorded in cost of revenues.

## Transaction Services

### *Cash Equity Trading Revenues*

Cash equity trading revenues increased in 2008 compared with 2007 and in 2007 compared with 2006. The increase in 2008 was primarily due to an increase in trade execution market share and average daily share volume in NYSE- and regional-listed securities primarily due to competitive pricing and systems capacity advantages. Partially offsetting this increase were lower Section 31 revenues due to lower rates charged by us to customers beginning January 2008. In 2008, cash equity trading revenues also include European cash equity trading revenues of \$113.3 million which includes trading revenues from equity products traded on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic. The increase in 2007 compared to 2006 was primarily due to increases in trade execution market share in NYSE- and NYSE Alternext-listed securities, fees collected as a result of NASDAQ's operation as a national securities exchange and increases in average daily share volume. In February 2007, we announced new equities pricing to harmonize the trading of NASDAQ-listed and non-NASDAQ-listed securities into one pricing schedule. We also announced a pricing change, effective March 1, 2007, that lowered execution and routing fees for high volume customers. As a result of these pricing changes, our matched market share in U.S.-listed equities has increased which also contributed to the increase in our execution and trade reporting revenues.

As discussed above, we record Section 31 fees as cash equity trading revenues with a corresponding amount recorded as cost of revenues. We are assessed these fees from the SEC and pass them through to our customers in the form of incremental fees. Since the amount recorded in revenues is equal to the amount recorded in cost of revenues, there is no impact on our revenues less liquidity rebates, brokerage, clearance and exchange fees. Section 31 fees were \$207.3 million in 2008, \$365.0 million in 2007 and \$170.6 million in 2006. The decrease in 2008 compared with 2007 is primarily due to rate reductions in 2008. The increase in 2007 compared to 2006 is primarily due to fees collected as a result of The NASDAQ Stock Market's operation as a national securities exchange for NASDAQ-listed securities beginning August 1, 2006 and February 12, 2007 for non-NASDAQ-listed securities.

Liquidity rebates, in which we credit a portion of the per share execution charge to the market participant that provides the liquidity, increased in 2008 compared with 2007 and in 2007 compared with 2006. The increase in liquidity rebates in 2008 compared with 2007 was primarily due to increases in average daily share volume in NYSE- and regional-listed securities. The increase in liquidity rebates in 2007 compared with 2006 was primarily due to increases in trade execution market share for NYSE- and NYSE Alternext-listed securities and the pricing changes discussed above.

Brokerage, clearance and exchange fees decreased in 2008 compared with 2007 and increased in 2007 compared with 2006. The decrease in 2008 compared with 2007 was primarily due to lower rates charged on Section 31 fees in 2008. The increase in 2007 compared with 2006 was primarily due to additional Section 31 fees due to The NASDAQ Stock Market's operation as a national securities exchange and increases in trade execution market share for NYSE- and NYSE Alternext-listed securities. As noted above, effective August 1, 2006, as a result of The NASDAQ Stock Market's operation as a national securities exchange, additional Section 31 fees were recorded as execution and trade reporting revenues as well as a corresponding cost of revenues. Partially offsetting the increase in 2007 was a decline in clearance costs due to our migration to a single trading platform.

### *Derivative Trading Revenues*

U.S. derivative trading revenues in 2008 primarily include NASDAQ OMX PHLX's derivative trading revenues of \$78.1 million from the date of acquisition and revenues from The NASDAQ Options Market from the date of launch on March 31, 2008. Derivative trading revenues also include European derivative trading revenues of \$63.2 million in 2008 which includes trading and clearing revenues from derivative products traded on NASDAQ OMX Stockholm and derivative trading revenues on NASDAQ OMX Copenhagen.

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### *Access Services Revenues*

Access services revenues increased in 2008 compared with 2007 primarily due to increases in customer demand for network connectivity and exchange and other membership fees and the inclusion of NASDAQ OMX PHLX's Access Services revenues of \$8.0 million.

Access services revenues also increased in 2007 compared with 2006 primarily due to increases in customer demand for network connectivity and exchange membership fees. We began charging exchange membership fees as a result of our operation as a national securities exchange.

### **Market Data**

Market Data revenues increased in 2008 compared with 2007 and in 2007 compared with 2006. The increase in 2008 was primarily due to an increase in U.S. market data products revenues and the inclusion of European market data products revenues of \$77.5 million, partially offset by a smaller decrease in net U.S. tape plan revenues. The increase in 2007 compared with 2006 was primarily due to an increase in U.S. market data products revenues and an increase in net U.S. tape plan revenues.

U.S. market data products revenues increased in 2008 compared with 2007 primarily due to revenues from OpenView Basic, which was launched in the second quarter of 2007, NASDAQ Last Sale, which was launched in 2008 and growth from other proprietary data products including TotalView, Open View and Level 2, which is the best quote information from each market participant trading NASDAQ-listed securities. The increase in 2007 compared with 2006 was primarily due to an increase in TotalView subscribers and distributors and their related revenues, an increase in Level 2 revenues and the launch of OpenView Basic.

Net U.S. tape plan revenues decreased in 2008 compared with 2007 primarily due to a decrease in our share of trading and quoting activity in NASDAQ-listed securities through the UTP Plan, partially offset by increases in our share of trading and quoting activity in NYSE-listed securities. Under the revenue sharing provision of the UTP Plan, we are permitted to deduct costs associated with acting as the exclusive Securities Information Processor from the total amount of tape fees collected. After these costs are deducted from the tape fees, we distribute to the respective UTP Plan participants, including The NASDAQ Stock Market, their share of tape fees based on a formula, required by Regulation NMS that takes into account both trading and quoting activity. Our tape fee revenue sharing amount allocated to UTP plan participants increased in 2008 compared to 2007 primarily due to a reduction of our percentage earned of the UTP revenue caused, in part by the Regulation NMS market data revenue allocation formula, which became effective April 1, 2007. The increase in 2007 compared with 2006 was primarily due to an increase in trade execution market share in both NYSE- and NYSE Alternext-listed securities.

### *Broker Services Revenues*

As a result of our business combination with OMX AB, Broker Services is a new product within our Market Services segment. Broker Services revenues were \$42.6 million for 2008.

### *Other Market Services Revenues*

Other Market Services revenues increased in 2008 compared with 2007 and decreased in 2007 compared with 2006. The increase in 2008 was primarily due to the inclusion of OMX revenues of \$27.7 million. The decrease in 2007 compared with 2006 was primarily due to a decrease in revenues earned from our testing facility, which charges a fee for customers testing new services, due to our migration to a single trading platform.

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### ISSUER SERVICES

The following table shows revenues from our Issuer Services segment:

	Year Ended December 31,			Percentage Change	
	2008	2007 (in millions)	2006	2008 vs. 2007	2007 vs. 2006
Global Listing Services:					
Annual renewal fees	\$122.4	\$125.6	\$107.9	(2.5)%	16.4%
Listing of additional shares fees	40.2	40.6	36.9	(1.0)%	10.0%
Initial listing fees	22.1	22.2	23.2	(0.5)%	(4.3)%
Total U.S. listing fees	184.7	188.4	168.0	(2.0)%	12.1%
European listing fees	41.0	—	—	#	—
Corporate Services	59.6	52.6	41.5	13.3%	26.7%
Total Global Listing Services	285.3	241.0	209.5	18.4%	15.0%
Global Index Group	45.3	42.9	39.5	5.6%	8.6%
Total Issuer Services revenues	\$330.6	\$283.9	\$249.0	16.4%	14.0%

# Denotes a variance equal to 100.0%.

#### Global Listing Services

##### *U.S. Listing Services Revenues*

Annual renewal fees decreased in 2008 compared with 2007. The number of companies listed on The NASDAQ Stock Market on January 1, 2008 was 3,135, compared to 3,193 on January 1, 2007, the date on which listed companies are billed their annual fees. The decrease in the number of listed companies was due to 348 delistings by NASDAQ OMX during 2007, partially offset by 290 new listings during 2007. The number of listed companies as of January 1, 2008 and 2007 also includes separately listed ETFs.

Annual renewal fees increased in 2007 compared with 2006. The number of companies listed on The NASDAQ Stock Market on January 1, 2007 was 3,193, compared to 3,208 on January 1, 2006, the date on which listed companies are billed their annual fees. The decrease in the number of listed companies was due to 303 delistings by NASDAQ during 2006, partially offset by 285 new listings during 2006. Offsetting the decrease in the number of listed companies was an annual renewal fee increase effective January 1, 2007.

Listing of additional shares fees remained flat in 2008 compared with 2007 and increased in 2007 compared with 2006. The increase in 2007 compared to 2006 was primarily due to amortization of fees. There were 71 secondary offerings in 2008, 197 in 2007 and 214 in 2006.

Initial listing fees remained flat in 2008 compared with 2007 and decreased in 2007 compared with 2006. Initial listing fees decreased in 2007 primarily due to amortization of fees. There were 177 new listings, including 13 new IPOs, during 2008 compared with 290 new listings, including 132 new IPOs, during 2007 compared with 285 new listings, including 137 new IPOs, during 2006. The decrease in new listings during 2008 will impact future revenues as these fees are amortized on a straight-line basis over an estimated service period of six years.

##### *European Listing Services Revenues*

European Listing Services revenues, which are comprised of issuers' revenues derived from annual fees received from listed companies on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic, are directly related to the listed companies' market capitalization. These revenues are recognized ratably over a 12-month period.

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### *Corporate Services Revenues*

Global Listing Services revenues also include fees from Corporate Services. These fees include commission income from Carpenter Moore, subscription income from Shareholder.com and Directors Desk and fees from GlobeNewswire. Corporate Services revenues increased in 2008 compared with 2007 primarily due to expanding customer utilization of our Corporate Services. Corporate Services revenues increased in 2007 compared with 2006 primarily due to revenues generated from the operations of acquired businesses. Corporate Services revenues include revenues from Carpenter Moore, Shareholder.com beginning February 1, 2006, GlobeNewswire beginning September 1, 2006, Directors Desk beginning July 2, 2007 and other sources for all periods presented. In February 2007, Carpenter Moore merged with the Nasdaq Insurance Agency, with Carpenter Moore as the surviving entity.

### *Global Index Group Revenues*

Global Index Group revenues primarily include license fees from NASDAQ OMX branded indexes, associated derivatives and financial products in the U.S. and abroad. Global Index Group revenues increased in 2008 compared with 2007 primarily due to an increase in licensing fees associated with NASDAQ OMX-licensed ETFs, licensed derivatives volumes and fees and third party structured products, partially offset by a decrease in Portal applications as a result of economic conditions. The increase in 2007 compared with 2006 was primarily due to an increase in licensing fees associated with NASDAQ OMX-licensed ETFs and third party structured products, partially offset by a decline in licensing fees associated with options traded on ETFs based on our indexes.

## **MARKET TECHNOLOGY**

As a result of our business combination with OMX AB, Market Technology is a new reporting segment. The following table shows the revenues from our Market Technology segment:

	<b>Year Ended December 31, 2008 (in millions)</b>
Market Technology:	
License, support and project revenues	\$ 67.5
Facility management services	28.8
Other revenues	9.9
<b>Total Market Technology revenues</b>	<b>\$ 106.2</b>

Market Technology provides technology solutions for trading, clearing and settlement, and information dissemination, and also offers facility management integration and advisory services to marketplaces throughout the world.

License, support and project revenues are derived from the system solutions developed and sold by NASDAQ OMX. After we have developed and sold a system solution, the customer licenses the right to use the software. Each project involves individual adaptations to the specific requirements of the customer, for instance, relating to functionality and capacity. When NASDAQ OMX provides a system solution, it undertakes to upgrade, develop and maintain the system and receives regular support revenues for this work which is recognized over the contract period. Under contract accounting, where customization and significant modifications to the software are made to meet the needs of our customers, total revenues, as well as costs incurred, are deferred until the customization and significant modifications are complete and are then recognized over the support period.

Facility management services revenues are derived when NASDAQ OMX assumes responsibility for the continuous operation of a system platform for a customer and receives facility management services revenues

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which can be both fixed and volume-based. Facility management services revenues are recognized as services are rendered over the contract period after delivery has occurred.

Other revenues include amortization of the deferred revenue related to our contribution of technology licenses to NASDAQ Dubai. See “Equity Investment in NASDAQ Dubai,” of Note 3, “Business Combinations,” to the consolidated financial statements for further discussion of our transaction with NASDAQ Dubai. In addition, other revenue includes advisory services that are recognized in revenue when earned.

### Expenses

#### Direct Expenses

The following table shows our direct expenses:

	Year Ended December 31,			Percentage Change	
	2008	2007 (in millions)	2006	2008 vs. 2007	2007 vs. 2006
Compensation and benefits	\$401.0	\$200.4	\$195.7	#	2.4%
Marketing and advertising	18.6	20.8	20.5	(10.6)%	1.5%
Depreciation and amortization	92.6	38.9	70.9	#	(45.1)%
Professional and contract services	71.9	32.1	32.0	#	0.3%
Computer operations and data communications	54.5	28.7	41.5	89.9%	(30.8)%
Occupancy	65.2	34.5	34.1	89.0%	1.2%
Regulatory	28.9	28.9	—	—	#
Merger expenses	25.4	—	—	#	—
General, administrative and other	61.8	62.5	38.9	(1.1)%	60.7%
Total direct expenses	<u>\$819.9</u>	<u>\$446.8</u>	<u>\$433.6</u>	83.5%	3.0%

# Denotes a variance equal to or greater than 100.0%.

Compensation and benefits expense increased in 2008 compared with 2007 and in 2007 compared with 2006. The increase in 2008 was primarily due to the inclusion of OMX’s compensation expense of \$147.3 million, the inclusion of NASDAQ OMX PHLX’s compensation expense of \$19.6 million, a curtailment gain of approximately \$6.1 million recognized in 2007 as a result of the pension plan and supplemental executive retirement plan, or SERP, freeze and increased incentive compensation reflecting stronger financial performance. Headcount increased from 887 employees at December 31, 2007 to 2,506 employees at December 31, 2008, primarily due to our business combination with OMX AB. The increase in 2007 compared with 2006 was primarily due to increased incentive compensation reflecting stronger financial performance, additional share-based compensation expense due to grants in December 2006 to all active employees and additional compensation costs due to our acquisitions. Partially offsetting the increase in 2007 was a curtailment gain as discussed above. See Note 11, “Employee Benefits,” to the consolidated financial statements for further discussion of the curtailment gain.

Marketing and advertising expense decreased in 2008 compared with 2007 and increased in 2007 compared with 2006. In 2008, the decrease was primarily due to reduced marketing activity, partially offset by the inclusion of OMX’s marketing and advertising expense of \$5.1 million. The increase in 2007 was due to new advertising campaigns launched in 2007.

Depreciation and amortization expense increased in 2008 compared with 2007 and decreased in 2007 compared with 2006. The increase in 2008 is primarily due to additional amortization expense of \$23.8 million for intangible assets acquired in our business combination with OMX AB, the inclusion of OMX’s depreciation and amortization expense of \$19.7 million and the inclusion of NASDAQ OMX PHLX’s depreciation and

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amortization expense of \$9.6 million. The decrease in 2007 was primarily due to the retirement of certain equipment which was fully amortized in December 2006 related to the migration to a single trading platform. The 2007 decrease was partially offset by intangible amortization expense on identifiable intangible assets acquired in our acquisitions.

Professional and contract services expense increased in 2008 compared with 2007 and remained flat in 2007 compared with 2006. The increase in 2008 was primarily due to the inclusion of OMX's professional and contract services expense of \$38.0 million.

Computer operations and data communications expense increased in 2008 compared with 2007 and decreased in 2007 compared with 2006. The increase in 2008 was primarily due to the inclusion of OMX's computer operations and data communication expense of \$29.5 million and the inclusion of NASDAQ OMX PHLX's computer operations and data communications expense of \$4.0 million, partially offset by lower costs due to hardware and software leases which were cancelled in the fourth quarter of 2007. The decrease in 2007 was primarily due to lower costs associated with hardware leased equipment. The contract for this equipment was cancelled and charged to expense in the fourth quarter of 2006. The decrease is also due to lower costs associated with a reduced number of communication lines due to the consolidation of our data centers.

Occupancy expense increased in 2008 compared with 2007 and was flat in 2007 compared with 2006. The increase in 2008 was primarily due to the inclusion of OMX's occupancy expense of \$26.5 million and the inclusion of NASDAQ OMX PHLX's occupancy expense of \$3.2 million.

Regulatory expense remained flat in 2008 compared with 2007. Since we sought to preserve a regulatory separation upon operation as a national securities exchange, FINRA continues to provide regulatory services to The NASDAQ Stock Market, The NASDAQ Options Market and, once fully implemented in March 2009, the markets operated or regulated by NASDAQ OMX BX, including the regulation of trading activity and surveillance and investigative functions. The regulation charge from FINRA of \$33.8 million in 2006 was included in support costs from related parties, net. See below for further discussion. The decrease in 2007 compared with 2006 was primarily due to a reduction in surveillance and other regulatory charges by FINRA and an adjustment of the allocation of its costs between members and market matters.

Merger expenses were \$25.4 million in 2008. These costs are directly attributable to the business combination with OMX AB and the acquisition of PHLX, but do not qualify as purchase accounting adjustments. The costs primarily include consulting and legal costs related to our integration of OMX AB and PHLX.

General, administrative and other expense decreased in 2008 compared with 2007 and increased in 2007 compared with 2006. The decrease in 2008 and increase in 2007 was primarily due to charges recorded in 2007 including a \$19.5 million tax sharing payment owed to SLP pursuant to an agreement to share the deferred tax benefit on the sale of Instinet's Institutional Brokerage division. In addition, we recorded a \$5.8 million loss in 2007 on the early extinguishment of debt related to the repayment in full of our former credit facilities from the proceeds from the sale of the share capital of the LSE. Also, in 2007 there was an additional loss of \$1.1 million on the early extinguishment of a portion of the 3.75% convertible notes and a \$10.6 million charge related to a clearing contract. Our single trading platform includes functionality that enabled us to discontinue the use of services previously provided under the contract. Partially offsetting the decreases in 2008 was the inclusion of OMX's general, administrative and other expense of \$34.9 million. Partially offsetting the increases in 2007 were charges recorded in 2006. In 2006, we recorded a \$12.3 million loss on the early extinguishment of the \$750.0 million senior term debt issued in December 2005, which was refinanced in April 2006. Additional losses totaling \$9.7 million were recorded on the early extinguishment of the portion of the \$1.1 billion secured term loan of our April 2006 credit facility that was repaid in May 2006 as a result of an equity offering and in November 2006 with excess cash flow. These charges were partially offset by a realized foreign currency gain related to our investment in the LSE of \$8.2 million in 2006.

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### Support Costs From Related Parties, net

Support costs from related parties, net were \$33.8 million in 2006. After December 20, 2006, since FINRA is no longer a related party, the regulatory expense is now shown as part of direct expenses. See the description of regulatory expense under “Direct Expenses” above for further discussion.

### Other Income (Expense), net

The following table presents the components of other income (expense), net:

	Year Ended December 31,			Percentage Change	
	2008	2007 (in millions)	2006	2008 vs. 2007	2007 vs. 2006
Interest income	\$ 34.5	\$ 37.6	\$ 24.6	(8.2)%	52.8%
Interest expense	(86.6)	(72.9)	(91.1)	18.8%	(20.0)%
Net interest expense	(52.1)	(35.3)	(66.5)	47.6%	(46.9)%
Dividend and investment income	8.4	14.7	16.2	(42.9)%	(9.3)%
Income from unconsolidated investees, net	27.3	—	—	#	—
Gain (loss) on foreign currency contracts	(57.9)	44.0	48.4	#	(9.1)%
Asset impairment charges	(42.2)	—	(5.9)	#	#
Gain on sale of strategic initiative	—	431.4	—	#	#
Strategic initiative costs	—	(26.5)	—	#	#
Total other income (expense), net	<u>\$(116.5)</u>	<u>\$428.3</u>	<u>\$ (7.8)</u>	#	#

# Denotes a variance equal to or greater than 100.0%.

### Net Interest Expense

Net interest expense was \$52.1 million in 2008 compared with \$35.3 million in 2007, an increase of \$16.8 million. The increase in 2008 was primarily due to:

- a decrease in interest income due to lower interest rates and the use of cash to fund acquisitions in 2008, partially offset by the inclusion of OMX’s interest income of \$16.6 million;
- an increase in debt issuance amortization costs due to the draw-down of debt to fund the OMX AB business combination, the PHLX acquisition and the Nord Pool transaction, compared to minimal debt issuance costs in 2007 due to the costs being included in general, administrative and other expenses due to the early extinguishment of debt related to the repayment in full of our outstanding debt obligations in September 2007 from the proceeds of the sale of our share capital of the LSE. See Note 7, “Financial Investments, at Fair Value,” to the consolidated financial statements for further discussion; and
- a higher average outstanding debt balance, partially offset by lower interest rates. Our higher outstanding debt balance was due to the draw-down of debt to fund the OMX AB business combination, the PHLX acquisition and the Nord Pool transaction.

Net interest expense was \$35.3 million in 2007 compared with \$66.5 million in 2006, a decrease of \$31.2 million. The decrease in 2007 was primarily due to higher interest income due to higher cash balances and lower interest expense due to a lower average outstanding debt balance and lower interest rates year over year. Our lower outstanding debt balance was due to the repayment in full and termination of our credit facilities from the proceeds of the sale of our share capital of the LSE. In addition, our lower outstanding debt balance was due to Hellman & Friedman, or H&F, converting \$300.0 million of its 3.75% convertible notes to equity and SLP and other partners converting a portion of their 3.75% convertible notes to equity in the fourth quarter of 2007.

### **Dividend and Investment Income**

Dividend and investment income was \$8.4 million in 2008 compared with \$14.7 million in 2007, a decrease of \$6.3 million. Dividend and investment income in 2008 primarily relates to the inclusion of OMX's and NASDAQ OMX PHLX's dividend and investment income. Dividend and investment income in 2007 is primarily due to the receipt of ordinary dividends declared from our investment in the LSE.

Dividend and investment income was \$14.7 million in 2007 compared with \$16.2 million in 2006. Both periods represent ordinary dividends from our investment in the LSE.

### **Income from Unconsolidated Investees, net**

Income recognized from unconsolidated investees, net was \$27.3 million in 2008 and primarily relates to the NASDAQ Dubai transaction. In connection with the NASDAQ Dubai transaction, we contributed intangible assets and \$50.0 million in cash to NASDAQ Dubai in exchange for a 33 <sup>1</sup>/<sub>30</sub>% equity ownership in NASDAQ Dubai. One of the intangible assets contributed was the Nasdaq trade name, which had a zero carrying value on Nasdaq's books and records prior to the transfer. As a result, we recognized a \$26.0 million gain for the difference between Nasdaq's carrying value and the fair value of the contributed asset on this non-monetary exchange. See "Equity Investment in NASDAQ Dubai," of Note 3, "Business Combinations," to the consolidated financial statements for further discussion. Also included is income from our share of the earnings and losses from our ownership in unconsolidated equity method investees.

### **Gain (Loss) on Foreign Currency Contracts**

The loss on foreign currency contracts was \$57.9 million in 2008 compared with a gain of \$44.0 million in 2007 and a gain of \$48.4 million in 2006. The loss in 2008 primarily relates to a forward contract entered into to hedge the NOK cash payment for the Nord Pool transaction (\$71.5 million) and our market technology forward currency contracts (\$13.4 million), partially offset by gains on forward contracts entered into to hedge the foreign currency exposure on our business combination with OMX AB (\$27.0 million).

The gain in 2007 primarily relates to option contracts purchased to hedge the foreign currency exposure on our business combination with OMX AB (\$51.8 million), partially offset by a loss on options contracts purchased to hedge the foreign currency exposure on our acquisition bid for the LSE (\$7.8 million).

The gain in 2006 relates to our acquisition bid for the LSE. In order to hedge the foreign currency exposure on our acquisition bid for the LSE, we purchased foreign currency option contracts at the time of the bid, which was the fourth quarter of 2006. The fair value of these contracts at December 31, 2006 was \$71.7 million and the unrealized gain for the quarter ended December 31, 2006 was \$48.4 million.

See Note 17, "Derivative Financial Instruments and Hedging Activities," to the consolidated financial statements for further discussion.

### **Asset Impairment Charges**

In the fourth quarter of 2008, we recorded a non-cash other-than-temporary impairment charge of \$34.9 million related to a long-term available-for-sale investment security. See "Financial Investments," of Note 2, "Summary of Significant Accounting Policies," and "Accumulated Other Comprehensive Income," of Note 14, "Stockholders' Equity," to the consolidated financial statements for further discussion. We also recorded a non-cash impairment loss of \$7.3 million from the write-down of finite-lived intangibles assets, primarily related to our insurance agency business. See Note 4, "Goodwill and Purchased Intangible Assets," to the consolidated financial statements for further discussion. In 2006, we recorded write-downs for property and equipment of \$5.9 million related to the sale of a building and related assets. See "Valuation of Long-Lived Assets," of Note 2, "Summary of Significant Accounting Policies," to the consolidated financial statements for further discussion.

### **Gain on Sale of Strategic Initiative**

The pre-tax gain on the sale of our strategic initiative was \$431.4 million in 2007. The gain represents the sale of our share capital of the LSE and is net of costs directly related to the sale of \$18.0 million, primarily broker fees. See Note 7, “Financial Investments, at Fair Value,” to the consolidated financial statements for further discussion.

### **Strategic Initiative Costs**

Strategic initiatives costs were \$26.5 million in 2007. We incurred these costs in connection with our strategic initiatives related to the LSE, including our acquisition bid. In conjunction with the lapse of our final offers for the LSE in February 2007, these costs were charged to expense. See Note 7, “Financial Investments, at Fair Value,” to the consolidated financial statements for further discussion.

### **Minority Interests**

Minority interests were \$(1.5) million in 2008 compared to \$0.1 million in 2007 and \$0.9 million in 2006. The 2008 minority interests include \$(0.9) million representing 1.2% of OMX income for the period February 27, 2008 to August 27, 2008 (the effective date of the purchase of the remaining minority OMX AB shares). The 2007 and 2006 minority interests relate to Reuters’ investment in the Independent Research Network, a joint venture created to help public companies obtain independent analyst coverage, beginning in the third quarter of 2005. This investment was reduced to zero due to losses incurred at the Independent Research Network and all losses of the Independent Research Network were recorded by us. We have discontinued the Independent Research Network’s operations.

### **Income Taxes**

NASDAQ OMX’s income tax provision was \$202.3 million in 2008 compared with \$275.5 million in 2007, and was \$85.2 million in 2006. The overall effective tax rate was 38.7% in 2008, 34.7% in 2007 and 40.0% in 2006. Although the income tax provision increased from 2006 to 2007, the overall effective tax rate was lower in 2007 primarily due to the utilization of capital loss carry-forwards and a reduction to the reserve for uncertain tax positions. The higher effective tax rate in 2008 when compared to 2007 was primarily due to the other-than-temporary impairment loss of \$34.9 million on a long-term available-for-sale investment security, which is not deductible for tax purposes.

The effective tax rate may vary from period to period depending on, among other factors, the geographic and business mix of earnings and losses. These same and other factors, including history of pre-tax earnings and losses, are taken into account in assessing the ability to realize deferred tax assets.

We adopted the provisions of FASB Interpretation No. 48, “Accounting for Uncertainty in Income Taxes—an interpretation of FASB Statement No. 109,” or FIN 48, on January 1, 2007. As a result of the implementation of FIN 48, we recognized a \$1.0 million increase to reserves for uncertain tax positions. This increase was accounted for as an adjustment to the beginning balance of retained earnings in the consolidated balance sheet. At the adoption date of January 1, 2007, we had \$9.2 million of unrecognized tax benefits of which \$7.9 million would affect our effective tax rate if recognized. As of December 31, 2007, we had \$7.6 million of unrecognized benefits of which \$4.0 million would affect our effective tax rate if recognized. As of December 31, 2008, we had \$9.2 million of unrecognized benefits of which \$5.4 million would affect our effective tax rate if recognized.

Our policy is to recognize interest and/or penalties related to income tax matters in income tax expense. We had \$1.8 million accrued for interest and penalties, net of tax effect on January 1, 2007. As of December 31, 2007, we had \$2.7 million accrued for interest and penalties, net of tax effect. As of December 31, 2008, we had \$3.1 million accrued for interest and penalties, net of tax effect.

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NASDAQ OMX and its eligible subsidiaries file a consolidated U.S. federal income tax return, and applicable state and local income tax returns and non-U.S. income tax returns. Federal income tax returns for years 2005-2007 are subject to examination by the Internal Revenue Service. Several state tax returns are currently under examination by the respective tax authorities for years 1996-2006 and we are subject to examination for 2007. Non-U.S. tax returns are subject to review by the respective tax authorities for years 2002-2007. We anticipate that the amount of unrecognized tax benefits at December 31, 2008 will significantly decrease in the next twelve months as we expect to settle certain tax audits. The final outcome of such audits cannot yet be determined. We anticipate that such adjustments would not have a material impact on our consolidated financial position or results of operations.

### **Cost Reductions and Operating Efficiencies**

During the past several years, we have taken significant steps to grow our business and enhance our competitive position. We have successfully reduced technology costs, eliminated non-core products, scaled back our workforce and consolidated our real estate facilities and operations.

Charges associated with our cost reduction program and our integration of INET ceased during 2007. In 2007, we incurred charges of approximately \$4.1 million in connection with actions we took to improve our operational efficiency as well as to integrate INET. During 2006, we incurred similar charges of approximately \$40.9 million. As a result of our cost reduction program and integration of INET, we were able to migrate to a single trading platform, and significantly reduce our depreciation and amortization expense and computer operations and data communications expense. See Note 22, "Cost Reduction Program and INET Integration," to the consolidated financial statements for further discussion.

### **Liquidity and Capital Resources**

Recent global market and economic conditions have been, and continue to be, disruptive and volatile, having an adverse impact on financial markets in general. As a result of concern about the stability of the markets and the strength of counterparties, many lenders and institutional investors have reduced and, in some cases, ceased to provide funding to borrowers resulting in severely diminished liquidity and credit availability. At this time, the extent to which these conditions will persist is unclear. To date, our cost and availability of funding has not been adversely affected by illiquid credit markets and we do not expect it to be materially impacted in the near future.

We require cash to pay our operating expenses, make capital expenditures and service our debt and other long-term liabilities. Our principal source of funds is cash from our operations. In addition, we have obtained funds by selling our common stock in the capital markets. In order to finance our business combination with OMX AB, our acquisition of PHLX and the Nord Pool transaction, we have incurred additional debt and issued shares of our common stock. See Note 9, "Debt Obligations," and Note 14, "Stockholders' Equity," to the consolidated financial statements for further discussion.

In the near term, we expect that our operations will provide sufficient cash to fund our operating expenses, capital expenditures and interest payments on our debt. As of December 31, 2008, our cash and cash equivalents of \$565.8 million is primarily invested in money market funds comprised of U.S. government treasury obligations. In the long-term, we may use both internally generated funds and external sources to satisfy our debt and other long-term liabilities.

Principal factors that could affect the availability of our internally-generated funds include:

- deterioration of our revenues in any of our business segments;
- changes in our working capital requirements; and

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- an increase in our expenses.

Principal factors that could affect our ability to obtain cash from external sources include:

- financial covenants contained in our Credit Facilities that limit our total borrowing capacity;
- increases in interest rates applicable to our floating rate term debt;
- credit rating downgrades, which could limit our access to additional debt;
- a decrease in the market price of our common stock; and
- volatility in the public debt and equity markets, especially the recent seize up of the credit markets.

The following sections discuss the effects of changes in our cash flows, capital requirements and other commitments on our liquidity and capital resources.

### **Cash and Cash Equivalents and Changes in Cash Flows**

The following tables summarize our cash and cash equivalents and changes in cash flows:

	<u>December 31,</u> <u>2008</u>	<u>December 31,</u> <u>2007</u>	<u>Percentage</u> <u>Change</u>
	(in millions)		
Cash and cash equivalents <sup>(1)</sup>	<u>\$ 565.8</u>	<u>\$ 1,325.3</u>	(57.3)%

<sup>(1)</sup> As of December 31, 2008, our cash and cash equivalents included \$230.8 million of restricted cash which is not available for general use by us due to regulatory and other requirements. There was no restricted cash included in cash and cash equivalents as of December 31, 2007.

	<u>Year Ended December 31,</u>		
	<u>2008</u>	<u>2007</u>	<u>Percentage Change</u>
	(in millions)		
Cash provided by operating activities	\$ 407.7	\$ 173.2	#
Cash provided by (used in) investing activities	(3,148.6)	1,857.9	#
Cash provided by (used in) financing activities	2,028.9	(1,027.8)	#
Effect of exchange rate changes on cash and cash equivalents	(47.5)	—	#

# Denotes a variance equal to or greater than 100.0%.

*Cash and cash equivalents.* Cash and cash equivalents decreased \$759.5 million from December 31, 2007 primarily due to cash used in connection with the business combination with OMX AB, as well as the acquisitions of PHLX and BSX, the Nord Pool transaction, our purchase of a majority stake in IDCG and other acquisitions. In addition, we used cash to pay OMX AB debt obligations. This decrease was partially offset by proceeds received from the draw-down of debt to fund the OMX AB business combination, the PHLX acquisition and the Nord Pool transaction, cash acquired in our business combination with OMX AB and positive cash flows from operations. See Note 3, "Business Combinations," to the consolidated financial statements for further discussion of our business combination, acquisitions and strategic initiative.

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### *Changes in Cash Flows*

*Cash provided by operating activities.* The following items impacted our cash provided by operating activities for the year ended December 31, 2008:

- Net income of \$319.9 million, plus:
  - Non-cash items of approximately \$91.6 million comprised primarily of depreciation and amortization expense of \$92.6 million, loss on foreign currency contracts of \$57.9 million, asset impairment charges of \$42.2 million and share-based compensation of \$25.7 million, partially offset by deferred taxes, net of \$103.1 million and income from unconsolidated investees, net of \$27.3 million.
- Decrease in receivables, net of \$31.6 million primarily due to lower Section 31 fees as a result of rate decreases.
- Increase in accrued personnel costs of \$20.9 million primarily due to additional incentive compensation reflecting stronger financial performance.
- Increase in accounts payable and accrued expenses of \$19.8 million primarily due to additional liquidity rebates from increased trade volume.
- Increase in other liabilities of \$17.6 million primarily due to additional SERP liabilities for the NASDAQ OMX PHLX benefit plans.
- Partially offset by a:
  - Decrease in Section 31 fees payable to SEC of \$54.2 million mainly due to lower Section 31 fees as a result of rate decreases.
  - Decrease in deferred revenue of \$40.5 million primarily due to a decrease in the initial listing fees deferred revenue balance as a result of a decrease in new listings from 290 new listings during 2007 to 177 new listings during 2008, as well as the amortization of OMX's annual listing fees.
  - Decrease in other accrued liabilities of \$9.0 million primarily due to a decrease in income tax payable as a result of paying the 2007 tax liability related to the sale of our share capital in the LSE.

During the year ended December 31, 2007, the following items impacted our cash provided by operating activities:

- Net income of \$518.4 million, partially offset by:
  - Non-cash items of approximately \$407.7 million comprised primarily of the gain on the sale of a strategic initiative of \$431.4 million, gain on foreign currency option contracts of \$44.0 million and deferred taxes, net of \$15.6 million, partially offset by strategic initiative costs of \$26.5 million, clearing contract charge of \$10.6 million, loss on early extinguishment of debt of \$7.0 million and depreciation and amortization expense of \$38.9 million.
- Increase in other accrued liabilities of \$63.6 million primarily due to an increase in income tax payable due to the sale of our share capital in the LSE and an increase in pre-tax income. Deferred revenue also increased \$7.2 million due to additional Global Listing Services billings. Partially offsetting these items, was a net increase of \$18.8 million in assets, primarily due to an increase in receivables due to the recording of additional Section 31 fees and a net decrease of \$7.7 million in other operating liabilities.

We expect that cash provided by operating activities may fluctuate in future periods as a result of a number of factors, including fluctuations in our operating results, accounts receivable collections, share-based compensation and the timing and amount of other payments that we make.

*Cash provided by (used in) investing activities.* Cash used in investing activities for the year ended December 31, 2008 is primarily due to cash used in connection with the business combination with OMX AB, as

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well as the acquisitions of PHLX and BSX, the Nord Pool transaction, our purchase of a majority stake in IDCG and other acquisitions, net of cash acquired, as well as the acquisition of 33 1/3% of the equity of NASDAQ Dubai, for total cash paid of \$2,998.8 million. In 2007, in conjunction with the lapse of our final offers for the LSE in February 2007, we traded out of foreign currency option contracts which were purchased at the time of the commencement of our bid. These contracts were cash settled for \$63.9 million which increased our cash provided by investing activities in 2007.

*Cash provided by (used in) financing activities.* Cash provided by financing activities for 2008 consisted of the proceeds from the issuance of \$475.0 million aggregate principal amount of the 2.50% convertible senior notes and \$2,000.0 million in senior secured indebtedness under our Credit Facilities, net of debt issuance costs paid of \$53.3 million. See "Credit Facilities" below for further discussion. The proceeds from the 2.50% convertible senior notes and new Credit Facilities were partially offset by the refinancing of \$352.9 million of OMX AB outstanding debt obligations at the time of the business combination. In addition, we made a \$75.0 million principal payment in 2008 on our \$2,000.0 million senior secured term loan facility. Cash used in financing activities for 2007 was primarily due to the repayment in full of our former credit facilities from the proceeds of the sale of the share capital of the LSE.

### **Capital Resources and Working Capital**

Working capital (calculated as current assets less current liabilities) was \$372.0 million at December 31, 2008, compared with \$1,270.8 million at December 31, 2007, a decrease of \$898.8 million, or 70.7%, primarily due to cash used for the business combination with OMX AB, as well as the acquisitions of PHLX and BSX, the Nord Pool transaction, our purchase of a majority stake in IDCG and other acquisitions. We have historically been able to generate sufficient funds from operations to meet working capital requirements. At December 31, 2008, we had debt obligations of \$2,518.8 million (excluding interest payments), of which \$225.0 million is due within one year. In the first quarter of 2008, in connection with our business combination with OMX AB, we issued \$475.0 million aggregate principal amount of convertible senior notes and incurred \$1,050.0 million in senior secured indebtedness under our Credit Facilities. In the third quarter of 2008, in connection with our acquisition of PHLX, we drew down an additional \$650.0 million and in connection with the Nord Pool transaction, we drew down an additional \$300.0 million. See "Credit Facilities" below for further discussion.

At December 31, 2008, none of our lenders were affiliated with NASDAQ OMX, except to the extent, if any, that SLP would be deemed an affiliate of NASDAQ OMX due to its ownership of \$118.6 million aggregate principal amount of the 3.75% convertible notes and shares of our common stock and representation on our board of directors.

### **3.75% Convertible Notes due 2012**

As of December 31, 2008, approximately \$120.1 million in aggregate principal amount of the 3.75% convertible notes due 2012 remained outstanding, which includes ownership by SLP of \$118.6 million.

### **2.50% Convertible Senior Notes due 2013**

In the first quarter of 2008, in connection with the business combination with OMX AB, we completed the offering of \$475.0 million aggregate principal amount of 2.50% convertible senior notes due 2013. It is our intent and policy to settle the principal amount of the notes in cash and we are permitted to settle the conversion premium in shares of our common stock or cash.

### **Credit Facilities**

In the first quarter of 2008, we entered into the Credit Facilities to finance the business combination with OMX AB, the acquisition of PHLX and the Nord Pool transaction. The Credit Facilities provide for up to

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\$2,075.0 million of debt financing, which includes (i) a five-year, \$2,000.0 million senior secured term loan facility which consists of (a) a \$1,050.0 million term loan facility allocated to the OMX AB business combination, (b) a \$650.0 million term loan facility allocated to our acquisition of PHLX and (c) a \$300.0 million term loan facility allocated to fund the Nord Pool transaction and (ii) a five-year, \$75.0 million senior secured revolving credit facility. At December 31, 2008, the revolving credit facility was unused. Total debt obligations outstanding under the Credit Facilities at December 31, 2008 were \$1,925.0 million.

Under the provisions of our Credit Facilities, we are required to maintain approximately 30% of our debt structure on a fixed rate basis for two years from the date of the credit agreement. As such, in August 2008, we entered into interest rate swap agreements that effectively converted \$200.0 million of funds borrowed under our Credit Facilities, which is floating rate debt, to a fixed rate basis through August 2011. The interest rate swap was fixed to a LIBOR base rate of 3.73% plus the current credit spread of 200 basis points as of December 31, 2008. The credit spread (not to exceed 200 basis points) is subject to change based upon the leverage ratio in accordance with the Credit Facilities. See Note 17, "Derivative Financial Instruments and Hedging Activities," to the consolidated financial statements for further discussion.

In addition to the \$75.0 million revolving credit facility discussed above, we have credit facilities related to our clearinghouses in order to meet liquidity requirements. These credit facilities, which are available in multiple currencies, primarily Swedish Krona, totaled \$245.8 million at December 31, 2008, of which \$4.4 million was drawn and was included in other accrued liabilities in the Consolidated Balance Sheets.

See Note 9, "Debt Obligations," to the consolidated financial statements for further discussion of our 3.75% convertible notes, 2.50% convertible senior notes and Credit Facilities.

### **Broker-Dealer Net Capital Requirements**

Our broker-dealer subsidiaries, Nasdaq Execution Services and NASDAQ Options Services, are subject to regulatory requirements intended to ensure their general financial soundness and liquidity, which require that they comply with minimum capital requirements. At December 31, 2008, Nasdaq Execution Services was required to maintain minimum net capital of \$0.3 million and had total net capital of approximately \$15.0 million or \$14.7 million in excess of the minimum amount required. At December 31, 2008, NASDAQ Options Services was also required to maintain minimum net capital of \$0.3 million and had total net capital of approximately \$4.7 million or \$4.4 million in excess of the minimum amount required.

### **Other Capital Requirements**

NASDAQ Options Services is also required to maintain a \$2.0 million minimum level of net capital under our clearing arrangement with the OCC.

### **Derivative Clearing Operations Regulatory Capital Requirements**

We are required to maintain minimum levels of regulatory capital for our clearing operations for NASDAQ OMX Stockholm, NASDAQ OMX Commodities and IDCG. The level of regulatory capital required to be maintained is dependent upon many factors including market conditions and creditworthiness of the counterparty. At December 31, 2008, we had regulatory capital of \$519.4 million which is comprised of:

- \$182.1 million of restricted cash;
- \$110.0 million of financial guarantees; and
- \$227.3 million of Swedish government debt securities. These securities are included in financial investments, at fair value in the Consolidated Balance Sheets as of December 31, 2008.

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### **OMX AB Share Purchase**

On August 27, 2008, through compulsory acquisition procedures, NASDAQ OMX received advanced title for the remaining 1.2% of OMX AB shares held by OMX AB shareholders for an aggregate consideration of SEK 370.8 million (\$61.7 million at August 27, 2008). As a result of the compulsory acquisition procedures, OMX AB is now wholly-owned by NASDAQ OMX. The additional purchase price for the shares acquired was included in other liabilities in the Consolidated Balance Sheets as of December 31, 2008. In accordance with the compulsory acquisition procedures, NASDAQ OMX is required to maintain cash amounts greater than the total amount due, and as such, has segregated SEK 440.0 million (\$73.2 million as of August 27, 2008) in other assets in the Consolidated Balance Sheets as of December 31, 2008.

### **Quantitative and Qualitative Disclosures About Market Risk**

As a result of our operating and financing activities, we are exposed to market risks such as interest rate risk, foreign currency exchange rate risk, equity risk and credit risk.

We have implemented policies and procedures to measure, manage, monitor and report risk exposures, which are reviewed regularly by management and the board of directors. We identify risk exposures and monitor and manage such risks on a daily basis.

We perform sensitivity analyses to determine the effects that market risk exposures may have. We may use derivative instruments solely to hedge financial risks related to our financial positions or risks that are incurred during the normal course of business. We do not use derivative instruments for speculative purposes.

#### **Interest Rate Risk**

The majority of our financial assets and liabilities are based on floating rates and fixed rates with an outstanding maturity or reset date falling in less than one year. The following table summarizes our significant exposure to interest rate risk as of December 31, 2008:

	<u>Financial Assets</u>	<u>Financial Liabilities</u>	<u>Currency Forwards</u> (in millions)	<u>Total Net Exposure</u>	<u>Negative impact of a 100 bp adverse shift in interest rate<sup>(2)</sup></u>
<b>Floating rate<sup>(1)</sup> positions in:</b>					
U.S. Dollars	\$ 351.9	\$1,725.0	\$ 37.8	\$(1,335.3)	\$ 13.4
Swedish Krona	55.8	—	(95.1)	(39.3)	0.4
Danish Krone	2.3	—	110.0	112.3	1.1
Norwegian Krone	115.6	65.7	1.9	51.8	0.5
<b>Fixed rate positions in:</b>					
U.S. Dollars <sup>(3)</sup>	—	793.8	—	(793.8)	—
Swedish Krona <sup>(4)</sup>	227.3	—	—	227.3	0.3
Total	<u>\$ 752.9</u>	<u>\$2,584.5</u>	<u>\$ 54.6</u>	<u>\$(1,777.0)</u>	<u>\$ 15.7</u>

(1) Includes floating rate and fixed interest rates with a maturity or reset date due within 12 months.

(2) Annualized impact of a 100 basis point parallel adverse shift in the yield curve.

(3) Includes \$200.0 million of our Credit Facilities which was swapped to fixed rate using float-to-fixed interest rate swaps in the third quarter of 2008. See Note 9, "Debt Obligations," and Note 17, "Derivative Financial Instruments and Hedging Activities," to the consolidated financial statements for further discussion.

(4) Primarily consists of our Swedish government debt securities, which are classified as trading investment securities, with an average duration of 0.9 years. See Note 7, "Financial Investments, at Fair Value," to the consolidated financial statements for further discussion.

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We are exposed to cash flow risk on floating rate positions. Because we are a net lender in Swedish Krona, Norwegian Krone and Danish Krone, including currency forward positions, when interest rates in these currencies decrease, net interest and investment income decreases. Based on December 31, 2008 positions, each 1.0% increase in the Swedish Krona, Norwegian Krone and Danish Krone interest rates would impact annual pre-tax income by \$2.0 million in total as reflected in the table above. Because we are a net borrower in U.S. dollars including currency forward positions, when interest rates in U.S. dollars increase, our net interest cost increases. Based on December 31, 2008 positions, a 1.0% increase in U.S. dollar interest rates would impact annual pre-tax income by \$13.4 million.

We are exposed to a price risk on our fixed rate positions held in our Swedish government debt securities portfolio. At December 31, 2008, fixed rate positions with an average outstanding maturity or reset date falling in more than one year amounted to \$227.3 million. A shift of 1.0% of the interest rate curve would in aggregate impact the fair value of these positions by approximately \$1.9 million. The average duration of the portfolio was 0.9 years. The net effect of such a yield curve shift taking into account the change in fair value and the increase in interest income would impact annual pre-tax income negatively by \$0.3 million.

### **Foreign Currency Exchange Rate Risk**

As an international company, we are subject to currency translation risk. Some of our assets, liabilities, revenues and expenses are denominated in Swedish Krona, Euro and Danish Krone. Assets, liabilities, revenues and expenses of foreign subsidiaries are generally denominated in the local functional currency of such subsidiaries.

Our primary exposure to foreign denominated earnings for the year ended December 31, 2008 is presented by foreign currency in the following table:

	<u>Swedish Krona</u>	<u>Euro</u>	<u>Danish Krone</u>
	(in millions, except currency rate)		
Average foreign currency rate to the U.S. dollar in 2008	0.1516	1.4712	0.1963
Average foreign currency rate to the U.S. dollar in 2007	0.1480	1.3709	0.1837
Foreign denominated operating income	\$ 9.9	\$ 119.9	\$ 12.1
Impact of the currency fluctuations <sup>(1)</sup>	\$ 0.1	\$ 12.0	\$ 0.2

<sup>(1)</sup> Represents the impact of currency fluctuations for the year ended December 31, 2008 compared to the same period in 2007.

### **Equity Risk**

Our investments in foreign subsidiaries are exposed to volatility in currency exchange rates through translation of the foreign subsidiaries' net assets or equity to U.S. dollars. Our primary exposure to this equity risk for the year ended December 31, 2008 is presented by foreign currency in the following table:

	<u>Net Investment (millions of dollars)</u>	<u>Impact on Consolidated Equity of a 10% Decrease in Foreign Currency</u>
Swedish Krona	\$ 209.1	\$ 20.9
Euro	95.2	9.5
Danish Krone	124.8	12.5
Norwegian Krone	62.9	6.3

**Credit Risk**

We are exposed to credit risk from third parties, including customers, counterparties and clearing agents. These parties may default on their obligations to us due to bankruptcy, lack of liquidity, operational failure or other reasons. We limit our exposure to credit risk by rigorously selecting the counterparties with which we make investments and execute agreements. The financial investment portfolio objective is to invest in securities to preserve principal while maximizing yields, without significantly increasing risk. Credit risk associated with investments is minimized substantially by ensuring that these financial assets are placed with governments, well-capitalized financial institutions and other creditworthy counterparties.

Our subsidiaries, Nasdaq Execution Services and NASDAQ Options Services may be exposed to credit risk, due to the default of trading counterparties, in connection with the clearing and routing services that Nasdaq Execution Services and NASDAQ Options Services provide for our trading customers. System trades in equities routed to other market centers for members of The NASDAQ Stock Market are cleared by Nasdaq Execution Services, as a member of the NSCC. System trades in derivative contracts executed in the opening and closing cross and trades routed to other market centers are cleared by NASDAQ Options Services, as a member of the OCC.

Pursuant to the rules of the NSCC and Nasdaq Execution Services' clearing agreement, Nasdaq Execution Services is liable for any losses incurred due to counterparty or a clearing agent's failure to satisfy its contractual obligations, either by making payment or delivering securities. Pursuant to the rules of the OCC and NASDAQ Options Services' clearing agreement, NASDAQ Options Services is also liable for any losses incurred due to counterparty or a clearing agent's failure to satisfy its contractual obligations, either by making payment or delivering securities. Adverse movements in the prices of securities and derivative contracts that are subject to these transactions can increase our credit risk. However, we believe that the risk of material loss is limited, as Nasdaq Execution Services' and NASDAQ Options Services' customers are not permitted to trade on margin and NSCC and OCC rules limit counterparty risk on self-cleared transactions by establishing credit limits and capital deposit requirements for all brokers that clear with NSCC and OCC. Both Nasdaq Execution Services and NASDAQ Options Services have never incurred a liability due to a customer's failure to satisfy its contractual obligations as counterparty to a system trade. Credit difficulties or insolvency or the perceived possibility of credit difficulties or insolvency of one or more larger or visible market participants could also result in market-wide credit difficulties or other market disruptions.

In addition, through our clearing operations in the derivative markets with NASDAQ OMX Commodities, NASDAQ OMX Stockholm and IDCG, we are the legal counterparty for each derivative position traded and thereby guarantee the fulfillment of each contract. We are required to pledge collateral for commitments with other clearinghouses. The amount of these commitments is calculated on the gross exposure between the clearinghouses. As collateral for these obligations, we have obtained financial guarantees and credit facilities which are guaranteed by us through counter indemnities. At December 31, 2008, these guarantees and credit facilities totaled \$636.9 million. We require our customers to pledge collateral and meet certain minimum financial standards to mitigate the risk if they become unable to satisfy their obligations. At December 31, 2008, total customer pledged collateral was \$3.5 billion. The pledged collateral is held by a custodian bank. Since these funds are not held by NASDAQ OMX and they are not available for NASDAQ OMX to use, we do not receive any interest income on these funds. We believe that the potential for us to be required to make payments under these arrangements is mitigated through the pledged collateral, our risk management policies and in the case of NASDAQ OMX Commodities a default insurance policy. Accordingly, no contingent liability is recorded in the Consolidated Balance Sheets for these arrangements.

We also have credit risk related to transaction fees that are billed to customers on a monthly basis, in arrears. Our potential exposure to credit losses on these transactions is represented by the receivable balances in our Consolidated Balance Sheets. Our customers are financial institutions whose ability to satisfy their contractual obligations may be impacted by volatile securities markets.

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On an ongoing basis we review and evaluate changes in the status of our counterparty's creditworthiness. Credit losses such as those described above could adversely affect our consolidated financial position and results of operations.

### **Contractual Obligations and Contingent Commitments**

NASDAQ OMX has contractual obligations to make future payments under debt obligations by contract maturity, minimum rental commitments under non-cancelable operating leases, net and other obligations. The following table shows these contractual obligations:

<u>Contractual Obligations</u>	<u>Payments Due by Period</u>				
	<u>Total</u>	<u>Less than 1 year</u>	<u>1-3 years (in millions)</u>	<u>3-5 years</u>	<u>More than 5 years</u>
Debt obligations by contract maturity (See Note 9, "Debt Obligations") <sup>(1)</sup>	\$2,762.1	\$ 299.1	\$1,003.3	\$1,459.7	\$ —
Minimum rental commitments under non-cancelable operating leases, net (See Note 18, "Leases")	380.1	49.6	90.0	72.9	167.6
Other obligations	116.1	25.4	71.6	1.8	17.3
Total	<u>\$3,258.3</u>	<u>\$ 374.1</u>	<u>\$1,164.9</u>	<u>\$1,534.4</u>	<u>\$ 184.9</u>

<sup>(1)</sup> Our debt obligations include both principal and interest obligations. The interest on our Credit Facilities reflects the net interest payment after consideration of interest rate swap agreements that effectively converted \$200.0 million of our Credit Facility to fixed rate debt. See Note 9, "Debt Obligations," to the consolidated financial statements for further discussion. A weighted-average interest rate of 3.06% at December 31, 2008 was used to compute the amount of the contractual obligations for interest on our Credit Facilities. For our 3.75% convertible notes, the contractual obligation for interest was calculated on a 360 day basis at the contractual fixed rate of 3.75% multiplied by the remaining aggregate principal amount of \$120.1 million at December 31, 2008. The 2.50% convertible senior notes contractual obligation for interest was calculated on a 360 day basis at the contractual fixed rate of 2.50% multiplied by the aggregate principal amount of \$475.0 million at December 31, 2008.

### **Off-Balance Sheet Arrangements**

#### **Brokerage Activities**

In accordance with FASB Interpretation 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others," or FIN 45, Nasdaq Execution Services and NASDAQ Options Services provide guarantees to securities clearinghouses and exchanges under their standard membership agreements, which require members to guarantee the performance of other members. If a member becomes unable to satisfy its obligations to the clearinghouses, other members would be required to meet its shortfalls. To mitigate these performance risks, the exchanges and clearinghouses often require members to post collateral as well as meet certain minimum financial standards. Nasdaq Execution Services' and NASDAQ Options Services' maximum potential liability under these arrangements cannot be quantified. However, we believe that the potential for Nasdaq Execution Services and NASDAQ Options Services to be required to make payments under these arrangements is unlikely. Accordingly, no contingent liability is recorded in the Consolidated Balance Sheets for these arrangements.

#### **Obligations Under Guarantee**

In connection with our registration as a national securities exchange, Nasdaq completed an internal reorganization in November 2006. As part of the reorganization, Nasdaq transferred the ownership of some of its

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subsidiaries, including its broker-dealer subsidiaries, to The NASDAQ Stock Market LLC. The NASDAQ Stock Market LLC assumed Nasdaq's obligations under the 3.75% convertible notes due October 22, 2012 and the related indenture. NASDAQ OMX guarantees the obligations of The NASDAQ Stock Market LLC under the indenture.

As discussed in Note 9, "Debt Obligations," to the consolidated financial statements, in the 2007 and 2008, a portion of the 3.75% convertible notes were converted from debt to equity. NASDAQ OMX continues to guarantee the obligations of The NASDAQ Stock Market LLC under the remaining 3.75% convertible notes.

### ***Guarantees Issued and Collateral Received for Clearing Operations***

Through our clearing operations in the derivative markets with NASDAQ OMX Commodities, NASDAQ OMX Stockholm and IDCG, we are the legal counterparty for each derivative position traded and thereby guarantee the fulfillment of each contract. We are required to pledge collateral for commitments with other clearinghouses. The amount of these commitments is calculated on the gross exposure between the clearinghouses. As collateral for these obligations, we have obtained financial guarantees and credit facilities which are guaranteed by us through counter indemnities. At December 31, 2008, these guarantees and credit facilities totaled \$636.9 million. We require our customers to pledge collateral and meet certain minimum financial standards to mitigate the risk if they become unable to satisfy their obligations. At December 31, 2008, total customer pledged collateral was \$3.5 billion. The pledged collateral is held by a custodian bank. Since these funds are not held by NASDAQ OMX and they are not available for NASDAQ OMX to use, we do not receive any interest income on these funds. We believe that the potential for us to be required to make payments under these arrangements is mitigated through the pledged collateral, our risk management policies and in the case of NASDAQ OMX Commodities a default insurance policy. Accordingly, no contingent liability is recorded in the Consolidated Balance Sheets for these arrangements.

### ***Other Guarantees***

We have provided guarantees as of December 31, 2008 of \$31.3 million, primarily related to obligations for our rental and leasing contracts. We have received financial guarantees from various financial institutions to support these guarantees.

### **Critical Accounting Policies and Estimates**

The preparation of Consolidated Financial Statements in conformity with U.S. GAAP requires management to use judgment in making estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities and the reported amounts of revenue and expenses. The following critical accounting policies are based on, among other things, judgments and assumptions made by management that include inherent risk and uncertainties. Management's estimates are based on the relevant information available at the end of each period. For a summary of our significant accounting policies, including the accounting policies discussed below, see Note 2, "Summary of Significant Accounting Policies," to the consolidated financial statements for further discussion.

#### ***Revenue Recognition***

##### *Issuer Services Revenues*

##### *Global Listing Services*

Listing Services revenues in the U.S. include annual renewal fees, listing of additional shares fees and initial listing fees. Annual renewal fees do not require any judgments or assumptions by management as these amounts are recognized ratably over the following 12-month period. However, listing of additional shares fees and initial listing fees are recognized on a straight-line basis over estimated service periods, which are four and six years, respectively, based on our historical listing experience, pursuant to the requirements of SAB Topic 13.

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### Market Technology Revenues

Market Technology revenues are derived from three primary sources: licensing, support and project revenues, facility management services revenues and other revenues. Revenues related to Market Technology are accounted for in accordance with SOP 97-2, and SOP 81-1, depending upon the terms of the Market Technology contracts.

We may customize our software technology and make significant modifications to the software to meet the needs of our customers. As such, we account for these Market Technology contracts pursuant to the provisions of SOP 81-1. Under contract accounting, total revenues and costs incurred for a customer under a customer contract are deferred and recognized over the final element, generally the post contract support period. We have included the deferral of this revenue in other accrued liabilities and the deferral of costs in other assets in the Consolidated Balance Sheets.

We enter into sales arrangements with customers for software programs, support and other post-contract services. SOP 97-2 sets out precise requirements for establishing VSOE for valuing elements of certain multiple-element arrangements. When VSOE for individual elements of an arrangement cannot be established in accordance with SOP 97-2, revenue is generally deferred and recognized over the term of the final element. We do not have VSOE for certain elements of certain multiple-element arrangements with customers. Therefore, as stated above, for contracts which are accounted for under contract accounting, total revenues and costs incurred for a customer under a customer contract are deferred and recognized over the post contract support period after the significant modifications have been completed.

License, support and project revenues are derived from the system solutions developed and sold by NASDAQ OMX. After we have developed and sold a system solution, the customer licenses the right to use the software. Each project involves individual adaptations to the specific requirements of the customer, for instance, relating to functionality and capacity. When NASDAQ OMX provides a system solution, it undertakes to upgrade, develop and maintain the system and receives regular support revenues for this work which is recognized over the contract period. Under contract accounting, where customization and significant modifications to the software are made to meet the needs of our customers, total revenues as well as costs incurred are deferred until the customization and significant modifications are complete and are then recognized over the support period. The timing of recognition of our deferred Market Technology revenues is dependent upon the timing when significant modifications are made pursuant to the contracts. As such, as it relates to these fees, the timing represents our best estimate.

### ***Reserve for Bad Debts***

The reserve for bad debts is maintained at a level that management believes to be sufficient to absorb estimated losses in the accounts receivable portfolio. The reserve is increased by the provision for bad debts which is charged against operating results and decreased by the amount of charge-offs, net of recoveries. The amount charged against operating results is based on several factors including, but not limited to, a continuous assessment of the collectibility of each account, the length of time a receivable is past due and our historical experience with the particular customer. In circumstances where a specific customer's inability to meet its financial obligations is known (i.e., bankruptcy filings), we record a specific provision for bad debts against amounts due to reduce the receivable to the amount we reasonably believe will be collected. Due to changing economic, business and market conditions, we review the reserve for bad debts monthly and make changes to the reserve through the provision for bad debts as appropriate. If circumstances change (i.e., higher than expected defaults or an unexpected material adverse change in a major customer's ability to pay), our estimates of recoverability could be reduced by a material amount.

### ***Financial Investments***

We account for our financial investments in accordance with SFAS 115. Financial investments, at fair value on the Consolidated Balance Sheets, represent debt securities that are classified as trading. Changes in fair value of trading investment securities are included in dividend and investment income within other income (expense), net in the Consolidated Statements of Income. Long-term available-for-sale investment securities are carried at fair value in the Consolidated Balance Sheets in other assets with unrealized gains and losses, net of tax, reported as a separate component of stockholders' equity. Realized gains and losses on available-for-sale securities are included in earnings upon disposition of the securities using the specific identification method. In addition, losses are recognized when management determines that a decline in value is other-than-temporary, which requires judgment regarding the amount and timing of recovery. Indicators of other-than-temporary impairment for debt securities include issuer downgrade, default, or bankruptcy. For debt and equity securities we also consider the extent to which cost exceeds fair value, the duration of that difference and management's judgment about the issuer's current and prospective financial condition, as well as our intent and ability to hold the security until recovery of the unrealized losses. For equity securities we also consider the performance of the investee's stock price in relation to industry indexes and review the investee's credit profile. In the fourth quarter of 2008, we recorded an other-than-temporary impairment loss on a long-term available-for-sale investment security of \$34.9 million. This charge was included in asset impairment charges within other income (expense), net in the Consolidated Statements of Income. See "Accumulated Other Comprehensive Income," of Note 14, "Stockholders' Equity," to the consolidated financial statements for further discussion. We did not record any other-than-temporary impairments in December 31, 2007 or 2006.

Fair value of both available-for-sale and trading investment securities are generally obtained from third party pricing sources. When available, quoted market prices are used to determine fair value. If quoted market prices are not available, fair values are estimated using pricing models, where the inputs to those models are based on observable market inputs. The inputs to the valuation models vary by the type of security being priced but are typically benchmark yields, reported trades, broker dealer quotes, and prices of similar assets. Pricing models generally do not entail material subjectivity because the methodologies employed use inputs observed from active markets. See Note 16, "Fair Value of Financial Instruments," to the consolidated financial statements for further discussion of fair value measures.

### ***Goodwill and Indefinite-Lived Intangible Assets and Related Impairment***

Our business acquisitions typically result in the recording of goodwill and intangible assets, and the recorded values of those assets may become impaired in the future. As of December 31, 2008, goodwill totaled approximately \$5.4 billion and intangible assets, net of accumulated amortization, totaled approximately \$1.8 billion. The determination of the value of such goodwill and intangible assets requires management to make estimates and assumptions that affect our consolidated financial statements. In connection with SFAS No. 142, "Goodwill and Other Intangible Assets," or SFAS 142, we are required to test goodwill for impairment at the reporting unit level annually, or in interim periods if certain events occur indicating that the carrying value may be impaired. We have elected to make the first day of the fourth quarter the annual impairment assessment date for all goodwill and indefinite-lived intangible assets. We assess potential impairments to goodwill and indefinite-lived intangible assets when there is evidence that events or changes in circumstances indicate that the carrying amount of an asset may not be recovered. Our judgments regarding the existence of impairment indicators and future cash flows related to goodwill and intangible assets are based on operational performance of our acquired businesses, market conditions, relevant trading multiples of comparable companies, the trading price of our common stock and other factors. Although there are inherent uncertainties in this assessment process, the estimates and assumptions we use are consistent with our internal planning. However, disruptions to our business such as continued economic weakness and unexpected significant declines in operating results of reporting units, may result in our having to perform a goodwill impairment test for some or all of our reporting units prior to the required annual assessment. These types of events and the resulting analysis could result in goodwill or intangible asset impairment charges in the future. For goodwill, if the fair value of the reporting unit

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is less than its carrying value, an impairment loss is recorded to the extent that the fair value of the goodwill is less than the carrying value. For indefinite-lived intangible assets, impairment exists if the carrying value of the intangible asset exceeds its fair value.

### ***Long-Lived Assets and Related Impairment***

In accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," or SFAS 144, we assess potential impairments to our long-lived assets, including finite-lived intangible assets and property and equipment, when there is evidence that events or changes in circumstances indicate that the carrying amount of an asset may not be recovered. An impairment loss is recognized when the carrying amount of the long-lived asset is not recoverable and exceeds its fair value. The carrying amount of a long-lived asset is not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the asset. Any required impairment loss is measured as the amount by which the carrying amount of a long-lived asset exceeds its fair value and is recorded as a reduction in the carrying value of the related asset and a charge to operating results. In the third quarter of 2008, we recorded an impairment loss of finite-lived intangible assets of \$7.3 million primarily related to our insurance agency business, which is part of Corporate Services within our Issuer Services segment. This charge was included in asset impairment charges within other income (expense), net in the Consolidated Statements of Income. See Note 4, "Goodwill and Purchased Intangible Assets," for further discussion. In 2006, we recorded write-downs for property and equipment of \$5.9 million related to the sale of a building and related assets located in Trumbull, Connecticut. The carrying value of the building and related assets were adjusted to their fair market value less costs to sell, which were determined based on quoted market prices from independent third parties. This charge was also included in asset impairment charges within other income (expense), net in the Consolidated Statements of Income in 2006. No other impairments of long-lived assets were recorded in 2008, 2007 or 2006.

### ***Amortization Periods of Intangible Assets with Finite-Lives***

Intangible assets, net, primarily include exchange and clearing registrations, customer relationships, trade names, licenses and technology. Intangible assets with finite-lives are amortized on a straight-line basis over their estimated average useful lives as follows:

- Technology: 1.5—10 years
- Customer relationships: 11—30 years
- Other: 1—10 years

The estimated useful life of developed and new technology is based on the likely duration of benefit to be derived from the technology. We consider such factors as the migration cycle for re-platforming existing technologies and the development of future generations of technology. We also give consideration to paragraph 11 of SFAS 142, and to the pace of the technological changes in the industries in which we sell our products.

The estimated useful life of customer relationships is determined based on an analysis of the historical attrition rates of customers and paragraph 11 of SFAS 142, which includes an analysis of the legal, regulatory, contractual, competitive, economic, or other factors that limit the useful life of customer relationships.

See Note 3, "Business Combinations," and Note 4, "Goodwill and Purchased Intangible Assets," to the consolidated financial statements for further discussion of intangible assets.

### ***Share-Based Compensation***

We account for share-based compensation in accordance with SFAS No. 123 (revised 2004), "Share-Based Payment," or SFAS 123(R), which requires the measurement and recognition of compensation expense for all

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share-based payment awards made to employees including employee stock options, restricted stock, performance share units, or PSUs, and certain employee stock purchase plans, based on estimated fair values.

We estimate the fair value of share-based awards using the Black-Scholes valuation model. Assumptions used in the Black-Scholes valuation model include the expected life of the award, the weighted-average risk free rate, the expected volatility, and the dividend yield. Our computation of expected life is based on historical exercise patterns. The risk free interest rate for periods within the expected life of the award is based on the U.S. Treasury yield curve in effect at the time of grant. Our computation of expected volatility is based on a combination of historical and market-based implied volatility. Our Credit Facilities restrict our ability to pay dividends. Before our Credit Facilities were in place, it was not our policy to declare or pay cash dividends on our common stock.

See Note 12, "Share-Based Compensation," to the consolidated financial statements for further discussion.

### ***Income Taxes***

Estimates and judgments are required in the calculation of certain tax liabilities and in the determination of the recoverability of certain deferred tax assets, which arise from net operating loss carryforwards, tax credit carryforwards and temporary differences between the tax and financial statement recognition of revenue and expense. SFAS No. 109, "Accounting for Income Taxes," or SFAS 109, requires that deferred tax assets be reduced by a valuation allowance, if it is more likely than not that some portion or all of the recorded deferred tax assets will not be realized in future periods. We adopted the provisions of FIN 48, on January 1, 2007. FIN 48 requires management to determine whether a tax position is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. Once it is determined that a position meets the recognition thresholds, the position is measured to determine the amount of benefit to be recognized in the consolidated financial statements. Interest and/or penalties related to income tax matters are recognized in income tax expense.

In assessing the need for a valuation allowance, we consider all available evidence including past operating results, the existence of cumulative losses in the most recent fiscal years, estimates of future taxable income and the feasibility of tax planning strategies. In the event that we change our determination as to the amount of deferred tax assets that can be realized, we will adjust our valuation allowance with a corresponding impact to the provision for income taxes in the period in which such determination is made.

In addition, the calculation of our tax liabilities involves uncertainties in the application of tax regulations in the U.S. and other tax jurisdictions. We recognize potential liabilities for anticipated tax audit issues in such jurisdictions based on our estimate of whether, and the extent to which, additional taxes and interest may be due. While we believe that our tax liabilities reflect the probable outcome of identified tax uncertainties, it is reasonably possible that the ultimate resolution of any tax matter may be greater or less than the amount accrued. If events occur and the payment of these amounts ultimately proves unnecessary, the reversal of the liabilities would result in tax benefits being recognized in the period when we determine the liabilities are no longer necessary. If our estimate of tax liabilities proves to be less than the ultimate assessment, a further charge to expense would result.

### ***Pension and Post-Retirement Benefits***

Pension and other post-retirement benefit plan information for financial reporting purposes is developed using actuarial valuations. We assess our pension and other post-retirement benefit plan assumptions on a regular basis. In evaluating these assumptions, we consider many factors, including evaluation of the discount rate, expected rate of return on plan assets, healthcare cost trend rate, retirement age assumption, our historical assumptions compared with actual results and analysis of current market conditions and asset allocations. See Note 11, "Employee Benefits," to the consolidated financial statements for further discussion.

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Discount rates used for pension and other post-retirement benefit plan calculations are evaluated annually and modified to reflect the prevailing market rates at the measurement date of a high-quality fixed-income debt instrument portfolio that would provide the future cash flows needed to pay the benefits included in the benefit obligations as they come due. Actuarial assumptions are based upon management's best estimates and judgment.

The expected rate of return on plan assets for our U.S. pension plans represents our long-term assessment of return expectations which may change based on significant shifts in economic and financial market conditions. The long-term rate of return on plan assets is derived from return assumptions based on targeted allocations for various asset classes. While we consider the pension plans' recent performance and other economic growth and inflation factors, which are supported by long-term historical data, the return expectations for the targeted asset categories represents a long-term prospective return.

### **Software Costs**

We capitalize and amortize significant purchased application software and operational software that are an integral part of computer hardware on the straight-line method over their estimated useful lives, generally two to five years. We expense other purchased software as incurred.

NASDAQ OMX uses Statement of Position 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use," or SOP 98-1, for accounting for internally developed software. SOP 98-1 requires that certain costs incurred in connection with developing or obtaining internal use software be capitalized. We capitalize internal and third party costs incurred in connection with the development of internal use software.

The provisions of SFAS No. 86, "Accounting for the Costs of Computer Software to be Sold, Leased, or Otherwise Marketed," or SFAS 86, which apply to our Market Technology segment, specify the accounting for the costs of computer software to be sold, leased, or otherwise marketed as a separate product or as part of a product or process. In accordance with SFAS 86, software development expenses are capitalized after the product has reached technological feasibility. Technological feasibility is established upon completion of a detail program design or, in its absence, completion. Thereafter, all software production costs shall be capitalized. Prior to reaching technological feasibility, all costs are charged to expense. Capitalized costs are amortized on a straight-line basis over the remaining estimated economic life of the product and are included in depreciation and amortization expense in the Consolidated Statements of Income.

### **Recently Adopted Accounting Pronouncements**

**SFAS No. 157**—As of January 1, 2008, we adopted on a prospective basis certain required provisions of SFAS No. 157, "Fair Value Measurements," or SFAS 157, as amended by FASB Financial Staff Position, or FSP, No. 157-2, "Effective Date of FASB Statement No. 157," or FSP 157-2. Those provisions relate to our financial assets and liabilities carried at fair value and our fair value disclosures related to financial assets and liabilities. SFAS 157 defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. As such, our financial assets and financial liabilities recorded at fair value have been categorized based upon a fair value hierarchy in accordance with SFAS 157. See Note 16, "Fair Value of Financial Instruments," to the consolidated financial statements for further discussion. The adoption of SFAS 157 did not have a significant impact on our consolidated financial statements. We did not elect to adopt SFAS 157 for acquired non-financial assets and assumed non-financial liabilities.

**SFAS No. 159**—In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities," or SFAS 159. SFAS 159 allows entities to voluntarily choose, at specified election dates, to measure many financial assets and financial liabilities at fair value ("the fair value option"). SFAS 159 is expected to expand the use of fair value accounting but does not affect existing standards which require certain assets or liabilities to be carried at fair value. SFAS 159 provides an option for most financial

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assets and liabilities to be reported at fair value on an instrument-by-instrument basis with changes in fair value reported in earnings. After the initial adoption, the election is made at the acquisition of a financial asset, financial liability, or a firm commitment and it may not be revoked. SFAS 159 provides an opportunity to mitigate volatility in reported earnings that was caused by measuring hedged assets and liabilities that were previously required to use an accounting method other than fair value, while the related economic hedges were reported at fair value. SFAS 159 was effective for us on January 1, 2008. We have considered the fair value option and decided not to elect the option upon adoption. We will continue to consider the fair value option upon acquiring assets and liabilities that would fall under this option and may elect it in future periods.

### **Recently Issued Accounting Pronouncements**

**SFAS No. 141(R) and SFAS 160**—In December 2007, the FASB issued SFAS No. 141(R)(revised 2007), “Business Combinations,” or SFAS 141(R), which revised SFAS No. 141, “Business Combinations,” or SFAS 141, and FASB Statement No. 160, “Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51,” or SFAS 160. These FASBs are effective for us on a prospective basis on January 1, 2009.

SFAS 141(R) will significantly change how business acquisitions are accounted for and will impact financial statements both on the acquisition date and in subsequent periods. SFAS 141(R) will require:

- More assets acquired and liabilities assumed to be measured at fair value as of the acquisition date;
- Liabilities related to contingent consideration to be remeasured at fair value in each subsequent reporting period; and
- An acquirer to expense acquisition-related costs (e.g., deal fees for attorneys, accountants, investment bankers).

SFAS 160 will change accounting and reporting for minority interests, which will be characterized as noncontrolling interests and classified as a component of equity. SFAS 160 requires retroactive adoption of the presentation and disclosure requirements for existing minority interests. All other requirements of SFAS 160 shall be applied prospectively. Early adoption is prohibited for both standards.

**SFAS No. 161**—In March 2008, the FASB issued SFAS No. 161, “Disclosures about Derivative Instruments and Hedging Activities, an amendment of FASB Statement No. 133,” or SFAS 161. SFAS 161 expands the disclosure requirements for derivative instruments and hedging activities and specifically requires entities to provide enhanced disclosures concerning:

- How and why an entity uses derivative instruments;
- How derivative instruments and related hedged items are accounted for under SFAS No. 133, “Accounting for Derivative Instruments and Hedging Activities,” or SFAS 133; and
- How derivative instruments and related hedged items affect an entity’s financial position, financial performance and cash flows.

SFAS 161 also requires disclosure of the fair values of derivative instruments and their gains and losses in a tabular format. SFAS 161 is effective for us on January 1, 2009.

**FASB Staff Position APB No. 14-1**— In May 2008, the FASB issued FSP APB No. 14-1, “Accounting for Convertible Debt Instruments That May Be Settled in Cash Upon Conversion,” or FSP APB 14-1. FSP APB 14-1 will require us to separately account for the liability and equity components of the convertible debt instrument in a manner that reflects our nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. FSP APB 14-1 will require bifurcation of a component of the debt, classification of that component in equity and then accretion of the resulting discount on the debt as part of interest expense being reflected in the

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income statement. FSP APB 14-1 will be effective for us on January 1, 2009 and we are required to adopt FSP APB 14-1 in the first quarter of 2009. FSP APB 14-1 will not permit early application and will require retrospective application to all periods presented. We will adjust our previously issued consolidated financial statements to reflect the change in interest expense and reclassification of debt to equity as a result of implementing FSP APB 14-1. Based on our current assumptions, we expect that the implementation of FSP APB 14-1 will increase our reported interest expense by approximately \$13 million for 2008. Additionally, we expect that the reclassification of debt obligations to stockholders' equity will be approximately \$85 million for the year-ended December 31, 2008.

### Summarized Quarterly Financial Data (Unaudited)

	1st Qtr 2008	2nd Qtr 2008	3rd Qtr 2008	4th Qtr 2008
	(in thousands, except per share amounts)			
Total revenues	\$ 813,826	\$ 821,478	\$ 989,673	\$1,023,716
Cost of revenues	(535,494)	(441,325)	(590,635)	(621,161)
Revenues less liquidity rebates, brokerage, clearance and exchange fees	278,332	380,153	399,038	402,555
Total operating expenses	145,313	225,331	226,696	222,553
Operating income	133,019	154,822	172,342	180,002
Net income	\$ 121,363	\$ 101,637	\$ 60,116	\$ 36,764
Basic earnings per share	\$ 0.75	\$ 0.51	\$ 0.30	\$ 0.18
Diluted earnings per share	\$ 0.69	\$ 0.48	\$ 0.28	\$ 0.17
	1st Qtr 2007	2nd Qtr 2007	3rd Qtr 2007	4th Qtr 2007
Total revenues	\$ 561,947	\$ 558,201	\$ 651,961	\$ 664,484
Cost of revenues	(369,880)	(359,521)	(442,017)	(452,935)
Revenues less liquidity rebates, brokerage, clearance and exchange fees	192,067	198,680	209,944	211,549
Total operating expenses	110,665	99,829	126,238	110,068
Operating income	81,402	98,851	83,706	101,481
Net income	\$ 18,316	\$ 56,128	\$ 364,993	\$ 78,963
Basic earnings per share	\$ 0.16	\$ 0.50	\$ 3.23	\$ 0.63
Diluted earnings per share	\$ 0.14	\$ 0.39	\$ 2.41	\$ 0.52

### Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

Information about quantitative and qualitative disclosures about market risk is incorporated herein by reference from "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Quantitative and Qualitative Disclosures About Market Risk."

### Item 8. Financial Statements and Supplementary Data.

NASDAQ OMX's consolidated financial statements, including consolidated balance sheets as of December 31, 2008 and 2007, consolidated statements of income for the years ended December 31, 2008, 2007 and 2006, consolidated statements of changes in stockholders' equity for the years ended December 31, 2008, 2007 and 2006, consolidated statements of cash flows for the years ended December 31, 2008, 2007 and 2006

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and notes to our consolidated financial statements, together with a report thereon of Ernst & Young LLP, dated February 26, 2009, are attached hereto as pages F-1 through F-92 and incorporated by reference herein.

### **Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

None.

### **Item 9A. Controls and Procedures.**

(a). **Disclosure controls and procedures.** NASDAQ OMX's management, with the participation of NASDAQ OMX's Chief Executive Officer and Executive Vice President and Chief Financial Officer, has evaluated the effectiveness of NASDAQ OMX's disclosure controls and procedures (as defined in Rule 13a-15(e) and Rule 15d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act")) as of the end of the period covered by this report. Based upon that evaluation, NASDAQ OMX's Chief Executive Officer and Executive Vice President and Chief Financial Officer have concluded that, as of the end of such period, NASDAQ OMX's disclosure controls and procedures are effective.

(b). **Internal controls over financial reporting.** On February 27, 2008, Nasdaq completed its acquisition of OMX AB, on July 24, 2008, NASDAQ OMX completed its acquisition of PHLX and on October 21, 2008 NASDAQ OMX completed its acquisition of certain businesses of Nord Pool. Management has considered these transactions material to the results of operations, cash flows and financial position from the date of the acquisitions through December 31, 2008, and believes that the internal controls and procedures of both acquisitions have a material effect on internal controls over financial reporting. In accordance with SEC guidance, management has elected to exclude OMX, NASDAQ OMX PHLX and NASDAQ OMX Commodities from its December 31, 2008 assessment of and report on internal controls over financial reporting. NASDAQ OMX is currently in the process of incorporating the internal controls and procedures of OMX, NASDAQ OMX PHLX and NASDAQ OMX Commodities into the internal controls over financial reporting for our assessment of and report on internal controls over financial reporting for December 31, 2009. There have been no other changes in NASDAQ OMX's internal controls over financial reporting (as defined in Rule 13a-15(f) and Rule 15d-15(f) under the Exchange Act) that occurred during NASDAQ OMX's 2008 fiscal year that have materially affected, or are reasonably likely to materially affect, NASDAQ OMX's internal controls over financial reporting.

### **Management's Report on Internal Control Over Financial Reporting**

Management is responsible for the preparation and integrity of the consolidated financial statements appearing in the reports that we file with the SEC. The consolidated financial statements were prepared in conformity with U.S. generally accepted accounting principles and include amounts based on management's estimates and judgments.

Management is also responsible for establishing and maintaining adequate internal control over NASDAQ OMX's financial reporting. We maintain a system of internal control that is designed to provide reasonable assurance as to the fair and reliable preparation and presentation of the consolidated financial statements, as well as to safeguard assets from unauthorized use or disposition that could have a material effect on the financial statements.

Our management assessed the effectiveness of our internal control over financial reporting, as of December 31, 2008, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). This evaluation included review of the documentation of controls, evaluation of the design effectiveness of controls, testing of the operating effectiveness of controls and a conclusion on this evaluation. Although there are inherent limitations in the effectiveness of any system of internal control over financial reporting, based on its assessment, our management believes that, as of December 31, 2008, our internal control over financial reporting is effective.

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Management's assessment of and conclusion on the effectiveness of internal control over financial reporting did not include, in accordance with SEC guidance, the internal controls of OMX, NASDAQ OMX PHLX and NASDAQ OMX Commodities operations which are included in the 2008 consolidated financial statements and in 2008 reflect total assets constituting 82% of consolidated total assets including 70% of goodwill, intangible assets, net and market value, outstanding derivative positions, 62% of consolidated liabilities and approximately 37% of the gross margin of consolidated results.

Ernst & Young LLP, an independent registered public accounting firm, has issued an attestation report on NASDAQ OMX's internal control over financial reporting, which is include herein.

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### **Report of Independent Registered Public Accounting Firm**

The Board of Directors and Stockholders of The NASDAQ OMX Group, Inc.

We have audited The NASDAQ OMX Group Inc.'s internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). The NASDAQ OMX Group, Inc.'s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate.

As indicated in the accompanying Management's Report on Internal Control Over Financial Reporting, management's assessment of and conclusion on the effectiveness of internal control over financial reporting did not include the internal controls of OMX AB (including Nord Pool) and the Philadelphia Stock Exchange, Inc., which are included in the 2008 consolidated financial statements of The NASDAQ OMX Group, Inc. and constituted 82% of total assets as of December 31, 2008 which includes 70% related to goodwill, intangible assets, net and market value, outstanding derivative positions and 37% and 15% of Revenues less liquidity rebates, brokerage, clearance and exchange fees and net income, respectively, for the year then ended. Our audit of internal control over financial reporting of The NASDAQ OMX Group, Inc. also did not include an evaluation of the internal control over financial reporting of OMX AB, the Philadelphia Stock Exchange, Inc. or Nord Pool.

In our opinion, The NASDAQ OMX Group, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on the COSO criteria.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of The NASDAQ OMX Group, Inc. as of December 31, 2008 and 2007, and the related consolidated statements of income, changes in stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2008 of The NASDAQ OMX Group, Inc. and our report dated February 26, 2009 expressed an unqualified opinion thereon.

*/s/ Ernst & Young LLP*

New York, New York  
February 26, 2009

**Item 9B. Other Information.**

None.

**Part III**

**Item 10. Directors, Executive Officers and Corporate Governance.**

Information about NASDAQ OMX's directors, as required by Item 401 of Regulation S-K, is incorporated by reference from the discussion under the caption "Proposal I: Election of Directors" in NASDAQ OMX's proxy statement for the 2009 Annual Meeting of Stockholders, or the Proxy. Information about NASDAQ OMX's executive officers, as required by Item 401 of Regulation S-K, is incorporated by reference from the discussion under the caption "Executive Officers of NASDAQ OMX" in the Proxy. Information about Section 16 reports, as required by Item 405 of Regulation S-K, is incorporated by reference from the discussion under the caption "Section 16(a) Beneficial Ownership Reporting Compliance" in the Proxy. Information about NASDAQ OMX's code of ethics, as required by Item 406 of Regulation S-K, is incorporated by reference from the discussion under the caption "NASDAQ OMX Corporate Governance Guidelines and Code of Ethics" in the Proxy. Information about NASDAQ OMX's nomination procedures, audit committee and audit committee financial experts, as required by Items 407(c)(3), 407(d)(4) and 407(d)(5) of Regulation S-K, is incorporated by reference from the discussion under the caption "Proposal I: Election of Directors" in the Proxy.

**Item 11. Executive Compensation.**

Information about NASDAQ OMX's director and executive compensation, as required by Items 402, 407(e)(4) and 407(e)(5) of Regulation S-K, is incorporated by reference from the discussion under the captions "Compensation Discussion and Analysis," "Director Compensation" and "Executive Compensation" in the Proxy.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.**

Information about security ownership of certain beneficial owners and management, as required by Item 403 of Regulation S-K, is incorporated by reference from the discussion under the caption "Security Ownership of Certain Beneficial Owners and Management" in the Proxy.

**Equity Compensation Plan Information**

NASDAQ OMX's Equity Plan provides for the issuance of our equity securities to officers and other employees, directors and consultants. In addition, U.S. employees of NASDAQ OMX and its subsidiaries are eligible to participate in the NASDAQ OMX 2000 Employee Stock Purchase Plan, or ESPP, at 85.0% of the fair market value of our common stock on the price calculation date. The Equity Plan and the ESPP have been approved previously by our stockholders. In 2003, we granted non-qualified stock options for 1,000,000 shares of common stock and 100,000 shares of restricted stock to Robert Greifeld, our Chief Executive Officer, as inducement awards to secure his employment with NASDAQ OMX. These two inducement awards were outside of the Equity Plan. The following table sets forth information regarding outstanding options and shares reserved for future issuance under all of NASDAQ OMX's compensation plans as of December 31, 2008.

<u>Plan Category</u>	<u>Number of shares to be issued upon exercise of outstanding options, warrants and rights (a)<sup>(1)</sup></u>	<u>Weighted-average exercise price of outstanding options, warrants and rights (b)</u>	<u>Number of shares remaining available for future issuance under equity compensation plans (excluding shares reflected in column (a))(c)</u>
Equity compensation plans approved by stockholders	10,026,905	\$ 19.27	6,280,203 <sup>(2)</sup>
Equity compensation plans not approved by stockholders	700,000 <sup>(3)(4)</sup>	\$ 5.28	
<b>Total</b>	<b>10,726,905</b>	<b>\$ 18.08</b>	<b>6,280,203<sup>(2)</sup></b>

- (1) The amounts in this column include only the number of shares to be issued upon exercise of outstanding options, warrants and rights. At December 31, 2008, we also had 2,516,440 shares to be issued upon vesting of outstanding restricted stock awards, restricted stock units and performance share units.
- (2) This amount includes 5,464,742 shares of common stock that may be awarded pursuant to the Equity Plan and 815,461 shares of common stock that may be issued pursuant to the ESPP.
- (3) Mr. Greifeld received an inducement award of non-qualified stock options exercisable for 1,000,000 shares of common stock pursuant to the terms of his 2003 employment agreement, of which he has exercised 300,000 shares. The award was granted on April 15, 2003 at an exercise price of \$5.28 per share and expires on April 15, 2013. The option became exercisable with respect to 250,000 shares on July 10, 2003 and became exercisable with respect to 250,000 shares on each of April 15, 2004, 2005 and 2006. In the event Mr. Greifeld's employment is terminated by NASDAQ OMX for cause or by Mr. Greifeld without good reason (each as defined in his 2003 employment agreement), the vested options will remain exercisable for a period ending on the earlier of ten days after termination or the expiration date. In the event Mr. Greifeld's employment is terminated by NASDAQ OMX without cause, by Mr. Greifeld for good reason or in the event of death or disability, Mr. Greifeld would have the earlier of 24 months after the termination date or the expiration date to exercise the vested options. If Mr. Greifeld's employment terminates as a result of retirement (as defined in his 2003 employment agreement), he would have the earlier of 370 days or the expiration date to exercise the vested options. In the event Mr. Greifeld's employment terminates as a result of a non-renewal by NASDAQ OMX, any vested options will be exercisable until the earlier of 24 months from termination or the expiration date. This inducement award is transferable by Mr. Greifeld only to certain immediate family members or to a trust or other entity for the exclusive benefit of such immediate family members.
- (4) Does not include 100,000 shares of restricted stock granted to Mr. Greifeld as an inducement award on June 11, 2003. The shares of restricted stock vested in equal amounts on each of the first three anniversaries of May 12, 2003, Mr. Greifeld's employment date. This inducement award is transferable only by the laws of descent and distribution.

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### **Item 13. Certain Relationships and Related Transactions, and Director Independence.**

Information about certain relationships and related transactions, as required by Item 404 of Regulation S-K, is incorporated herein by reference from the discussion under the caption “Certain Relationships and Related Transactions” in the Proxy. Information about director independence, as required by Item 407(a) of Regulation S-K, is incorporated herein by reference from the discussion under the caption “Proposal I: Election of Directors” in the Proxy.

### **Item 14. Principal Accountant Fees and Services.**

Information about principal accountant fees and services, as required by Item 9(e) of Schedule 14A, is incorporated herein by reference from the discussion under the caption “Proposal II: Ratify the Appointment of Independent Registered Public Accounting Firm” in the Proxy.

## **Part IV**

### **Item 15. Exhibits and Financial Statement Schedules.**

#### (a)(1) Financial Statements

See “Index to Consolidated Financial Statements.”

#### (a)(2) Financial Statement Schedules

See “Index to Consolidated Financial Statements.”

All other schedules for which provision is made in the applicable accounting regulations of the Securities and Exchange Commission are not required under the related instructions or are inapplicable and therefore have been omitted.

#### (a)(3) Exhibits

### **Exhibit Index**

#### **Exhibit Number**

3.1	Restated Certificate of Incorporation of Nasdaq (incorporated herein by reference to Exhibit 3.1 to the Quarterly Report on Form 10-Q for the quarter ended September 30, 2003 filed on November 14, 2003).
3.1.1	Certificate of Amendment of the Restated Certificate of Incorporation of Nasdaq filed on May 25, 2005 (incorporated herein by reference to Exhibit 3.1.1 to the Annual Report on Form 10-K for the year ended December 31, 2005 filed on March 15, 2006).
3.1.2	Certificate of Amendment of the Restated Certificate of Incorporation of Nasdaq filed on March 13, 2006 (incorporated herein by reference to Exhibit 3.1.2 to the Annual Report on Form 10-K for the year ended December 31, 2005 filed on March 15, 2006).
3.1.3	Certificate of Amendment of the Restated Certificate of Incorporation of Nasdaq filed on August 1, 2006 (incorporated herein by reference to Exhibit 3.1.3 to the Quarterly Report on Form 10-Q for the quarter ended September 30, 2006 filed on November 8, 2006).
3.1.4	Certificate of Amendment to the Restated Certificate of Incorporation of Nasdaq filed on February 27, 2008 (incorporated herein by reference to the language appearing under the caption “Approval of an Amendment to Nasdaq’s Restated Certificate of Incorporation to Change Nasdaq’s Name to “The NASDAQ OMX Group, Inc.” beginning on page 44 of the Definitive Proxy Statement filed on November 19, 2007).

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### Exhibit Number

- 3.1.5 Certificate of Designations, Preferences and Rights of Series C Cumulative Preferred Stock of Nasdaq (incorporated herein by reference to Exhibit 5.03 to the Current Report on Form 8-K filed on December 1, 2004).
- 3.1.6 Certificate of Designations, Preferences and Rights of Series D Cumulative Preferred Stock of Nasdaq (incorporated herein by reference to Exhibit 3.1 to the Current Report on Form 8-K filed on December 20, 2005).
- 3.1.7 Certificate of Elimination (incorporated herein by reference to Exhibit 3.1 to the Current Report on Form 8-K filed on April 4, 2006).
- 3.2 By-laws of The NASDAQ OMX Group, Inc. (incorporated herein by reference to Exhibit 3.2 to the Current Report on Form 8-K filed on July 29, 2008).
- 4.1 Form of Common Stock certificate (incorporated herein by reference to Exhibit 4.1 to the Registration Statement on Form 10 filed on April 30, 2001).
- 4.2 Securities Purchase Agreement, dated as of April 22, 2005, between Norway Acquisition SPV, LLC and Nasdaq (incorporated herein by reference to Exhibit 4.1 to the Current Report on Form 8-K filed on April 28, 2005).
- 4.3 Indenture, dated as of April 22, 2005, between Nasdaq and Law Debenture Trust Company of New York, as Trustee (incorporated herein by reference to Exhibit 4.3 to the Current Report on Form 8-K filed on April 28, 2005).
- 4.3.1 First Supplemental Indenture, dated as of December 8, 2005, between Nasdaq and Law Debenture Trust Company of New York (incorporated herein by reference to Exhibit 4.1 to the Current Report on Form 8-K filed on December 14, 2005).
- 4.3.2 Second Supplemental Indenture, dated as of November 9, 2006, among Nasdaq, The NASDAQ Stock Market LLC and Law Debenture Trust Company of New York, as trustee (incorporated herein by reference to Exhibit 4.4.2 to the Annual Report on Form 10-K filed on February 28, 2007).
- 4.4 Amended and Restated Securityholders Agreement, dated as of April 22, 2005, among Norway Acquisition SPV, LLC, Hellman & Friedman Capital Partners IV, L.P., H&F Executive Fund IV, L.P., H&F International Partners IV-A, L.P., and H&F International Partners IV-B, L.P., Silver Lake Partners TSA, L.P., Silver Lake Investors, L.P., VAB Investors, LLC and Integral Capital Partners VI, L.P. (incorporated herein by reference to Exhibit 4.5 to the Current Report on Form 8-K filed on April 28, 2005).
- 4.5 Registration Rights Agreement, dated as of April 22, 2005, among Nasdaq, Hellman & Friedman Capital Partners IV, L.P., H&F Executive Fund IV, L.P., H&F International Partners IV-A, L.P., and H&F International Partners IV-B, L.P., Silver Lake Partners TSA, L.P., Silver Lake Investors, L.P., VAB Investors, LLC and Integral Capital Partners VI, L.P. (incorporated herein by reference to Exhibit 4.4 to the Current Report on Form 8-K filed on April 28, 2005).
- 4.6 Purchase Agreement, dated February 20, 2008, among Nasdaq, J.P. Morgan Securities Inc. and Banc of America Securities LLC (as Initial Purchasers) (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on February 21, 2008).
- 4.7 Indenture, dated as February 26, 2008, between Nasdaq and The Bank of New York (incorporated herein by reference to Exhibit 4.1 to the Current Report on Form 8-K filed on March 3, 2008)
- 4.8 Form of 2.50% Convertible Senior Note due 2013 (incorporated herein by reference to Exhibit 4.2 to the Current Report on Form 8-K filed on March 3, 2008).

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### Exhibit Number

- 4.9 Registration Rights Agreement, dated February 26, 2008, among The NASDAQ OMX Group, Inc., J.P. Morgan Securities Inc. and Banc of America Securities LLC (incorporated herein by reference to Exhibit 4.3 to the Current Report on Form 8-K filed on March 3, 2008).
- 4.10 The NASDAQ OMX Group Inc.'s Stockholders' Agreement, dated as of February 27, 2008, between The NASDAQ OMX Group, Inc. and Borse Dubai Limited (incorporated herein by reference to Exhibit 10.2 to the Current Report on Form 8-K filed on March 3, 2008).
- 4.10.1 First Amendment to The NASDAQ OMX Group Inc.'s Stockholders' Agreement, dated as of February 19, 2009, between The NASDAQ OMX Group, Inc. and Borse Dubai Limited.
- 4.11 Registration Rights Agreement, dated as of February 27, 2008, among The NASDAQ OMX Group, Inc., Borse Dubai Limited and Borse Dubai Nasdaq Share Trust (incorporated herein by reference to Exhibit 10.3 to the Current Report on Form 8-K filed on March 3, 2008).
- 4.11.1 First Amendment to Registration Rights Agreement, dated as of February 19, 2009, among The NASDAQ OMX Group, Inc., Borse Dubai Limited and Borse Dubai Nasdaq Share Trust.
- 10.1 Amended and Restated Board Compensation Policy, approved as of December 17, 2008.\*
- 10.2 Amended and Restated Executive Corporate Incentive Plan, dated as of December 17, 2008.\*
- 10.3 Form of NASDAQ OMX Non-Qualified Stock Option Agreement (incorporated herein by reference to Exhibit 10.5 to the Annual Report on Form 10-K for the year ended December 31, 2007 filed on February 25, 2008).\*
- 10.4 Form of NASDAQ OMX Restricted Stock Award Agreement (directors) (incorporated herein by reference to Exhibit 10.7 to the Annual Report on Form 10-K for the year ended December 31, 2006 filed on February 28, 2007).\*
- 10.5 Form of NASDAQ OMX Performance Share Unit Agreement (incorporated herein by reference to Exhibit 10.8 to the Annual Report on Form 10-K for the year ended December 31, 2007 filed on February 25, 2008).\*
- 10.6 Amended and Restated Supplemental Executive Retirement Plan, dated as of December 17, 2008.\*
- 10.6.1 Amendment No. 1 to Amended and Restated Supplemental Executive Retirement Plan, effective as of December 31, 2008.\*
- 10.7 The NASDAQ OMX Group, Inc. Supplemental Employer Retirement Contribution Plan, dated as of December 17, 2008.\*
- 10.8 Employment Agreement by and between Nasdaq and Robert Greifeld, effective as of January 1, 2007 (incorporated herein by reference to Exhibit 10.5 to the Annual Report on Form 10-K filed on February 28, 2007).\*
- 10.8.1 Amendment to Employment Agreement by and between NASDAQ OMX and Robert Greifeld, effective as of December 31, 2008.\*
- 10.9 Nonqualified Stock Option Agreement, dated as of February 21, 2008, between Nasdaq and Robert Greifeld (incorporated herein by reference to Exhibit 10.13 to the Annual Report on Form 10-K for the year ended December 31, 2007 filed on February 25, 2008).\*
- 10.10 2007 Performance Share Unit Agreement, dated as of February 21, 2008, between Nasdaq and Robert Greifeld (incorporated herein by reference to Exhibit 10.14 to the Annual Report on Form 10-K for the year ended December 31, 2007 filed on February 25, 2008).\*

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<u>Exhibit Number</u>	
10.11	2008 Performance Share Unit Agreement, dated as of February 21, 2008, between Nasdaq and Robert Greifeld (incorporated herein by reference to Exhibit 10.15 to the Annual Report on Form 10-K for the year ended December 31, 2007 filed on February 25, 2008).*
10.12	Form of Amended and Restated Letter Agreement, effective as of December 31, 2008, between NASDAQ OMX and Certain Executive Officers.*
10.13	Employment Agreement between Nasdaq and Edward Knight, effective as of December 29, 2000 Nasdaq (incorporated herein by reference to Exhibit 10.14 to the Annual Report on Form 10-K for the year ended December 31, 2002 filed on March 31, 2003).*
10.13.1	First Amendment to Employment Agreement between Nasdaq and Edward Knight, effective February 1, 2002 Nasdaq (incorporated herein by reference to Exhibit 10.14.1 to the Annual Report on Form 10-K for the year ended December 31, 2002 filed on March 31, 2003).*
10.13.2	Second Amendment to Employment Agreement between NASDAQ OMX and Edward Knight, effective as of December 31, 2008.*
10.14	Letter Agreement, dated as of September 19, 2007, among Nasdaq, Nightingale Acquisition Limited and Borse Dubai Limited (incorporated herein by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q filed on November 9, 2007).
10.15	Terms of Sale, dated as of September 21, 2007, among UBS Limited, J.P. Morgan Securities Ltd. and Nightingale Acquisition Limited (incorporated herein by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q filed on November 9, 2007).
10.16	Transaction Agreement, dated as of May 25, 2007, between OMX AB and Nasdaq (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on May 31, 2007).
10.16.1	Supplement, dated as of September 20, 2007, between OMX AB and Nasdaq (incorporated herein by reference to Exhibit 10.4 to the Quarterly Report on Form 10-Q filed on November 9, 2007).
10.16.2	Letter Agreement, dated as of January 2, 2008, between OMX AB and Nasdaq (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on January 7, 2008).
10.17	OMX Transaction Agreement, dated as of November 15, 2007, among Nasdaq, Borse Dubai Limited and BD Stockholm AB (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on November 16, 2007).
10.17.1	Amendment to the OMX Transaction Agreement, dated as of February 27, 2008, among Nasdaq, Borse Dubai Limited and BD Stockholm AB (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on March 3, 2008).
10.18	DIFX Transaction Agreement, dated as of November 15, 2007, among Nasdaq, Borse Dubai Limited and Dubai International Financial Exchange Limited (incorporated herein by reference to Exhibit 10.2 to the Current Report on Form 8-K filed on November 16, 2007).
10.19	Agreement and Plan of Merger, dated as of November 6, 2007, among Nasdaq, Pinnacle Merger Corporation, Philadelphia Stock Exchange, Inc., and Citadel Derivatives Group LLC (incorporated herein by reference to Exhibit 2.1 to the Current Report on Form 8-K filed on November 7, 2007).
10.20	Share Purchase Agreement, dated as of February 21, 2008, between Nord Pool ASA and OMX AB (publ).

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### Exhibit Number

10.21	Credit Agreement, dated February 27, 2008, among NASDAQ OMX, the Lenders party thereto, Bank of America, N.A., as Administrative Agent, Collateral Agent, Swingline Lender and Issuing Bank, and JPMorgan Chase Bank, N.A., as Syndication Agent, and the other parties thereto (incorporated herein by reference to Exhibit 10.4 to the Current Report on Form 8-K filed on March 3, 2008).
10.21.1	Amendment No. 1 to Credit Agreement and Collateral Agreement, dated as of December 4, 2008, among NASDAQ OMX, the Lenders party thereto, Bank of America, N.A., as Administrative Agent, Collateral Agent, Swingline Lender and Issuing Bank, and JPMorgan Chase Bank, N.A., as Syndication Agent, and the other parties thereto.
11	Statement regarding computation of per share earnings (incorporated herein by reference from Note 15 to the consolidated financial statements under Part II, Item 8 of this Form 10-K).
12.1	Computation of Ratio of Earnings to Fixed Charges.
21.1	List of all subsidiaries.
23.1	Consent of Ernst & Young.
24.1	Powers of Attorney.
31.1	Certification of President and Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley").
31.2	Certification of Executive Vice President and Chief Financial Officer pursuant to Section 302 of Sarbanes-Oxley.
32.1	Certifications Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of Sarbanes-Oxley.

\* Management contract or compensatory plan or arrangement.

(b) Exhibits:

See Item 15(a)(3) above.

(c) Financial Statement Schedules:

See Item 15(a)(2) above.



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<u>Name</u>	<u>Title</u>
* _____ John D. Markese	Director
* _____ Hans Munk Nielsen	Director
* _____ Thomas F. O'Neill	Director
* _____ James S. Riepe	Director
* _____ Michael R. Splinter	Director
* _____ Lars Wedenborn	Director
* _____ Deborah L. Wince-Smith	Director

\* Pursuant to Power of Attorney

By: \_\_\_\_\_ /s/ EDWARD S. KNIGHT  
Edward S. Knight  
Attorney-in-Fact

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**THE NASDAQ OMX GROUP, INC.**  
**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS AND SCHEDULE**

The following consolidated financial statements of The NASDAQ OMX Group, Inc. and its subsidiaries are presented herein on the page indicated:

<a href="#">Report of Independent Registered Public Accounting Firm</a>	F-2
<a href="#">Consolidated Balance Sheets</a>	F-3
<a href="#">Consolidated Statements of Income</a>	F-4
<a href="#">Consolidated Statements of Changes in Stockholders' Equity</a>	F-5
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<a href="#">Financial Statement Schedule: Schedule II—Valuation and Qualifying Accounts</a>	1

**Report of Independent Registered Public Accounting Firm**

The Board of Directors and Stockholders of The NASDAQ OMX Group, Inc.

We have audited the accompanying consolidated balance sheets of The NASDAQ OMX Group, Inc. (the “Company”) as of December 31, 2008 and 2007, and the related consolidated statements of income, changes in stockholders’ equity, and cash flows for each of the three years in the period ended December 31, 2008. Our audits also included the financial statement schedule listed in the Index at Item 15. These financial statements and schedule are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of The NASDAQ OMX Group, Inc. at December 31, 2008 and 2007, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 2008, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), The NASDAQ OMX Group, Inc.’s internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 26, 2009 expressed an unqualified opinion thereon.

*/s/ Ernst & Young LLP*

New York, New York  
February 26, 2009

**The NASDAQ OMX Group, Inc.**  
**Consolidated Balance Sheets**  
**(in thousands, except share and par value amounts)**

	December 31,	
	2008	2007
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 565,760	\$ 1,325,314
Financial investments, at fair value	227,305	—
Receivables, net	338,564	249,524
Deferred tax assets	41,300	10,794
Market value, outstanding derivative positions	4,121,797	—
Other current assets	140,726	96,385
Total current assets	5,435,452	1,682,017
Property and equipment, net	182,943	64,523
Non-current deferred tax assets	644,112	63,279
Goodwill	4,492,422	980,736
Intangible assets, net	1,582,864	181,612
Other assets	357,082	7,230
Total assets	<u>\$ 12,694,875</u>	<u>\$ 2,979,397</u>
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 242,356	\$ 115,114
Section 31 fees payable to SEC	49,382	103,574
Accrued personnel costs	156,795	64,625
Deferred revenue	86,328	60,537
Other accrued liabilities	165,267	58,540
Deferred tax liabilities	14,284	8,807
Market value, outstanding derivative positions	4,121,797	—
Current portion of debt obligations	225,000	—
Total current liabilities	5,061,209	411,197
Debt obligations	2,293,756	118,438
Non-current deferred tax liabilities	671,933	91,811
Non-current deferred revenue	109,291	94,045
Other liabilities	300,241	55,623
Total liabilities	8,436,430	771,114
Minority interests	17,023	—
Commitments and contingencies		
<b>Stockholders' equity</b>		
Common stock, \$0.01 par value, 300,000,000 shares authorized, shares issued: 202,188,144 at December 31, 2008 and 139,096,762 at December 31, 2007; shares outstanding: 201,896,700 at December 31, 2008 and 138,869,150 at December 31, 2007	2,023	1,393
Preferred stock, 30,000,000 shares authorized, none issued or outstanding	—	—
Additional paid-in capital	3,518,481	1,189,224
Common stock in treasury, at cost: 291,444 shares at December 31, 2008 and 227,612 shares at December 31, 2007	(10,350)	(8,035)
Accumulated other comprehensive income (loss)	(619,010)	(4,697)
Retained earnings	1,350,278	1,030,398
Total stockholders' equity	4,241,422	2,208,283
Total liabilities, minority interests and stockholders' equity	<u>\$ 12,694,875</u>	<u>\$ 2,979,397</u>

See accompanying notes to consolidated financial statements.

**The NASDAQ OMX Group, Inc.**  
**Consolidated Statements of Income**  
**(in thousands, except per share amounts)**

	Year Ended December 31,		
	2008	2007	2006
<b>Revenues</b>			
Market Services	\$ 3,207,294	\$ 2,152,390	\$ 1,408,297
Issuer Services	330,594	283,885	249,016
Market Technology	106,151	—	—
Other	4,654	317	463
Total revenues	<u>3,648,693</u>	<u>2,436,592</u>	<u>1,657,776</u>
<b>Cost of revenues</b>			
Liquidity rebates	(1,744,294)	(1,049,812)	(644,860)
Brokerage, clearance and exchange fees	(444,321)	(574,541)	(325,521)
Total cost of revenues	<u>(2,188,615)</u>	<u>(1,624,353)</u>	<u>(970,381)</u>
<b>Revenues less liquidity rebates, brokerage, clearance and exchange fees</b>	<u>1,460,078</u>	<u>812,239</u>	<u>687,395</u>
<b>Operating Expenses</b>			
Compensation and benefits	400,960	200,369	195,662
Marketing and advertising	18,613	20,822	20,522
Depreciation and amortization	92,578	38,890	70,916
Professional and contract services	71,895	32,113	32,038
Computer operations and data communications	54,471	28,694	41,472
Occupancy	65,174	34,556	34,125
Regulatory	28,943	28,865	—
Merger expenses	25,383	—	—
General, administrative and other	61,876	62,491	38,843
Total direct expenses	<u>819,893</u>	<u>446,800</u>	<u>433,578</u>
Support costs from related parties, net	—	—	33,771
Total operating expenses	<u>819,893</u>	<u>446,800</u>	<u>467,349</u>
Operating income	640,185	365,439	220,046
Other income (expense), net	(116,537)	428,368	(7,803)
Minority interest	(1,484)	96	902
Income before income taxes	522,164	793,903	213,145
Income tax provision	202,284	275,502	85,252
<b>Net income</b>	<u>\$ 319,880</u>	<u>\$ 518,401</u>	<u>\$ 127,893</u>
<b>Net income applicable to common stockholders:</b>			
Net income	\$ 319,880	\$ 518,401	\$ 127,893
Preferred stock:			
Dividends declared	—	—	(359)
Accretion of preferred stock	—	—	(331)
Net income applicable to common stockholders	<u>\$ 319,880</u>	<u>\$ 518,401</u>	<u>\$ 127,203</u>
<b>Basic and diluted earnings per share:</b>			
Basic earnings per share	<u>\$ 1.68</u>	<u>\$ 4.47</u>	<u>\$ 1.22</u>
Diluted earnings per share	<u>\$ 1.58</u>	<u>\$ 3.46</u>	<u>\$ 0.95</u>

See accompanying notes to consolidated financial statements.

**The NASDAQ OMX GROUP, Inc.**  
**Consolidated Statements of Changes in Stockholders' Equity**  
(in thousands, except share amounts)

	Number of Common Shares Outstanding	Common Stock	Additional Paid-in Capital	Common Stock in Treasury	Preferred Stock Series C and D	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Deferred Stock Compensation	Common Stock Issuable	Total
Balance at January 1, 2006	83,148,909	\$ 1,307	\$ 383,669	\$(613,369)	\$ 95,017	\$ (1,290)	\$ 385,794	\$ (4,930)	\$ 6,809	\$ 253,007
Net income	—	—	—	—	—	—	127,893	—	—	127,893
Change in unrealized gains and losses on available-for-sale investments, net of tax of \$(95,082)	—	—	—	—	—	147,320	—	—	—	147,320
Foreign currency translation	—	—	—	—	—	37	—	—	—	37
Employee benefit adjustments, net of tax of \$6,366	—	—	—	—	—	(9,863)	—	—	—	(9,863)
Comprehensive income for the year ended December 31, 2006										265,387
Proceeds from public equity offerings	26,542,142	—	630,024	342,394	—	—	—	—	—	972,418
Accretion of preferred stock and dividends declared	—	—	—	—	331	—	(690)	—	—	(359)
Redemption of Series C Cumulative and Series D preferred stock	—	—	—	—	(95,348)	—	—	—	—	(95,348)
Adoption of FAS 123R	—	—	33,027	—	—	—	—	4,930	(6,809)	31,148
Amortization and vesting of restricted stock	180,518	—	1,459	2,021	—	—	—	—	—	3,480
Stock options exercised, net	2,470,545	—	(2,831)	30,813	—	—	—	—	—	27,982
Other purchases of common stock, net	(24,127)	—	1,251	(1,611)	—	—	—	—	—	(360)
Balance at December 31, 2006	112,317,987	\$ 1,307	\$1,046,599	\$(239,752)	\$ —	\$ 136,204	\$ 512,997	\$ —	\$ —	\$1,457,355
Net income	—	—	—	—	—	—	518,401	—	—	518,401
Change in unrealized losses on available-for-sale investments, net of tax of (\$54)	—	—	—	—	—	83	—	—	—	83
Change in unrealized gain on sale of strategic initiative, net of tax of \$94,764	—	—	—	—	—	(146,826)	—	—	—	(146,826)
Foreign currency translation	—	—	—	—	—	(184)	—	—	—	(184)
Employee benefit adjustments, net of tax of (\$3,835)	—	—	—	—	—	6,026	—	—	—	6,026
Comprehensive income for the year ended December 31, 2007										377,500
Conversion of 3.75% convertible notes and exercise of warrants	24,777,859	83	110,848	214,155	—	—	—	—	—	325,086
Adoption of FIN 48	—	—	—	—	—	—	(1,000)	—	—	(1,000)
Amortization and vesting of restricted stock	136,750	—	5,420	1,329	—	—	—	—	—	6,749
Stock options exercised, net	1,597,005	3	24,363	17,084	—	—	—	—	—	41,450
Other purchases of common stock, net	39,549	—	1,994	(851)	—	—	—	—	—	1,143
Balance at December 31, 2007	138,869,150	\$ 1,393	\$1,189,224	\$(8,035)	\$ —	\$ (4,697)	\$1,030,398	\$ —	\$ —	\$2,208,283

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	Number of Common Shares Outstanding	Common Stock	Additional Paid-in Capital	Common Stock in Treasury	Preferred Stock Series C and D	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Deferred Stock Compensation	Common Stock Issuable	Total
Net income	—	—	—	—	—	—	319,880	—	—	319,880
Change in unrealized losses on derivative financial instruments that qualify as cash flow hedges, net of tax of \$4,408	—	—	—	—	—	(6,738)	—	—	—	(6,738)
Foreign currency translation, net of tax of \$436,600	—	—	—	—	—	(601,423)	—	—	—	(601,423)
Employee benefit adjustments, net of tax of \$975	—	—	—	—	—	(6,152)	—	—	—	(6,152)
Comprehensive income for the year ended December 31, 2008										(294,433)
Business combination with OMX AB	60,561,515	606	2,266,212	—	—	—	—	—	—	2,266,818
Conversion of 3.75% convertible notes and exercise of warrants	1,531,451	15	22,336	(234)	—	—	—	—	—	22,117
Amortization and vesting of restricted stock	164,507	2	14,790	(2,081)	—	—	—	—	—	12,711
Stock options exercised, net	712,860	6	22,997	—	—	—	—	—	—	23,003
Other purchases of common stock, net	57,217	1	2,922	—	—	—	—	—	—	2,923
Balance at December 31, 2008	<u>201,896,700</u>	<u>\$ 2,023</u>	<u>\$3,518,481</u>	<u>\$ (10,350)</u>	<u>\$ —</u>	<u>\$ (619,010)</u>	<u>\$1,350,278</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$4,241,422</u>

See accompanying notes to consolidated financial statements.

**The NASDAQ OMX Group, Inc.**  
**Consolidated Statements of Cash Flows**  
(in thousands)

	Year Ended December 31,		
	2008	2007	2006
<b>Cash provided by operating activities</b>			
Net income	\$ 319,880	\$ 518,401	\$ 127,893
Adjustments to reconcile net income to cash provided by operating activities:			
Depreciation and amortization	92,578	38,890	70,916
Share-based compensation	25,681	16,746	9,871
Excess tax benefits related to share-based compensation	(5,315)	(16,210)	(24,758)
Provision for bad debts	4,118	1,858	464
Loss on the early extinguishment and refinancing of debt obligations	—	6,961	22,032
Asset impairment charges	42,184	—	5,925
(Gain) loss on foreign currency contracts	57,959	(43,950)	(48,391)
Deferred taxes, net	(103,145)	(15,582)	13,404
Income from unconsolidated investees, net	(27,321)	—	—
Clearing contract charge	—	10,620	—
Strategic initiative costs	—	26,511	—
Gain on sale of strategic initiative	—	(431,383)	—
Other non-cash items included in net income	4,847	(2,150)	(61)
Net change in operating assets and liabilities, net of effects of acquisitions:			
Receivables, net	31,553	(26,502)	9,524
Other assets	10,107	7,661	(22,060)
Accounts payable and accrued expenses	19,772	(31,250)	(17,953)
Section 31 fees payable to SEC	(54,192)	43,470	60,104
Accrued personnel costs	20,872	9,059	(207)
Deferred revenue	(40,460)	7,175	(389)
Other accrued liabilities	(9,007)	63,640	5,017
Payables to related parties	—	—	(8,063)
Other liabilities	17,614	(10,729)	(2,193)
<b>Cash provided by operating activities</b>	<b>407,725</b>	<b>173,236</b>	<b>201,075</b>
<b>Cash flows from investing activities</b>			
Purchases of trading investment securities	(164,588)	—	—
Purchases of available-for-sale investments, net	—	(80,400)	(1,827,057)
Proceeds from maturities of available-for-sale investments	—	51,910	38,780
Proceeds from sales and redemptions of available-for-sale investments	15,176	1,864,630	581,670
Purchases of foreign currency contracts	(12,500)	(12,988)	(23,350)
Settlement of foreign currency contracts	66,515	67,937	—
Acquisitions of businesses, net of cash and cash equivalents acquired and purchase accounting adjustments	(2,998,821)	(15,105)	(53,959)
Purchases of property and equipment	(54,719)	(18,489)	(21,035)
Proceeds from sales of property and equipment	267	383	30,568
<b>Cash provided by (used in) investing activities</b>	<b>(3,148,670)</b>	<b>1,857,878</b>	<b>(1,274,383)</b>
<b>Cash flows from financing activities</b>			
Proceeds from debt obligations, net of debt issuance costs	2,421,748	—	2,000,000
Payments of debt obligations	(427,918)	(1,060,823)	(1,689,177)
Net proceeds from exercise of warrants	22,088	—	—
Net proceeds from equity offerings	—	—	972,418
Issuances of common stock, net of treasury stock purchases	7,641	16,818	27,126
Series C Cumulative preferred stock, net of treasury stock purchases	—	—	(105,059)
Excess tax benefits related to share-based compensation	5,315	16,210	24,758
<b>Cash provided by (used in) financing activities</b>	<b>2,028,874</b>	<b>(1,027,795)</b>	<b>1,230,066</b>
Effect of exchange rate changes on cash and cash equivalents	(47,483)	—	—
Increase (decrease) in cash and cash equivalents	(759,554)	1,003,319	156,758
Cash and cash equivalents at beginning of period	1,325,314	321,995	165,237
<b>Cash and cash equivalents at end of period</b>	<b>\$ 565,760</b>	<b>\$ 1,325,314</b>	<b>\$ 321,995</b>
<b>Supplemental Disclosure Cash Flow Information</b>			
Cash paid for:			
Interest	\$ 67,217	\$ 76,340	\$ 86,812
Income taxes, net of refund	\$ 266,263	\$ 229,571	\$ 22,849
Conversion of 3.75% convertible notes	\$ 29	\$ 324,894	\$ —

See accompanying notes to consolidated financial statements.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements**

**1. Organization and Nature of Operations**

On February 27, 2008, Nasdaq and OMX AB combined their businesses and Nasdaq was renamed The NASDAQ OMX Group, Inc. We are a leading global exchange group that delivers trading, exchange technology, securities listing, and public company services across six continents. Our global offerings are diverse and include trading across multiple asset classes, market data products, financial indexes, capital formation solutions, financial services and market technology products and services. Our technology powers markets across the globe, supporting cash equity trading, derivatives trading, clearing and settlement and many other functions.

In the U.S., we operate The NASDAQ Stock Market, a registered national securities exchange. The NASDAQ Stock Market is the largest electronic cash equity securities market in the United States in terms of number of listed companies and in the world in terms of share value traded. As of December 31, 2008, The NASDAQ Stock Market was home to over 3,000 listed companies with a combined market capitalization of approximately \$2.6 trillion. In addition, in the U.S. we operate NASDAQ OMX PHLX, which is the third largest U.S. options market, The NASDAQ Options Market, NASDAQ OMX BX, a second cash equities trading market, and NASDAQ OMX Futures Exchange, a futures market.

In Europe, we operate exchanges in Stockholm (Sweden), Copenhagen (Denmark), Helsinki (Finland), and Iceland as NASDAQ OMX Nordic and exchanges in Tallinn (Estonia), Riga (Latvia) and Vilnius (Lithuania) as NASDAQ OMX Baltic. In addition, we operate NASDAQ OMX Europe (London), a marketplace for pan-European blue chip trading, NASDAQ OMX Commodities, our new offering for trading and clearing commodities in Oslo, and the Armenian Stock Exchange.

The exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic offer trading in cash equities, bonds, structured products and ETFs, as well as trading and clearing of derivatives. Our Nordic and Baltic operations also offer alternative marketplaces for smaller companies called NASDAQ OMX First North. As of December 31, 2008, the exchanges within NASDAQ OMX Nordic and NASDAQ OMX Baltic were home to 824 listed companies with a combined market capitalization of approximately \$605 billion.

We also operate two registered broker-dealers: Nasdaq Execution Services and NASDAQ Options Services. Nasdaq Execution Services is a wholly-owned subsidiary of The NASDAQ Stock Market. It has no customers, accepts orders from one user, The NASDAQ Stock Market, and currently operates solely as the routing broker for The NASDAQ Stock Market. Nasdaq Execution Services is distinguished from most broker-dealers in that it is a facility of The NASDAQ Stock Market, which functions as both an exchange and a SRO.

NASDAQ Options Services is also a wholly-owned subsidiary of The NASDAQ Stock Market. It performs a comparable function to Nasdaq Execution Services with respect to routing of orders from The NASDAQ Options Market.

We manage, operate and provide our products and services in three business segments: Market Services, Issuer Services and Market Technology.

**Market Services**

Our Market Services segment includes our U.S. and European Transaction Services businesses, as well as our Market Data and Broker Services businesses. We offer trading on multiple exchanges and facilities across several asset classes including equities, derivatives, debt, commodities, structured products and ETFs.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

***U.S. Transaction Services***

In the U.S., we offer trading in equity securities, derivatives and ETFs on The NASDAQ Stock Market, NASDAQ OMX PHLX, The NASDAQ Options Market, NASDAQ OMX BX and NFX. Our transaction-based platforms in the U.S. provide market participants with the ability to access, process, display and integrate orders and quotes for cash equities and derivatives. The platforms allow the routing and execution of buy and sell orders as well as the reporting of transactions for cash equity securities, derivatives and ETFs, providing fee-based revenues.

***European Transaction Services***

**Nordic Transaction Services**

The exchanges that comprise NASDAQ OMX Nordic offer trading for equities and bonds and trading and clearing services for derivatives. Our platform allows the exchanges to share the same trading system which enables efficient cross-border trading and settlement, cross membership, and one source for Nordic market data.

Cash trading is offered in Nordic securities such as equities and depository receipts, warrants, convertibles, rights, fund units, ETFs, bonds and other interest-related products. NASDAQ OMX Nordic also offers trading in derivatives, such as stock options and futures, index options and futures, fixed-income options and futures and stock loans.

On NASDAQ OMX Stockholm, we offer clearing services for fixed-income options and futures, stock options and futures and index options and futures by serving as the central counterparty. In doing so, we guarantee the completion of the transaction and market participants can thereby limit their counterparty risk. We also act as the counterparty for certain over-the-counter contracts. The transactions are reported electronically prior to central counterparty clearing and we thereby guarantee the completion of the transaction. Following the completion of a transaction, settlement takes place between parties with the exchange of the securities and funds. The transfer of ownership is registered and the securities are stored on the owner's behalf. Settlement and registration of cash trading takes place in Sweden and Finland via the local central securities depositories.

**Baltic Transaction Services**

NASDAQ OMX holds a 62% ownership stake in NASDAQ OMX Tallinn (Estonia) and holds a 93% ownership stake in both NASDAQ OMX Riga (Latvia) and NASDAQ OMX Vilnius (Lithuania). In addition, we own the central securities depositories in Estonia and Latvia, and 40 percent of the central securities depository in Lithuania.

In the Baltic markets, NASDAQ OMX exchanges offer their members trading, clearing, payment and custody services. Issuers, primarily large companies, are offered listing and a distribution network for their securities. The securities traded are mainly equities, bonds and treasury bills. Clearing, payment and custody services are offered through the central securities depositories in Estonia, Latvia and Lithuania. In addition, in Estonia and Latvia, NASDAQ OMX offers registry maintenance of fund units included in obligatory pension funds, and in Estonia, the maintenance of shareholder registers for listed companies. The Baltic central securities depositories offer a complete range of cross-border settlement services.

**Pan-European Transaction Services**

NASDAQ OMX Europe is a new marketplace designed for high performance trading of the most actively traded European stocks. It is the first platform to connect European liquidity pools with pan-European routing.

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

As of December 31, 2008, NASDAQ OMX Europe traded approximately 800 securities including constituents of the main European indices, ETFs and other highly liquid securities.

**Commodities Trading and Clearing**

NASDAQ OMX Commodities, together with third party partner Nord Pool, provides access to the world's largest power derivatives markets and one of Europe's largest carbon markets. NASDAQ OMX Commodities offers international derivatives and carbon products, operates a clearing business and offers consulting services to commodities markets globally. Nord Pool is responsible for exchange operations and trading activities, including ownership of Nordic derivatives products. NASDAQ OMX Commodities and Nord Pool have more than 400 members from 22 countries across a wide range of energy producers and consumers, as well as financial institutions. NASDAQ OMX Commodities offering is designed for banks, brokers, hedge funds and other financial institutions, as well as power utilities, industry, manufacturing and oil companies. NASDAQ OMX Commodities offers clearing services for energy derivative and carbon product contracts by serving as the central counterparty. In doing so, we guarantee the completion of the transaction and market participants can thereby limit their counterparty risk. We also act as the counterparty for trades on the OTC derivative market subject to our approval on a case by case basis. Trading on the contracts can take place up until the delivery period which can occur over a period of up to six years.

**Access Services**

We provide market participants with several alternatives for accessing our markets for a fee. We also earn revenues from annual and monthly exchange membership and registration fees.

**Market Data**

Market Data revenues are earned from U.S tape plans and U.S. and European market data products.

**Net U.S. Tape Plans**

The NASDAQ Stock Market operates as the exclusive Securities Information Processor of the UTP Plan for the collection and dissemination of best bid and offer information and last transaction information from markets that quote and trade in NASDAQ-listed securities. The NASDAQ Stock Market also is a participant in the UTP Plan and shares in the net distribution of revenue according to the plan on the same terms as the other plan participants. In the role as the Securities Information Processor, The NASDAQ Stock Market collects and disseminates quotation and last sale information for all transactions in NASDAQ-listed securities whether on The NASDAQ Stock Market or other exchanges. We sell this information to market participants and to data distributors which the data distributors then sell to the public. After deducting costs associated with acting as an exclusive Securities Information Processor, as permitted under the revenue sharing provision of the UTP Plan, we distribute the tape fees to the respective UTP Plan participants, including The NASDAQ Stock Market, based on a formula required by Regulation NMS that takes into account both trading and quoting activity. In addition, all quotes and trades in NYSE- and NYSE Alternext-listed securities are reported and disseminated in real time, and as such, we share in the tape fees for information on NYSE- and NYSE Alternext-listed securities.

**U.S. Market Data Products**

Our data products enhance transparency and provide critical information to the professional and non-professional marketplace. We collect and process information and earn revenues as a distributor of our market data. We provide varying levels of quote and trade information to market participants and to data

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

distributors, who in turn sell subscriptions for this information to the public. Our systems enable vendors to gain direct access to our detailed order data, index information, mutual fund pricing information, and corporate action information on NASDAQ-listed securities. We earn revenues primarily based on the number of data subscribers and distributors of our data.

**European Market Data Products**

Nordic and Baltic market data products and services provide critical market transparency to the professional and non-professional investors that participate in NASDAQ OMX Nordic and NASDAQ OMX Baltic marketplaces and, at the same time, give investors greater insight into these markets.

Information products and services are based on the trading information from the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic for three classes of securities: equities, bonds and derivative instruments. We provide varying levels of quote and trade information to market participants and to data distributors, who in turn sell subscriptions for this information to the public. Revenues from European market data are subscription based and are generated primarily based on the number of data subscribers and distributors of our data.

***Broker Services***

Our Broker Services operations offer technology and customized securities administration solutions to financial participants in the Nordic market and in the United Kingdom. Broker Services provide services through a registered securities company which is regulated by the Swedish and United Kingdom Financial Supervisory Authorities. The primary services include flexible back-office systems. Our services allow customers to entirely or partly outsource their company's back-office functions.

We offer customer and account registration, business registration, clearing and settlement, corporate action handling for reconciliations and reporting to authorities. Available services also include direct settlement with the Nordic central securities depositories, real-time updating and communication via SWIFT to deposit banks. Revenues are based on a fixed basic fee for back-office brokerage services, such as administration or licensing, maintenance and operations, and a variable portion that depends on the number of transactions completed.

***Issuer Services***

Our Issuer Services segment includes our Global Listing Services and the Global Index Group businesses.

***Global Listing Services***

**U.S. Listings**

In the U.S., companies listed on The NASDAQ Stock Market represent a diverse array of industries including telecommunication services, information technology, financial services, healthcare, consumer products, industrials and energy. There are three types of fees applicable to companies that list on The NASDAQ Stock Market: an annual renewal fee, a listing of additional shares fees and an initial listing fee. Annual renewal fees for securities listed on The NASDAQ Stock Market are based on total shares outstanding. The fee for listing of additional shares is based on the total shares outstanding, which we review quarterly, and the initial listing fee for securities listed on The NASDAQ Stock Market includes a listing application fee and a total shares outstanding fee.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

European Listings

We also offer listings on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic. Revenues are generated through annual fees paid by companies listed on these exchanges which are measured in terms of the listed company's market capitalization. Our European listing customers are organization such as companies, funds or governments. Customers issue securities in the forms of equities and depository receipts, warrants, ETFs, convertibles, rights, options, bonds and other fixed-income related products.

Corporate Services

In addition, our Global Listing Services business includes revenues generated through our Corporate Services business. Our Corporate Services business provides customer support services, products and programs to companies, including companies listed on our exchanges. Through our Corporate Services offerings, companies gain access to innovative products and services that facilitate transparency, mitigate risk, maximize board efficiency and inspire better corporate governance.

**Global Index Group**

We develop and license NASDAQ OMX branded indexes, associated derivatives and financial products as part of our Global Index Group. These indexes and products leverage, extend and enhance the NASDAQ OMX brand. License fees for our trademark licenses vary by product based on assets or number or underlying dollar value of contracts issued. In addition to generating licensing revenues, these products, particularly mutual funds and ETFs, lead to increased investments in companies listed on The NASDAQ Stock Market, which enhances our ability to attract new U.S. listings. We also license cash-settled options, futures and options on futures on our indexes.

**Market Technology**

The Market Technology segment delivers technology and services to marketplaces throughout the world. Market Technology provides technology solutions for trading, clearing and settlement, and information dissemination, and also offers facility management integration and advisory services. Revenues are derived from three primary sources: licensing, support and project revenues, facility management services revenues and other revenues. License, support and project revenues are derived from the system solutions developed and sold by NASDAQ OMX. After we have developed and sold a system solution, the customer licenses the right to use the software. Facility management services revenues are derived when NASDAQ OMX assumes responsibility for the continuous operation of a system platform for a customer and receives facility management services revenues. Other revenues are derived from the amortization of the deferred revenue related to our contribution of technology licenses to NASDAQ Dubai and advisory services. See "Equity Investment in NASDAQ Dubai," of Note 3, "Business Combinations," for further discussion of our transaction with NASDAQ Dubai.

For further discussion of our segments, see Note 21, "Segments." For further discussion of our revenue recognition policies, see "Revenue Recognition and Cost of Revenues," of Note 2, "Summary of Significant Accounting Policies."

**2. Summary of Significant Accounting Policies**

**Basis of Presentation and Principles of Consolidation**

As discussed in Note 3, "Business Combinations," Nasdaq completed the business combination with OMX AB on February 27, 2008. The business combination between Nasdaq and OMX AB has been treated as a

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

purchase business combination for accounting purposes, with Nasdaq treated as the acquirer. The consolidated financial statements and accompanying notes included in this Form 10-K include the financial results of OMX from the date of acquisition.

We also completed our acquisitions of PHLX on July 24, 2008, BSX on August 29, 2008 and certain businesses of Nord Pool on October 21, 2008. These acquisitions have also been treated as purchases for accounting purposes, with NASDAQ OMX treated as the acquirer. On December 19, 2008, we purchased a majority stake in IDCG. The consolidated financial statements and accompanying notes included in this Form 10-K include the financial results of PHLX, BSX, certain businesses of Nord Pool and IDCG from the dates of each acquisition.

The consolidated financial statements are prepared in accordance with U.S. generally accepted accounting principles, or U.S. GAAP, and include the accounts of NASDAQ OMX, its wholly-owned subsidiaries and other entities in which NASDAQ OMX has a controlling financial interest. All significant intercompany accounts and transactions have been eliminated in consolidation. We consolidate those entities in which we are the primary beneficiary of a variable-interest entity, or VIE, as defined in FIN 46(R), "Consolidation of Variable Interest Entities, an interpretation of Accounting Research Bulletin No. 51, or ARB No. 51, (revised)," and entities where we have a controlling financial interest in accordance with ARB No. 51. When NASDAQ OMX is not the primary beneficiary of a VIE or does not have a controlling interest in an entity but exercises significant influence over the entity's operating and financial policies, such investment is accounted for under the equity method of accounting in accordance with Accounting Principles Board Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock," or APB 18.

In accordance with APB 18, for certain equity method investments for which financial information is not sufficiently timely for us to apply the equity method of accounting currently, we record our share of the earnings or losses of an investee from the most recent available financial statements on a lag. See Note 5, "Equity Method Investments," for further discussion of our equity method investments.

Certain prior year amounts have been reclassified to conform to the current year presentation.

**Use of Estimates**

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts and the disclosure of contingent amounts in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

**Foreign Currency Translation**

In accordance with SFAS No. 52, "Foreign Currency Translation," or SFAS 52, foreign denominated assets and liabilities are remeasured into the functional currency at exchange rates in effect at the balance sheet date through the income statement. Gains or losses resulting from foreign currency transactions are translated using the rates on the dates on which those elements are recognized during the period, and are included in general, administrative and other expense in the Consolidated Statements of Income.

Translation gains or losses resulting from translating our subsidiaries' financial statements from the local functional currency to the reporting currency, net of tax, are included in stockholders' equity. Assets and liabilities are generally translated at the balance sheet date while revenues and expenses are recorded at the date the transaction occurs or at an applicable average rate.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**Cash and Cash Equivalents**

Cash and cash equivalents include cash in banks and all non-restricted highly liquid investments with original maturities of three months or less at the time of purchase. Such equivalent investments included in cash and cash equivalents in the Consolidated Balance Sheets were \$349.8 million at December 31, 2008 and \$1,320.2 million at December 31, 2007. Cash equivalents are carried at cost plus accrued interest, which approximates fair value due to the short maturities of these investments. As of December 31, 2008, our cash and cash equivalents included \$230.8 million of restricted cash which is not available for general use by us due to regulatory and other requirements. There was no restricted cash included in cash and cash equivalents as of December 31, 2007.

**Financial Investments**

We account for our financial investments in accordance with SFAS 115. Financial investments, at fair value on the Consolidated Balance Sheets, represent debt securities that are classified as trading. Debt securities are bought principally for regulatory purposes and are generally sold in the near term. Changes in fair value of trading investment securities are included in dividend and investment income within other income (expense), net in the Consolidated Statements of Income. Long-term available-for-sale investment securities are carried at fair value in the Consolidated Balance Sheets in other assets with unrealized gains and losses, net of tax, reported as a separate component of stockholders' equity. Our long-term available-for-sale securities at December 31, 2008 represent equity securities in other foreign stock exchanges. Realized gains and losses on these securities are included in earnings upon disposition of the securities using the specific identification method. In addition, realized losses are recognized when management determines that a decline in value is other-than-temporary, which requires judgment regarding the amount and timing of recovery. Indicators of other-than-temporary impairment for debt securities include issuer downgrade, default, or bankruptcy. For debt and equity securities we also consider the extent to which cost exceeds fair value, the duration of that difference and management's judgment about the issuer's current and prospective financial condition, as well as our intent and ability to hold the security until recovery of the unrealized losses. For equity securities we also consider the performance of the investee's stock price in relation to industry indexes and review the investee's credit profile. In the fourth quarter of 2008, we recorded an other-than-temporary impairment loss on a long-term available-for-sale investment security of \$34.9 million. This charge was included in asset impairment charges within other income (expense), net in the Consolidated Statements of Income. See "Accumulated Other Comprehensive Income," of Note 14, "Stockholders' Equity," for further discussion. We did not record any other-than-temporary impairments in 2007 or 2006.

Fair value of both available-for-sale and trading investment securities are generally obtained from third party pricing sources. When available, quoted market prices are used to determine fair value. If quoted market prices are not available, fair values are estimated using pricing models, where the inputs to those models are based on observable market inputs. The inputs to the valuation models vary by the type of security being priced but are typically benchmark yields, reported trades, broker dealer quotes, and prices of similar assets. Pricing models generally do not entail material subjectivity because the methodologies employed use inputs observed from active markets. See Note 16, "Fair Value of Financial Instruments," for further discussion of fair value measures.

**Derivative Positions, at Fair Value**

Through our clearing operations in the derivative markets with NASDAQ OMX Commodities and NASDAQ OMX Stockholm, we are the legal counterparty for each derivative position traded and thereby guarantee the fulfillment of each contract. The derivatives are not used by NASDAQ OMX Commodities or NASDAQ OMX Stockholm for the purpose of trading on their own behalf. As a legal counterparty of each transaction, NASDAQ OMX Commodities and NASDAQ OMX Stockholm bear the counterparty risk. As such,

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

the market value of the derivative positions are reported gross in the Consolidated Balance Sheets after netting by customer where right of offset exists. The derivatives positions are recorded at fair value using an internal valuation model that uses key observable market data inputs. The structure and operations of NASDAQ OMX Commodities and NASDAQ OMX Stockholm differ from other clearinghouses. NASDAQ OMX Commodities and NASDAQ OMX Stockholm are not member owned organizations, do not maintain a guarantee fund to which members contribute and do not enforce loss sharing assessments amongst members. In addition, unlike other clearinghouses, they do not record any variation margin on the Consolidated Balance Sheet, as all risks and rewards of collateral ownership, including interest, belongs to the counterparty.

We have the responsibility for clearing, or settlement of payment, for the derivative and equity transactions. Certain timing differences may exist related to the periodic cash settlement of counterparty trades, between NASDAQ OMX Stockholm, United Kingdom broker services and other clearinghouses and customers, where we are acting as intermediary and guaranteeing the fulfillment of each contract. We have recorded receivables and payables associated with such timing differences in other current assets and accounts payable and accrued expenses, respectively, in the Consolidated Balance Sheets. Nord Pool, a third party, is responsible for exchange operations and trading activities on all counterparty trades where NASDAQ OMX Commodities is acting as intermediary. There are no timing differences related to the settlement of these transactions as all trades occur through Nord Pool and not between other exchanges with different settlement requirements.

**Derivative Financial Instruments and Hedging Activities**

To the extent that we engage in any hedging activity, we account for our hedging activity in accordance with SFAS 133. At December 31, 2008, we held derivative financial instruments which were designated and qualified for hedge accounting. Derivative financial instruments which are designated or qualify for hedge accounting, are recognized in the balance sheets at fair value as either assets or liabilities. The fair value of our derivative financial instruments are determined using either market quotes or valuation models that are based upon the net present value of estimated future cash flows and incorporate current market data inputs. We report our derivative assets in other current assets and our derivative liabilities in accounts payable and accrued expenses in the Consolidated Balance Sheets. Any ineffectiveness is recorded in earnings. The accounting for the change in the fair value of a derivative financial instrument depends on its intended use and the resulting hedge designation, if any. As of December 31, 2008, our derivative financial instruments which were designated and qualified for hedge accounting were cash flow hedges of our floating rate debt. As such, the accounting for the change in fair value of the derivative was included in accumulated other comprehensive income in the Consolidated Balance Sheets. Any ineffectiveness would impact earnings through interest expense. There was no material ineffectiveness recorded in earnings for the year ended December 31, 2008. For further discussion of hedging activities, see below and Note 17, "Derivative Financial Instruments and Hedging Activities."

***Non-Designated Derivatives***

We also use derivatives as economic hedges that are not designed as accounting hedges or do not qualify for hedge accounting treatment. For derivative financial instruments that do not qualify for hedge accounting or are not designated as hedges, changes in fair value are reported in current period earnings included in gain (loss) on foreign currency contracts within other income (expense), net in the Consolidated Statements of Income. As of December 31, 2008 and December 31, 2007, we had open foreign currency contracts hedging currency risk in our receivables. See Note 17, "Derivative Financial Instruments and Hedging Activities," for further discussion.

***Derivative Financial Instruments that Qualify for Hedge Accounting***

Derivative financial instruments that are entered into for hedging purposes are designated as such when we enter into the contract. For all derivative financial instruments that are designated for hedging activities, we

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

formally document all of the hedging relationships between the hedge instruments and the hedged items at the inception of the relationships. We also formally document our risk management objectives and strategies for entering into the hedge transactions. We formally assess, at inception and on a quarterly basis, whether derivatives designated as hedges are highly effective in offsetting the fair value or cash flows of hedged items. If it is determined that a derivative is no longer highly effective as a hedge, we will discontinue the application of hedge accounting.

**Receivables, net**

Our receivables are concentrated with our member firms, market data distributors, listed companies and market technology customers. Receivables are shown net of reserves for uncollectible accounts. The reserve for bad debts is maintained at a level that management believes to be sufficient to absorb estimated losses in the accounts receivable portfolio. The reserve is increased by the provision for bad debts which is charged against operating results and decreased by the amount of charge-offs, net of recoveries. The amount charged against operating results is based on several factors including, but not limited to, a continuous assessment of the collectibility of each account, the length of time a receivable is past due and our historical experience with the particular customer. In circumstances where a specific customer's inability to meet its financial obligations is known (i.e., bankruptcy filings), we record a specific provision for bad debts against amounts due to reduce the receivable to the amount we reasonably believe will be collected. Due to changing economic, business and market conditions, we review the reserve for bad debts monthly and make changes to the reserve through the provision for bad debts as appropriate. If circumstances change (i.e., higher than expected defaults or an unexpected material adverse change in a major customer's ability to pay), our estimates of recoverability could be reduced by a material amount. Total reserves netted against receivables in the Consolidated Balance Sheets were \$9.4 million at December 31, 2008 and \$2.9 million at December 31, 2007.

**Property and Equipment, net**

Property and equipment, including leasehold improvements, are carried at cost less accumulated depreciation and amortization. Depreciation and amortization are generally recognized over the estimated useful lives of the related assets. Estimated useful lives generally range from 10 to 40 years for buildings and improvements, two to five years for data processing equipment and software and five to 10 years for furniture and equipment. Leasehold improvements are amortized over the shorter of their estimated useful lives or the remaining term of the related lease. Depreciation and amortization are computed by the straight-line method. See Note 6, "Property and Equipment, net," for further discussion.

**Goodwill**

Goodwill represents the excess of purchase price and related costs over the value assigned to the net tangible and identifiable intangible assets of a business acquired. Goodwill is allocated to the reporting units based on the assignment of the fair values of each reporting unit of the acquired company. In connection with SFAS 142, we are required to test goodwill for impairment at the reporting unit level annually, or in interim periods if certain events occur indicating that the carrying value may be impaired. We have elected to make the first day of the fourth quarter the annual impairment assessment date for all goodwill and indefinite-lived intangible assets. If the fair value of the reporting unit is less than its carrying value, an impairment loss is recorded to the extent that the fair value of the goodwill is less than the carrying value. The determination of fair value includes considerations of projected cash flows, relevant trading multiples of comparable companies and the trading price of our common stock and other factors. There was no impairment of goodwill for the years ended December 31, 2008, 2007 and 2006. Although there is no impairment as of December 31, 2008, events such as continued economic

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

weakness and unexpected significant declines in operating results of reporting units, may result in our having to perform a goodwill impairment test for some or all of our reporting units prior to the required annual assessment. These types of events and the resulting analysis could result in goodwill impairment charges in the future.

**Intangible Assets, net**

Intangible assets, net, primarily include exchange and clearing registrations, customer relationships, trade names, licenses and technology. Intangible assets with finite-lives are amortized on a straight-line basis over their estimated average useful lives as follows:

- Technology: 1.5—10 years
- Customer relationships: 11—30 years
- Other: 1—10 years

In connection with SFAS 142, intangible assets deemed to have indefinite useful lives are not amortized and are subject to annual impairment tests. Impairment exists if the carrying value of the indefinite-lived intangible asset exceeds its fair value. For finite-lived intangible assets subject to amortization, impairment is considered upon certain “triggering events” and is recognized if the carrying amount is not recoverable and the carrying amount exceeds the fair value of the intangible asset, in accordance with SFAS 144. In the third quarter of 2008, we recorded an impairment loss of finite-lived intangible assets of \$7.3 million primarily related to our insurance agency business. For further discussion of this impairment loss of finite-lived intangible assets, see “Valuation of Long-Lived Assets” below. There was no impairment of indefinite-lived intangible assets in the years ended December 31, 2008, 2007 and 2006.

**Valuation of Long-Lived Assets**

In accordance with SFAS 144, we assess potential impairments to our long-lived assets, including finite-lived intangible assets and property and equipment, when there is evidence that events or changes in circumstances indicate that the carrying amount of an asset may not be recovered. An impairment loss is recognized when the carrying amount of the long-lived asset is not recoverable and exceeds its fair value. The carrying amount of a long-lived asset is not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the asset. Any required impairment loss is measured as the amount by which the carrying amount of a long-lived asset exceeds its fair value and is recorded as a reduction in the carrying value of the related asset and a charge to operating results. In the third quarter of 2008, we recorded an impairment loss of finite-lived intangible assets of \$7.3 million primarily related to our insurance agency business, which is part of Corporate Services within our Issuer Services segment. This charge was included in asset impairment charges within other income (expense), net in the Consolidated Statements of Income. See Note 4, “Goodwill and Purchased Intangible Assets,” for further discussion. In 2006, we recorded write-downs for property and equipment of \$5.9 million related to the sale of a building and related assets located in Trumbull, Connecticut. The carrying value of the building and related assets were adjusted to their fair market value less costs to sell, which were determined based on quoted market prices from independent third parties. This charge was also included in asset impairment charges within other income (expense), net in the Consolidated Statements of Income in 2006. No other impairments of long-lived assets were recorded in 2008, 2007 or 2006.

**Equity Method Investments**

We have certain investments in which we have determined that we have significant influence and as such account for the investments under the equity method of accounting in accordance with APB 18. As such, we

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

record our pro-rata share in earnings each period and record any dividends as a reduction in the investment balance. In addition, upon certain “triggering events”, we analyze these investments for other-than-temporary declines in value pursuant to APB 18. In certain cases, if there are readily determinable fair values, we utilize an impairment model similar to that required for available-for-sale investment securities. As of December 31, 2008, we have not recognized other-than-temporary declines in value on these investments.

**Revenue Recognition and Cost of Revenues**

***Market Services Revenues***

Transaction Services

*U.S. Cash Equity Trading*

U.S. cash equity trading revenues are variable, based on service volumes, and recognized as transactions occur. We charge transaction fees for executing cash equity trades in NASDAQ- and other listed securities on The NASDAQ Stock Market as well as on orders that are routed to other market venues for execution.

We closed the acquisition of BSX in August 2008. We used the BSX Exchange license to create a second U.S. cash equities market, called NASDAQ OMX BX, which was launched in January 2009. With NASDAQ OMX BX, we offer a second quote within the U.S. equities marketplace, providing our customers enhanced trading choices and price flexibility.

In the U.S., pursuant to EITF 99-19, we record execution revenues from transactions on a gross basis in revenues and record related expenses as cost of revenues. Nasdaq Execution Services, which is registered with the SEC as a broker-dealer, operates as The NASDAQ Stock Market’s routing broker-dealer for sending orders to other venues for execution in accordance with member order instructions and requirements. Nasdaq Execution Services, which is registered with the SEC as a broker-dealer, also clears all trading activity directly with the NSCC, either as a Qualified Special Representative, or QSR, or under an Automated Give Up, or AGU, agreement, through Automated Confirmation Trades system, or ACT, except for institutional trades and Designated Order Turnaround, or DOT, processed listed securities. The QSR relationship is an agreement between Nasdaq Execution Services, the clearing broker and a contra-clearing broker whereby the contra-clearing broker agrees to honor all trades sent directly to the NSCC by Nasdaq Execution Services. In the AGU relationship, Nasdaq Execution Services will send the trade to ACT initially and then ACT will send the trade to the NSCC for clearing. Nasdaq Execution Services, as a broker-dealer, can also receive non-electronic executions from markets that experienced technical issues hindering the receipt of electronic executions on trade date. These executions not received electronically on trade date (T) could be received in clearing on T+1 where Nasdaq Execution Services could potentially need to trade out of these executions on a principal capacity basis.

Under our Limitation of Liability Rule and procedures, we, subject to certain caps, provide compensation for losses directly resulting from the systems’ actual failure to correctly process an order, Quote/Order, message or other data into our platform. We do not record a liability for any potential claims that may be submitted under the Limitation of Liability Rule unless they meet the provisions of SFAS No. 5, “Accounting for Contingencies,” or SFAS 5. As such, losses arising as a result of the rule are accrued and charged to expense only if the loss is probable and estimable. The Limitation of Liability Rule and procedures applies to both U.S. cash equity and U.S. derivative trading in the aggregate. See discussion of U.S. derivative trading below.

We credit a portion of the per share execution charge to the market participant that provides the liquidity and record the liquidity rebate as a cost of revenues in the Consolidated Statements of Income. These liquidity

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

rebates are paid on a monthly basis and the amounts due are included in accounts payable and accrued expenses in the Consolidated Balance Sheets. The liquidity rebates payable amounts were \$48.5 million at December 31, 2008 and \$24.8 million at December 31, 2007.

Also, we pay Section 31 fees to the SEC for supervision and regulation of securities markets. We pass these costs along to our customers through our cash equity trading fees. We collect the fees as a pass-through charge from organizations executing eligible trades on The NASDAQ Stock Market platform and we recognize these amounts in cost of revenues when incurred. Section 31 fees received are included in cash and cash equivalents in the Consolidated Balance Sheets, at the time of receipt and, as required by law, the amount due to the SEC is remitted semiannually and recorded as Section 31 fees payable to the SEC in the Consolidated Balance Sheets until paid. Since the amount recorded in revenues is equal to the amount recorded in cost of revenues, there is no impact on our revenues less liquidity rebates, brokerage, clearance and exchange fees. As we hold the cash received until payment to the SEC, we earn interest income on the related cash balances.

*European Cash Equity Trading*

We charge transaction fees for executing trades on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic, as well as on NASDAQ OMX Europe. The transaction fee for executing trades on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic is charged per executed order and as per value traded. European cash equity trading revenues on NASDAQ OMX Europe are variable, based on service volumes, and recognized as transactions occur.

The exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic do not have any revenue sharing agreements or cost of revenues, such as liquidity rebates and brokerage, clearance and exchange fees.

*U.S. Derivative Trading*

U.S. derivative trading revenues are variable, based on service volumes, and recognized as transactions occur. The principal types of derivative contracts traded on NASDAQ OMX PHLX and The NASDAQ Options Market are equity options, index options and currency options. In the U.S., we also operate NFX, which offers trading for currency futures and other financial futures. In the U.S., for The NASDAQ Options Market, in accordance with EITF 99-19, we record derivative trading revenues from transactions on a gross basis in revenues and record related expenses as cost of revenues, as we have certain risk associated with trade execution. Since NASDAQ OMX PHLX and NFX do not act as principal to the transactions executed on these platforms, we are not exposed to clearance and settlement risk, and therefore EITF 99-19 is not applicable.

System trades in derivative contracts executed in the opening and closing cross and trades routed to other market centers are cleared by NASDAQ Options Services, which is registered with the SEC as a broker-dealer, as a member of the OCC. Pursuant to the rules of the OCC and NASDAQ Options Services' clearing agreement, we act as principal to the transactions executed on our platform, which exposes NASDAQ Options Services to clearance and settlement risk. NASDAQ Options Services', as a broker-dealer, can also receive non-electronic executions from markets that experienced technical issues hindering the receipt of electronic executions on trade date. For executions not received electronically on trade date (T), NASDAQ Options Services could receive notification that the trade occurred and would clear on T+1. NASDAQ Options Services could potentially need to trade out of these executions on a principal capacity basis. As discussed above, in the U.S., under our Limitation of Liability Rule and procedures, we, subject to certain caps, provide compensation for losses directly resulting from the systems' actual failure to correctly process an order, Quote/Order, message or other data into our platform.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

*European Derivative Trading*

European derivative trading revenues are also variable, are based on service volumes and are recognized as transactions occur. Derivative trading is conducted on NASDAQ OMX Stockholm and NASDAQ OMX Copenhagen. The principal types of derivative contracts traded are stock options and futures, index options and futures, fixed-income options and futures and stock loans. On NASDAQ OMX Stockholm, we offer clearing services for fixed-income options and futures, stock options and futures and index options and futures by serving as the central counterparty. In doing so, we guarantee the completion of the transaction and market participants can thereby limit their counterparty risk. The fee for executing derivative trading on NASDAQ OMX Stockholm is an integrated fee for both trading and clearing service.

European derivative trading revenues also include commodities clearing revenues. NASDAQ OMX Commodities, together with third party partner Nord Pool, provides access to the world's largest power derivatives markets and one of Europe's largest carbon markets. NASDAQ OMX Commodities offers trading of international power derivatives and carbon products, operates a clearing business and offers consulting services to commodities markets globally. Nord Pool is responsible for exchange operations and trading activities, including ownership of the Nordic derivatives products. Clearing revenues from Nord Pool trading transactions are variable, are based on service volumes and are recognized as transactions occur. We also have clearing revenues for contracts traded on the OTC market which are recognized when contracts are registered for clearing. In addition, European derivatives revenues include annual renewal fees. Each January, NASDAQ OMX Commodities members are billed an annual fee which is recognized ratably over the following 12-month period.

NASDAQ OMX Commodities and the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic do not have any revenue sharing agreements or cost of revenues, such as liquidity rebates and brokerage, clearance and exchange fees.

*Access Services*

We generate revenues by providing market participants with several alternatives for accessing our markets for a fee. The type of connectivity is determined by the level of functionality a customer needs. As a result, Access Services revenues vary depending on the type of connection provided to customers. We also earn revenues from annual and monthly exchange membership and registration fees. Revenues for providing access to our markets and revenues for monthly exchange membership and registration fees are recognized on a monthly basis as the service is provided. Revenues from annual fees for exchange membership and registration fees are recognized ratably over the following 12-month period.

Market Data

We earn Market Data revenues from U.S. tape plans and U.S. and European market data products.

*Net U.S. Tape Plans*

Revenues from U.S. tape plans include eligible UTP Plan revenues which are shared among UTP Plan participants. Under the revenue sharing provision of the UTP Plan, we are permitted to deduct costs associated with acting as the exclusive Securities Information Processor from the total amount of tape fees collected. After these costs are deducted from the tape fees, we distribute to the respective UTP Plan participants, including The NASDAQ Stock Market, their share of tape fees based on a formula, required by Regulation NMS that takes into account both trading and quoting activity. In addition, all quotes and trades in NYSE- and NYSE Alternext-listed securities are reported and disseminated in real time, and as such, we share in the tape fees for information on NYSE- and NYSE Alternext-listed securities. Revenues from net U.S. tape plans are recognized on a monthly basis.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

*U.S. Market Data Products*

We collect and process information and earn revenues as a distributor of our market data. We provide varying levels of quote and trade information to market participants and to data distributors, who in turn sell subscriptions for this information to the public. We earn revenues primarily based on the number of data subscribers and distributors of our data. U.S. Market Data revenues are recognized on a monthly basis. These revenues, which are subscription based, are recorded net of amounts due under revenue sharing arrangements with market participants.

*European Market Data Products*

European Market Data revenues, which are subscription based, are generated primarily through the sale and distribution of trading information based on data generated through trading on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic and are recognized on a monthly basis.

*Market Data Revenue Sharing*

The most significant component of Market Data revenues presented on a net basis in accordance with EITF 99-19 is the UTP Plan revenue sharing in the U.S. All indicators of gross vs. net reporting pursuant to EITF 99-19 have been considered in analyzing the appropriate presentation of UTP Plan revenue sharing. However, the following are the primary indicators of net reporting:

- **Primary Obligor:** We are the Securities Information Processor for the UTP Plan, in addition to being a participant in the UTP Plan. In our unique role as Securities Information Processor, we facilitate the collection and dissemination of revenues on behalf of the UTP Plan participants. As a participant, we share in the net distribution of revenues according to the plan on the same terms as all other plan participants.
- **Risk of Loss/Credit Risk:** Risk of loss on the revenue is shared equally among plan participants according to the UTP Plan.
- **Price Latitude:** The operating committee of the UTP Plan which is comprised of representatives from each of the participants, including us solely in our capacity as a UTP Plan participant, is responsible for setting the level of fees to be paid by distributors, subscribers and taking action in accordance with the provisions of the UTP Plan, subject to SEC approval.

The exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic do not have any market data revenue sharing agreements or cost of revenues, such as liquidity rebates and brokerage, clearance and exchange fees.

Broker Services

Our Broker Services operations offer technology and customized securities administration solutions to financial participants in the Nordic market and in the United Kingdom. The primary services include flexible back-office systems. Our services allow customers to entirely or partly outsource their company's back-office functions. Revenues from broker services are based on a fixed basic fee for administration or licensing, maintenance and operations, and a variable portion that depends on the number of transactions completed. Broker Services revenues are recognized on a continuous basis as services are rendered.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

***Issuer Services Revenues***

Global Listing Services

*U.S. Listing Services*

Listing Services revenues in the U.S. include annual renewal fees, listing of additional shares fees and initial listing fees. Annual renewal fees are recognized ratably over the following 12-month period. Listing of additional shares fees and initial listing fees are recognized on a straight-line basis over estimated service periods, which are four and six years, respectively, based on our historical listing experience, pursuant to the requirements of SAB Topic 13.

*European Listing Services*

European listing fees, which are comprised of issuers' revenues derived from annual fees received from listed companies on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic, are directly related to the listed companies' market capitalization. These revenues are recognized ratably over the following 12-month period.

*Corporate Services*

Global Listing Services revenues also include fees from Corporate Services. These fees include commission income from Carpenter Moore's insurance agency business, subscription income from Shareholder.com and Directors Desk, and fees from GlobeNewswire, formerly PrimeNewswire. For our insurance agency business, commission income is recognized when coverage becomes effective, the premium due under the policy is known or can be reasonably estimated, and substantially all required services related to placing the insurance have been provided. Fee income for services other than placement of insurance coverage is recognized as those services are provided. Broker commission adjustments and commissions on premiums billed directly by underwriters are recognized when such amounts can be reasonably estimated. Shareholder.com revenues are based on subscription agreements with customers. Revenues from subscription agreements are recognized ratably over the contract period, generally one year in length. As part of subscription services, customers are also charged usage fees based upon actual usage of the services provided. Revenues from usage fees and other services are recognized when earned. Directors Desk revenues are based on subscriptions for online services for directors. Subscriptions are one year in length and revenues are recognized ratably over the year. GlobeNewswire generates fees primarily from wire distribution services, and revenues are recognized as services are provided.

Global Index Group

Global Index Group revenues include license fees for our trademark licenses related to financial products linked to our indexes issued in the U.S. and abroad. We also generate revenues by licensing and listing third-party structured products and third-party sponsored ETFs. We primarily have two types of license agreements: transaction-based licenses and asset-based licenses. Transaction-based licenses are generally renewable long-term agreements. Customers are charged based on transaction volume or a minimum contract amount, or both. If a customer is charged based on transaction volume, we recognize revenue when the transaction occurs. If a customer is charged based on a minimum contract amount, we recognize revenue on a pro-rata basis over the licensing term. Asset-based licenses are also generally long-term agreements. Customers are charged based on a percentage of assets under management for licensed products, per the agreement, on a monthly or quarterly basis. These revenues are recorded on a monthly or quarterly basis over the term of the license agreement.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**Market Technology Revenues**

The Market Technology segment delivers technology and services to marketplaces throughout the world. Market Technology provides technology solutions for trading, clearing and settlement, and information dissemination, and also offers facility management integration and advisory services. Revenues are derived from three primary sources: licensing, support and project revenues, facility management services revenues and other revenues. Revenues related to Market Technology are accounted for in accordance with SOP 97-2, and SOP 81-1, depending upon the terms of the Market Technology contracts.

We may customize our software technology and make significant modifications to the software to meet the needs of our customers. As such, we account for these Market Technology contracts pursuant to the provisions of SOP 81-1. Under contract accounting, total revenues and costs incurred for a customer under a customer contract are deferred and recognized over the final element, generally the post contract support period. We have included the deferral of this revenue in other liabilities and the deferral of costs in other assets in the Consolidated Balance Sheets.

We enter into sales arrangements with customers for software programs, support and other post-contract services. SOP 97-2 sets out precise requirements for establishing VSOE for valuing elements of certain multiple-element arrangements. When VSOE for individual elements of an arrangement cannot be established in accordance with SOP 97-2, revenue is generally deferred and recognized over the term of the final element. We do not have VSOE for certain elements of certain multiple-element arrangements with customers. Therefore, as stated above, for contracts which are accounted for under contract accounting, total revenues and costs incurred for a customer under a customer contract are deferred and recognized over the post contract support period after the significant modifications have been completed.

License, support and project revenues are derived from the system solutions developed and sold by NASDAQ OMX. After we have developed and sold a system solution, the customer licenses the right to use the software. Each project involves individual adaptations to the specific requirements of the customer, for instance, relating to functionality and capacity. When NASDAQ OMX provides a system solution, it undertakes to upgrade, develop and maintain the system and receives regular support revenues for this work which is recognized over the contract period. Under contract accounting, where customization and significant modifications to the software are made to meet the needs of our customers, total revenues as well as costs incurred are deferred until the customization and significant modifications are complete and are then recognized over the support period.

Facility management services revenues are derived when NASDAQ OMX assumes responsibility for the continuous operation of a system platform for a customer and receives facility management services revenues which can be both fixed and volume-based. Facility management services revenues are recognized as services are rendered over the contract period after delivery has occurred.

Other revenues include amortization of the deferred revenue related to our contribution of technology licenses to NASDAQ Dubai. See “Equity Investment in NASDAQ Dubai,” of Note 3, “Business Combinations,” for further discussion of our transaction with NASDAQ Dubai. In addition, other revenues include advisory services that are recognized in revenue when earned.

**Earnings Per Share**

We compute earnings per share, or EPS, in accordance with SFAS No. 128, “Earnings per Share,” or SFAS 128. Basic EPS is computed by dividing net income applicable to common shareholders by the weighted

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

average number of common shares outstanding for the period. Diluted EPS reflects the assumed conversion of all dilutive securities which consist primarily of convertible notes and employee stock options and awards. See Note 15, “Earnings Per Common Share,” for further discussion.

**Share-Based Compensation**

We account for share-based compensation in accordance with SFAS 123(R), which requires the measurement and recognition of compensation expense for all share-based payment awards made to employees including employee stock options, restricted stock, PSUs, and discounted purchases under our employee stock purchase plan, based on estimated fair values. We recognize compensation expense for share-based awards on a straight-line basis over the requisite service period of the award. See Note 12, “Share-Based Compensation,” for further discussion.

**Deferred Revenue**

Deferred revenue represents revenues for services not yet rendered, primarily for Global Listing Services and Market Technology. See Note 8, “Deferred Revenue,” for further discussion.

**Advertising Costs**

We expense advertising costs, which include media advertising and production costs, in the periods in which the costs are incurred. Media advertising and production costs included as marketing and advertising expense in the Consolidated Statements of Income totaled \$6.6 million in 2008 and \$11.9 million for both 2007 and 2006.

**Software Costs**

Significant purchased application software and operational software that are an integral part of computer hardware are capitalized and amortized on a straight-line basis over their estimated useful lives, generally two to five years. All other purchased software is charged to expense as incurred. We develop systems solutions for both internal and external use.

The provisions of SOP 98-1 require certain costs incurred in connection with developing or obtaining internal use software to be capitalized. Unamortized capitalized software development costs are included in data processing equipment and software, within property and equipment, net in the Consolidated Balance Sheets. Amortization of costs capitalized under SOP 98-1 is included in depreciation and amortization expense in the Consolidated Statements of Income.

The provisions of SFAS 86, which apply to our Market Technology segment, specify the accounting for the costs of computer software to be sold, leased, or otherwise marketed as a separate product or as part of a product or process. In accordance with SFAS 86, software development expenses are capitalized after the product has reached technological feasibility. Technological feasibility is established upon completion of a detail program design or, in its absence, completion. Thereafter, all software production costs shall be capitalized. Prior to reaching technological feasibility, all costs are charged to expense. Capitalized costs are amortized on a straight-line basis over the remaining estimated economic life of the product and are included in depreciation and amortization expense in the Consolidated Statements of Income.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**Leases**

We account for our leases in accordance with SFAS No. 13, "Accounting for Leases." We expense rent from non-cancellable operating leases, net of sublease income, in the periods in which the costs are incurred. The net costs are included in occupancy expense in the Consolidated Statements of Income. See Note 18, "Leases," for further discussion.

**Income Taxes**

We use the asset and liability method required by SFAS 109 to provide income taxes on all transactions recorded in the consolidated financial statements. Deferred tax assets and liabilities are determined based on differences between the financial statement carrying amounts and the tax basis of existing assets and liabilities (i.e., temporary differences) and are measured at the enacted rates that will be in effect when these differences are realized. If necessary, a valuation allowance is established to reduce deferred tax assets to the amount that is more likely than not to be realized.

We recognize and measure our unrecognized tax benefits in accordance with FIN 48. FIN 48 requires management to determine whether a tax position is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. Once it is determined that a position meets the recognition thresholds, the position is measured to determine the amount of benefit to be recognized in the consolidated financial statements. Interest and/or penalties related to income tax matters are recognized in income tax expense. See Note 10, "Income Taxes," for further discussion.

**Recently Adopted Accounting Pronouncements**

**SFAS No. 157**—As of January 1, 2008, we adopted on a prospective basis certain required provisions of SFAS 157 as amended by FSP 157-2. Those provisions relate to our financial assets and liabilities carried at fair value and our fair value disclosures related to financial assets and liabilities. SFAS 157 defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. As such, our financial assets and financial liabilities recorded at fair value have been categorized based upon a fair value hierarchy in accordance with SFAS 157. See Note 16, "Fair Value of Financial Instruments," for further discussion. The adoption of SFAS 157 did not have a significant impact on our consolidated financial statements. We did not elect to adopt SFAS 157 for acquired non-financial assets and assumed non-financial liabilities.

**SFAS No. 159**—In February 2007, the FASB issued SFAS 159. SFAS 159 allows entities to voluntarily choose, at specified election dates, to measure many financial assets and financial liabilities at fair value ("the fair value option"). SFAS 159 is expected to expand the use of fair value accounting but does not affect existing standards which require certain assets or liabilities to be carried at fair value. SFAS 159 provides an option for most financial assets and liabilities to be reported at fair value on an instrument-by-instrument basis with changes in fair value reported in earnings. After the initial adoption, the election is made at the acquisition of a financial asset, financial liability, or a firm commitment and it may not be revoked. SFAS 159 provides an opportunity to mitigate volatility in reported earnings that was caused by measuring hedged assets and liabilities that were previously required to use an accounting method other than fair value, while the related economic hedges were reported at fair value. SFAS 159 was effective for us on January 1, 2008. We have considered the fair value option and decided to not elect the option upon adoption. We will continue to consider the fair value option upon acquiring assets and liabilities that would fall under this option and may elect it in future periods.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**Recently Issued Accounting Pronouncements**

**SFAS No. 141(R) and SFAS 160**—In December 2007, the FASB issued SFAS 141(R), which revised SFAS 141, and SFAS 160. These FASBs are effective for us on a prospective basis on January 1, 2009.

SFAS 141(R) will significantly change how business acquisitions are accounted for and will impact financial statements both on the acquisition date and in subsequent periods. SFAS 141(R) will require:

- More assets acquired and liabilities assumed to be measured at fair value as of the acquisition date;
- Liabilities related to contingent consideration to be remeasured at fair value in each subsequent reporting period; and
- An acquirer to expense acquisition-related costs (e.g., deal fees for attorneys, accountants, investment bankers).

SFAS 160 will change accounting and reporting for minority interests, which will be characterized as noncontrolling interests and classified as a component of equity. SFAS 160 requires retroactive adoption of the presentation and disclosure requirements for existing minority interests. All other requirements of SFAS 160 shall be applied prospectively. Early adoption is prohibited for both standards.

**SFAS No. 161**—In March 2008, the FASB issued SFAS 161. SFAS 161 expands the disclosure requirements for derivative instruments and hedging activities and specifically requires entities to provide enhanced disclosures concerning:

- How and why an entity uses derivative instruments;
- How derivative instruments and related hedged items are accounted for under SFAS 133; and
- How derivative instruments and related hedged items affect an entity's financial position, financial performance and cash flows.

SFAS 161 also requires disclosure of the fair values of derivative instruments and their gains and losses in a tabular format. SFAS 161 is effective for us on January 1, 2009.

**FASB Staff Position APB No. 14-1**— In May 2008, the FASB issued FSP APB 14-1. FSP APB 14-1 will require us to separately account for the liability and equity components of the convertible debt instrument in a manner that reflects our nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. FSP APB 14-1 will require bifurcation of a component of the debt, classification of that component in equity and then accretion of the resulting discount on the debt as part of interest expense being reflected in the income statement. FSP APB 14-1 will be effective for us on January 1, 2009 and we are required to adopt FSP APB 14-1 in our first quarter of 2009. FSP APB 14-1 will not permit early application and will require retrospective application to all periods presented. We will adjust our previously issued consolidated financial statements to reflect the change in interest expense and reclassification of debt to equity as a result of implementing FSP APB 14-1. Based on our current assumptions, we expect that the implementation of FSP APB 14-1 will increase our reported interest expense by approximately \$13 million for 2008. Additionally, we expect that the reclassification of debt obligations to stockholders' equity will be approximately \$85 million for the year-ended December 31, 2008.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**3. Business Combinations**

We completed the following significant acquisitions in 2008:

- *Business Combination with OMX AB, February 27, 2008*—Our business combination with OMX AB created a premier global exchange company and exchange technology provider. The combination of Nasdaq's global brand and technology leadership and OMX AB's global technology expertise further enhanced our competitive position in our industry. We completed our business combination with OMX AB for \$4.4 billion through a stock and cash transaction.
- *Acquisition of PHLX, July 24, 2008*—We acquired PHLX, the third largest options market in the U.S., to significantly diversify our product portfolio by providing us with a premier options trading platform in the U.S. The PHLX options market is also complementary to our other options trading platform, The NASDAQ Options Market, which was launched in March 2008.
- *Acquisition of certain businesses of Nord Pool, October 21, 2008*—We acquired Nord Pool's clearing, international derivatives and consulting businesses. As a result of the acquisition, we launched NASDAQ OMX Commodities which offers energy and carbon derivatives products. NASDAQ OMX Commodities, together with third party partner Nord Pool, provides access to the world's largest power derivatives markets and one of Europe's largest carbon markets.

Each of these significant acquisitions is discussed in more detail below.

In addition, we completed the following acquisitions and strategic initiative in 2008, 2007 and 2006:

2008

- *Acquisition of BSX, August 29, 2008*—The acquisition of BSX provided us with an additional license for trading both equities and options and a clearing license. We used the BSX license to create a second U.S. cash equities market, called NASDAQ OMX BX, which was launched in January 2009. With NASDAQ OMX BX, we offer a second quote within the U.S. equities marketplace, providing our customers enhanced trading choices and price flexibility. We have been able to leverage our INET trading system, which runs The NASDAQ Stock Market, to operate NASDAQ OMX BX, providing customers an additional fast and efficient cash equities market.
- *Acquisition of IDCG, December 19, 2008*—We purchased an 81% stake in IDCG and IDCG became an independently operated subsidiary of NASDAQ OMX. IDCG has been granted approval from the CFTC to clear OTC interest rate swap futures contracts and other fixed-income derivatives contracts. In December 2008, IDCG began providing CCP clearing for interest rate swap products through its clearinghouse subsidiary, International Derivatives Clearinghouse, LLC. NFX is serving as the designated contract market for trading of these interest rate swap products.

2007

- *Acquisition of Directors Desk, July 2, 2007*—We acquired Directors Desk, LLC, a firm which provides technology to boards of public and private companies in the U.S. and abroad. Directors Desk is part of our Corporate Services.

2006

- *Acquisition of Shareholder.com, February 1, 2006*—We acquired Shareholder.com, a privately held shareholder communications and investor relations intelligence service, enabling us to offer these services as part of our Corporate Services.

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

- *Acquisition of GlobeNewswire, September 1, 2006*—We acquired GlobeNewswire, a privately held press release newswire services firm, enabling us to offer information distribution and multimedia services as part of our Corporate Services.

Further detail on these acquisitions and strategic initiative is summarized in tables below.

The results of operations of each acquisition and strategic initiative are included in our Consolidated Statements of Income from the dates of each acquisition and strategic initiative.

**Business Combination with OMX AB**

On February 27, 2008, Nasdaq and OMX AB combined their businesses. The business combination was completed pursuant to the terms of an agreement with Borse Dubai Limited, a Dubai company, dated November 15, 2007. Pursuant to that agreement, Borse Dubai conducted an offer to acquire all of the outstanding shares of OMX AB and subsequently, on February 27, 2008, sold the OMX AB shares acquired in the offer or otherwise owned by Borse Dubai or its subsidiaries to Nasdaq. Nasdaq acquired 117,227,931 shares of OMX AB, representing 97.0% of the share capital of OMX AB, for SEK 11,678,630,352 (\$1.9 billion) in cash and 60,561,515 shares of Nasdaq common stock issued to Borse Dubai and a trust, or the Trust, for Borse Dubai's economic benefit. Subsequently, Borse Dubai acquired an additional 2,013,350 shares of OMX AB and, on March 17, 2008, sold those shares to Nasdaq in exchange for SEK 533,537,750 (\$0.1 billion) in cash, as a result of which we owned 98.8% of OMX AB's outstanding shares. See below for discussion of the acquisition of the remaining 1.2% of OMX AB's shares held by OMX AB shareholders. The cash component of the purchase price for OMX AB was financed through cash on hand, our Credit Facilities and the issuance of 2.50% convertible senior notes. See Note 9, "Debt Obligations," for further discussion.

At the closing of the transaction, Borse Dubai was issued shares of Nasdaq common stock representing 19.99% of our fully diluted outstanding share capital (approximately 42.9 million shares), and the balance (approximately 17.7 million shares) were issued to the Trust to be held for Borse Dubai's economic benefit until disposed of by the Trust.

In August 2008, through compulsory acquisition procedures, NASDAQ OMX received advanced title for the remaining 1.2% of OMX AB shares held by OMX AB shareholders for an aggregate consideration of SEK 370.8 million (\$61.7 million). As a result of the compulsory acquisition procedures, OMX AB is now wholly-owned by NASDAQ OMX.

Concurrently with the business combination with OMX AB, on February 27, 2008, Nasdaq also acquired 33 1/3% of the equity of DIFX in exchange for a contribution of \$50 million in cash to DIFX and the entry into certain technology and trademark licensing agreements. In the fourth quarter of 2008, DIFX was renamed NASDAQ Dubai. We also are responsible, under an agreement with Borse Dubai and NASDAQ Dubai, for 50% of any additional capital contribution calls made by NASDAQ Dubai, subject to a maximum aggregate additional commitment by us of \$25 million. We account for our investment in NASDAQ Dubai under the equity method of accounting in accordance with APB 18.

The business combination of Nasdaq and OMX AB and the acquisition of the equity interest in NASDAQ Dubai are collectively referred to as the "Transactions."

The financial results of OMX are included in the consolidated results of NASDAQ OMX beginning on February 27, 2008.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**Purchase Price**

The following is a summary of the purchase price in the OMX AB business combination (in millions):

Equity component	\$2,266.8(a)
Cash component for shares rendered	1,967.8(b)
Cash component for remaining 1.2% of OMX AB shares	61.7(c)
Acquisition costs	63.8(d)
Acquisition-related transaction costs	11.0(e)
Total purchase consideration	<u>\$4,371.1</u>

- (a) Based on the closing price of Nasdaq common stock (\$37.43) on September 26, 2007, which was the date of the original purchase agreement with Borse Dubai, multiplied by 60,561,515 shares of Nasdaq common stock. We recorded \$0.6 million to common stock, which represents our \$0.01 par value and the remaining \$2,266.2 million was recorded to additional paid in capital in the Consolidated Balance Sheets in the first quarter of 2008.
- (b) Based on the cash consideration of SEK 11,678,630,352 paid on February 27, 2008 divided by the SEK/USD exchange rate of 6.2140 on February 26, 2008 for the initial share purchase and SEK 533,537,750 paid on March 17, 2008 divided by the SEK/USD exchange rate of 6.0343 on March 14, 2008 for the OMX AB shares acquired in the extended offer period. Sources of the cash component are as follows:
- (i) Issuance of 2.50% convertible senior notes due August 15, 2013 for proceeds of \$475.0 million;
  - (ii) Draw down of debt of \$1,050.0 million under a five-year \$2,000.0 million senior secured term loan facility; and
  - (iii) The use of \$442.8 million of cash on hand.

See Note 9, "Debt Obligations," for further discussion on the issuance of the 2.50% convertible senior notes and the draw down on the senior secured term loan facility.

- (c) In August 2008, through compulsory acquisition procedures, NASDAQ OMX received advanced title for the remaining 1.2% of OMX AB shares held by OMX AB shareholders for an aggregate consideration of SEK 370.8 million (\$61.7 million).
- (d) Management's direct costs of the acquisition, which include legal and advisory fees incurred by Nasdaq and OMX AB. Nasdaq and OMX AB have signed an agreement by which Nasdaq reimbursed OMX AB for direct costs of the business combination. These costs were funded with cash on hand.
- (e) Under OMX AB's Share Match Programs, OMX AB made grants of matching share awards under the Share Match Program for 2006 in April 2006 and had planned to make similar grants under the Share Match Program for 2007. However, as a result of Nasdaq's offer to acquire OMX AB, OMX AB postponed making such grants. OMX AB had not granted stock options to employees since 2002. Under the Nasdaq OMX transaction agreement, dated as of May 25, 2007, between Nasdaq and OMX AB, as modified by the supplement dated September 20, 2007 and a clarifying letter dated January 2, 2008, referred to as the Nasdaq OMX Transaction Agreement, awards granted under the Share Match Program for 2006 will vest on a pro rata basis in accordance with the Nasdaq OMX Transaction Agreement, and have subsequently been cancelled as of the completion of the Transactions. Participants have received cash consideration for cancellation of such awards, as well as consideration for the grants that would have been made under the Share Match Program for 2007, in accordance with the Nasdaq OMX Transaction Agreement. The total cash consideration for the Share Match Programs totaled \$11.0 million, which was the fair value of the

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

awards at the time of the business combination and which includes the effect of any swap arrangements that were not material. The 2006 Share Match Program totaled approximately \$4.5 million and was calculated by multiplying the number of shares in the 2006 Share Match Program by the share price of SEK 265.0 and adding withholdings. The total cash consideration for the 2007 Share Match Program totaled approximately \$6.5 million, which as stated above was consideration for the grants that would have been made under the 2007 Share Match Program. These costs were funded with cash on hand.

The above purchase price has been preliminarily allocated based on an estimate of the fair value of OMX AB's assets acquired and liabilities assumed. In addition, we have begun to finalize our plan to integrate certain activities related to our business combination with OMX AB. We are still gathering information to make final decisions regarding the optimal organization of the combined company, from which additional adjustments and refinements to our plan will arise. As such, additional adjustments to the OMX AB purchase price allocation will be recorded as we finalize restructuring costs associated with integration activities of the combined company in accordance with the requirements of EITF No. 95-3, "Recognition of Liabilities in Connection with a Purchase Business Combination," or EITF 95-3. Upon completion of the organizational analysis and the approval of appropriate management, our plan will be finalized. The future adjustments, whether increasing or decreasing our plan's total value, will impact goodwill and accounts payable and accrued liabilities. We expect our plan to be finalized during the one year allocation period. We are completing our plan under the provisions of EITF 95-3. See Note 4, "Goodwill and Purchased Intangible Assets," for a summary of additional adjustments to the OMX AB purchase price as of December 31, 2008. All other restructuring liabilities outside the scope of EITF 95-3 will be recognized in the income statement when those costs have been incurred in accordance with SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities," or SFAS 146. The final valuation of net assets will be completed as soon as possible but no later than one year from the acquisition date. To the extent that the estimates need to be adjusted, we will do so, but no later than one year after closing in accordance with SFAS 141.

The following table presents a summary of the preliminary OMX AB purchase price allocation, which was revised to reflect changes in the fair value of certain purchased intangible assets as well as the purchase of the remaining 1.2% of OMX AB shares:

	<u>Purchase Consideration</u>	<u>Total Net Assets (Liabilities) Acquired<sup>(1)</sup></u> (in millions)	<u>Purchased Intangible Assets</u>	<u>Goodwill</u>
Initial purchase price allocation	\$ 4,309.4	\$ (669.9)	\$ 2,041.4	\$2,937.9
Change in fair value of purchased intangible assets	—	330.0	(834.3) <sup>(2)</sup>	504.3 <sup>(2)</sup>
Cash component for the remaining 1.2% of OMX AB shares	61.7 <sup>(3)</sup>	—	—	61.7 <sup>(3)</sup>
Revised purchase price allocation	<u>\$ 4,371.1</u>	<u>\$ (339.9)</u>	<u>\$ 1,207.1</u>	<u>\$3,503.9</u>

(1) We acquired net assets, at fair value, of OMX AB totaling \$137.5 million and recorded current deferred tax liabilities of \$18.4 million and non-current deferred tax liabilities of \$789.0 million related to OMX AB's intangible assets resulting in total net liabilities acquired of \$669.9 million. Included in the net liabilities acquired are \$21.1 million for sublease loss reserves related to OMX AB real estate that we do not intend to occupy as well as \$3.8 million for severance costs. Based on revised fair values of certain purchased intangible assets (see footnote (2) below), current deferred tax liabilities decreased \$7.1 million to \$11.3 million and non-current deferred tax liabilities decreased \$322.9 million to \$466.1 million, resulting in a total decrease of \$330.0 million and a decrease in net liabilities acquired from \$669.9 million to \$339.9 million.

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

- (2) As we finalize the factors and assumptions that we obtained to determine the purchase price allocation, the fair values of the purchased intangible assets were adjusted resulting in a decrease of \$834.3 million in 2008. The impact on amortization expense was immaterial. The adjusted fair value of purchased intangible assets is \$1,207.1 million. Based on the adjusted fair values, current and non-current deferred tax liabilities decreased \$330.0 million (see footnote (1) above) and goodwill increased \$504.3 million. As discussed above, we have not finalized the allocation of the purchase price related to the OMX AB business combination and expect there to be further adjustments to goodwill within one year from the purchase date.
- (3) In August 2008, through compulsory acquisition procedures, NASDAQ OMX received advanced title for the remaining 1.2% of OMX AB shares held by OMX AB shareholders for an aggregate consideration of SEK 370.8 million (\$61.7 million). The additional purchase was recorded as an adjustment to goodwill in the Consolidated Balance Sheets as of December 31, 2008.

In performing the preliminary purchase price allocation, Nasdaq considered, among other factors, the intention for the future use of the acquired assets, analyses of historical financial performance, and an estimate of the future performance of OMX AB's business. The preliminary estimate of the fair values of intangible assets is based, in part, on a valuation using an income or cost approach, as appropriate. The risk-adjusted discount rates used to compute the present value of the expected net cash flows of individual intangible assets were based on OMX AB's weighted average cost of capital, which ranged from 7.8% to 9.6%. These discount rates were determined after consideration of OMX AB's rate of return on debt and equity and the weighted-average return on invested capital. In estimating the remaining useful lives of the intangible assets, we considered the six factors presented in paragraph 11 of SFAS 142 and an analysis of the intangible assets' relevant historical attrition data.

**Intangible Assets**

The following table presents the details of the purchased intangible assets acquired in the OMX AB business combination. All purchased intangible assets are amortized using the straight-line method. See Note 4, "Goodwill and Purchased Intangible Assets," for further discussion.

	<u>Increase in Value</u>	<u>Estimated Average Remaining Useful Life (in Years)</u>
Equity method investment	\$ 74.7(i)	
	<u>Value</u>	
Intangible assets:		
Exchange and clearing registrations	583.0	Indefinite
Trade name	163.7	Indefinite
Customer relationships:		
Market Services	365.2	23-29
Issuer Services	25.2	27-33
Market Technology	29.4	20-24
Total customer relationships	<u>419.8</u>	
Market technology:		
Developed	37.1	3
New	3.5	10
Total market technology	<u>40.6</u>	
Total intangible assets	<u>1,207.1(ii)</u>	
Total assets	<u>\$ 1,281.8(i)+(ii)</u>	

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

Below is a discussion of the methods used to determine the fair value of OMX AB's intangible assets and equity method investment, as well as a discussion of the estimated average remaining useful life of each intangible asset. The carrying value of all other assets and liabilities was deemed to approximate their estimated fair value.

Equity Investment

As of February 27, 2008, OMX AB owned approximately 3.8 million shares of Orc Software AB, a company publicly traded on NASDAQ OMX Stockholm which was recorded under the equity method of accounting with a carrying value of \$14.0 million. As part of the OMX AB purchase price allocation, the investment in Orc Software was recorded at fair value of \$88.7 million based on the daily closing price as reported on NASDAQ OMX Stockholm as of February 27, 2008.

Exchange and Clearing Registrations

The exchange and clearing registrations represent licenses that provide OMX AB with the ability to operate its equity and derivative exchanges as well as the clearing function. Nasdaq views these intangible assets as a perpetual license to operate the exchanges so long as OMX AB meets its regulatory requirements. Nasdaq selected a variation of the income approach called the Greenfield Approach to value the exchange and clearing registrations. The Greenfield Approach refers to a discounted cash flow analysis that assumes the buyer is building the exchange and clearing operations from a start-up business to a normalized level of operations as of the acquisition date. This discounted cash flow model considers the required resources and eventual returns from the build-out of operational exchanges and the acquisition of customers, once the exchange and clearing registrations are obtained. The advantage of the approach is that it reflects the actual expectations that will arise from an investment in the registrations and it directly values the registrations. The Greenfield Approach relies on assumptions regarding projected revenues, margins, capital expenditures, depreciation, and working capital during the two year pre-trade phase, the 10 year ramp-up period as well as the terminal period.

A steady state projection for OMX AB was established first. The projection included synergies that a market participant buyer could realize. Since OMX AB has a strong market position, Nasdaq assumed that the projected revenues represent nearly 100.0% of the potential market until 2019, and that a market participant would be able to achieve 80.0% of the market within the 12 year ramp-up period. A terminal growth rate of 4.0% was chosen as a reasonable estimate of the growth rate of the stock exchange industry on a long-term basis. A steady state projection was used starting in year 12 based on the assumption that a stock exchange can expect to reach normalized operations at this time.

Nasdaq characterized the costs into fixed costs, variable costs, and technology costs. Annual fixed costs remained constant throughout the projection at approximately \$122.5 million, which represents 50.0% of normalized costs. The remaining 50.0% of the costs were variable costs, which were estimated as a proportion to the revenue. It was estimated that OMX AB would have to incur approximately \$200.0 million in upfront technology to start the exchanges, and ongoing maintenance technology costs would be equal to 15.0% of revenues thereafter.

The initial capital expenditures in years one and two reflect the costs associated with obtaining the fixed assets and the minimal regulatory fees required to start exchanges. Subsequent annual capital expenditures and depreciation were estimated at 4.9% of the revenue, assuming that maintenance capital expenditures are required to replace the depreciated fixed assets. Nasdaq also assumed that the exchanges would require \$100.0 million of initial clearing capital which would increase to \$275.0 million by the time the exchange reached normalized operations.

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**Notes to Consolidated Financial Statements—(Continued)**

Based on historical working capital levels and a review of working capital for comparable companies operating in the industry, working capital for a typical market participant, as a percentage of incremental revenue, is projected to be approximately 12.5%.

The cash flows were then tax-effected at a rate of 25.0%, and a discounted tax amortization benefit was added to the fair value of the asset under the assumption that the exchange registrations would be amortized for tax purposes over a period of seven years.

An indefinite life was assumed for these registrations as the exchanges have operated, in some cases, for more than 140 years and the authorization to operate these exchanges is perpetual so long as OMX AB meets its regulatory requirements. Furthermore, since no legal, contractual, competitive, economic, or other factors limit the useful life of these intangible assets, Nasdaq considered the useful life of the exchange and clearing registrations to be indefinite. As noted above, we assessed the factors listed in paragraph 11 of SFAS 142 in making this indefinite life determination.

The fair value of the exchange registrations was determined to be approximately \$583.0 million.

#### Trade Name

Nasdaq has incorporated OMX AB into three reporting segments—Issuer Services, Market Services, and Market Technology. The OMX AB trade name was valued as used in each of these reporting segments. The trade name represents the value of the market recognition of quality service that OMX AB and its predecessor entities have developed in their 140 years of operation. In valuing the acquired trade names, we used the income approach, specifically the relief from royalty approach, relying on publicly available information to determine the royalty rate that OMX AB would have to pay a third-party for the use of the trade name. This valuation methodology is based on the concept that because OMX AB owns the trade name, it does not have to pay a third-party for the right to use the trade name.

Nasdaq researched public documents and accessed the Royalty Source database for license agreements involving similar trade names in the financial services and technology industries. The guideline sample of license agreements yielded a range of royalty rates extending from 0.5% to 2.0% for financial services and technology companies. Based on the margins of the reporting segments, Nasdaq estimated the royalty rates to be 2.0% for Issuer Services, 2.0% for Market Services, and 0.5% for Market Technology.

The cash flows were then tax-effected at a rate of 25.0%, and a discounted tax amortization benefit was added to the fair value of the asset under the assumption that the trade name would be amortized for tax purposes over a period of seven years for Issuer Services and Market Services and five years for Market Technology.

The following is a summary of the indicated fair value for the trade name asset:

	<u>Issuer Services</u>	<u>Market Services</u>	<u>Market Technology</u>	<u>Total</u>
			(in millions)	
Sum of discounted cash flows	\$ 13.4	\$ 110.5	\$ 9.3	\$ 133.2
Discounted tax amortization benefit	3.0	25.0	2.5	30.5
Indicated fair value	<u>\$ 16.4</u>	<u>\$ 135.5</u>	<u>\$ 11.8</u>	<u>\$ 163.7</u>

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**Customer Relationships**

Customer relationships represent the non-contractual and contractual relationships that OMX AB has with issuers, traders, information vendors, and technology customers. OMX AB's customer relationships were valued using the income approach, specifically an excess earnings method. This valuation approach relied on assumptions regarding projected revenues, attrition rates, and operating cash flows for each customer type, which were projected up to 45 years.

The following chart depicts OMX AB's primary revenue streams and how the 2008 revenues were divided amongst the three customer relationship intangible assets:

	<u>Issuer Services</u>	<u>Market Services</u>	<u>Market Technology</u> (in millions)	<u>Unallocated</u>
<b><u>The Exchanges That Comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic</u></b>				
Trading revenues		100%		
Issuers' revenues	100%			
Other revenues				100%
<b><u>Information Services</u></b>				
Information sales		100%		
Revenues from Baltic Markets		100%		
Revenues from Broker Services		100%		
Other revenues				100%
<b><u>Market Technology</u></b>				
License, support, and project revenues			75%	25%
Facility management services revenues			75%	25%
Other revenues				100%

For operating income, Nasdaq assumed that the weighted-average growth for existing customers was 20.0% for each reporting segment. Nasdaq also adjusted for synergies that would be available to the typical market participant, as well as the cost savings, assumed to be 2.0% of revenue, related to servicing an existing customer base versus a future revenue base.

Nasdaq assumed annual revenue attrition of 5.0% for the customers for all reporting segments, as well as charges for contributory assets. The tax-effected cash flows were discounted at a rate of 9.6%, 10.1%, and 7.9% for Issuer Services, Market Services, and Market Technology, respectively.

The cash flows were then tax-effected at a rate of 25.0%, and a discounted tax amortization benefit was added to the fair value of the asset under the assumption that the customer relationships would be amortized for tax purposes over a period of seven years for Issuer and Market Services and five years for Market Technology.

The following is a summary of the indicated fair value for the customer relationship assets:

	<u>Issuer Services</u>	<u>Market Services</u>	<u>Market Technology</u> (in millions)	<u>Total</u>
Sum of discounted cash flows	\$ 20.6	\$ 298.8	\$ 23.3	\$ 342.7
Discounted tax amortization benefit	4.6	66.4	6.1	77.1
Indicated fair value	<u>\$ 25.2</u>	<u>\$ 365.2</u>	<u>\$ 29.4</u>	<u>\$ 419.8</u>

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

The estimated remaining useful life captures 90.0% to 95.0% of the present value of the cash flows generated by each customer relationship. The remaining useful life was determined based on an analysis of the historical attrition rates of OMX AB customers and paragraph 11 of SFAS 142, which included an analysis of the legal, regulatory, contractual, competitive, economic, or other factors that limit the useful life of this intangible asset. The useful life is addressed in the section below, which discusses the assessment of the lives of the customer relationships and market technology.

Technology—Licensed to Third Parties

Nasdaq acquired two types of technology from OMX AB, developed and new. The developed technology represents the existing portfolio of software technologies that OMX AB had developed or acquired. These software technologies are licensed to more than 60 external unrelated customers and are also currently used internally by OMX AB. The new technology includes Genium. Our future technology platform is an ongoing effort as we further evaluate both Nasdaq and OMX AB technologies. NASDAQ OMX has refocused the development of Genium to combine our INET (Nasdaq's current trading platform) and CLICK technologies with the original Genium concepts and components. Ongoing Genium development will predominately incorporate our core INET functionality, including order routing that will be deployed in the new NASDAQ OMX Europe. We will develop new integrated trading and clearing functions based on CLICK and SECUR, and the Genium platform will include Genium Market Info, our information dissemination solution. The exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic will begin the migration to the Genium platform in 2010. The fair values of the technologies licensed to third parties were computed using the income approach, specifically the excess earnings approach. This valuation approach relied on assumptions regarding projected revenues, operating cash flows and core technology charges for each technology, which were projected over three years for developed technology and over 10 years for new technology.

The technology revenue streams include 75.0% of license, support, and project revenues and facility management services revenues. Nasdaq assumed that certain customers will gradually start migrating from the existing technology to Genium starting in 2010 and will be almost fully migrated to Genium by 2014.

The projected margins for the technology business are consistent with the overall Market Technology business but are adjusted for research and development, or R&D, costs spent on each technology. Nasdaq assumed that for developed technology, 2.0% of the overall expenses were related to R&D associated with developed technology, and that for new technology, 10.0% of the overall expenses were related to R&D associated with developed technology.

A contributory asset charge for the use of other assets was deducted from the after-tax operating income yielding the excess earnings generated by the technologies, which were discounted at a rate of 7.9% for developed and new technologies.

The cash flows were then tax-effected at a rate of 25.0%, and a discounted tax amortization benefit was added to the fair value of the asset under the assumption that the technology would be amortized for tax purposes over a period of five years.

The fair value of the new technology was adjusted for the INET components that Nasdaq and OMX AB are incorporating into Genium, which represented approximately 96.0% of value.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

The following is a summary of the indicated fair value for the technology asset:

	<u>Developed Technology</u>	(in millions)	<u>New Technology</u>
Sum of discounted cash flows	\$ 12.3		\$ 26.0
Discounted tax amortization benefit	3.2		6.8
Indicated fair value	<u>15.5</u>		<u>32.8</u>
Value Adjustment for Nasdaq and OMX AB	—		(31.6)
Indicated fair value	<u>\$ 15.5</u>		<u>\$ 1.2</u>

The estimated useful life of the developed and new technology was based on discussions with OMX AB management as to the likely duration of benefit to be derived from the technology. Nasdaq considered such factors as the migration cycle from the existing technology to Genium, the estimated R&D, and the development of future generations of technology. Nasdaq also gave consideration to paragraph 11 of SFAS 142 and to the pace of the technological changes in the industries in which OMX AB sells its products.

Technology—Internal Use

The fair values of the internally used technology were valued using the income approach, specifically the relief from royalty approach, relying on publicly available information to determine the royalty rate that OMX AB would have to pay a third-party for the use of the technologies. This valuation methodology is based on the concept that because OMX AB owns the technologies it does not have to pay a third-party for the right to license the technology.

Nasdaq researched public documents and accessed the Royalty Source database for license agreements involving similar trade names in the financial services and technology industries. The guideline sample of license agreements yielded a range of royalty rates extending from 0.25% to 40.0% for financial services technologies. Based on the functionality of the technologies, Nasdaq estimated the royalty rates to be 5.0% for the developed and new technology.

The cash flows were then tax-effected at a rate of 25.0%, and a discounted tax amortization benefit was added to the fair value of the asset under the assumption that the technologies would be amortized for tax purposes over a period of seven years.

The fair value of the new technology was adjusted for the INET components that Nasdaq and OMX AB are incorporating into Genium, which represented approximately 96.0% of value.

The following is a summary of the indicated fair value for the internally licensed existing and new technologies:

	<u>Developed Technology</u>	(in millions)	<u>New Technology</u>
Sum of discounted cash flows	\$ 17.6		\$ 55.2
Discounted tax amortization benefit	4.0		12.5
Indicated fair value	<u>21.6</u>		<u>67.7</u>
Value Adjustment for Nasdaq and OMX AB	—		(65.4)
Indicated fair value	<u>\$ 21.6</u>		<u>\$ 2.3</u>

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

Customer Relationships and Market Technology Lives

The following summarizes the methodologies and assumptions Nasdaq used to estimate the remaining economic lives of the customer relationships and market technology.

a. *The expected use of the asset by the entity*—As previously discussed, the existing technology will be partially replaced by the Genium technology over the next 6 years. In addition, the existing technology and Genium technology will be obsolete after three and 10 years, respectively. The determination of the useful life of Genium was based on the historical development and life cycles of existing technology products within Nasdaq and OMX AB.

b. *The expected useful life of another asset or group of assets to which the useful life of the intangible asset may relate*—The useful lives of the technology and customer relationship assets are not significantly impacted by any other asset or group of assets. The life of the customer relationships varies depending on the customers. The issuers generally have a 27 to 33 year life, the traders/information vendors have a 23 to 29 year life, and the market technology customers have a 20 to 24 year life. For technology, the existing technology has a three year life whereas Genium has a 10 year life.

c. *Any legal, regulatory or contractual provisions that may limit the useful life*—We are not aware of any.

d. *Any legal, regulatory or contractual provisions that enable renewal or extension of the asset's legal or contractual life without substantial cost*—The market technology customers enter into license and facilities management contracts with a duration of three to 10 years. Such contracts are generally renewed at least once with minimal cost. The useful life of 20 to 24 years was selected based on the fact that many contracts are renewed more than one time, and a majority of the contracts have terms in the eight to 10 year range. We are not aware of any other legal, regulatory, or contractual provisions that may impact the lives of the customer relationships and market technology.

e. *The effects of obsolescence, demand, competition, and other economic factors*—Genium will be introduced both internally and externally beginning in 2010. The existing technology would become obsolete in approximately three years. In addition, Genium would become obsolete in approximately ten years should OMX AB not invest in upgrades and improvements. The life cycles were based on the historical development and life cycles of existing software products within Nasdaq and OMX AB.

With respect to the customer relationships, the issuers are generally loyal to their home country and, as such, list on the local exchanges. Most delistings relate to mergers or acquisitions rather than competition. However, within Europe, there has been increased competition with respect to the trading business, resulting in higher attrition rates for the listing/information vendor business. Finally, for the market technology customers, OMX AB faced competition from exchanges that choose to develop their own exchange technologies. The present competition does not have a large impact on the life cycle as customers typically return due to better pricing options and the high cost of changing providers.

f. *The level of maintenance expenditures required to obtain the expected future cash flows from the asset*. OMX AB expects to incur research and development expenses to maintain its technology. With respect to the customer relationships, OMX AB incurs sales and marketing expenses to maintain the current customers. Nasdaq believes that historically the research and development and sales and marketing expenses have maintained the quality of its products and services, thus contributing to a longer life.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

***Deferred Tax Liability***

An \$11.3 million current deferred tax liability and a \$466.1 million non-current deferred tax liability (total deferred tax liability of \$477.4 million) has been set up against the \$1,207.1 million increase in value of OMX AB's intangible assets outlined in the table above. The deferred tax liabilities represent the tax effect of the difference between the estimated assigned fair value of the acquired intangible assets (\$1,207.1 million) and the tax basis (\$0) of such assets. The estimated amount of \$477.4 million is determined by multiplying the difference of \$1,207.1 million by the U.S. marginal tax rate of 39.55%.

***Equity Investment in NASDAQ Dubai***

As discussed above, we also acquired 33 1/3% of the equity of NASDAQ Dubai in exchange for \$50 million of cash consideration and the entry into certain technology and trademark licensing agreements. These agreements are intended to be nontransferable and perpetual, subject to various exceptions. The agreements grant to NASDAQ Dubai and/or its affiliates rights to use or sublicense certain intellectual property (including, in some instances, on an exclusive basis). We will also be responsible for 50.0% of any additional capital contribution calls made by NASDAQ Dubai, subject to a maximum aggregate additional commitment by us of \$25.0 million.

Included in the Consolidated Balance Sheet is our equity method investment in NASDAQ Dubai, which was initially recorded for approximately \$128 million. Our investment includes \$50 million of cash consideration and the contribution of certain licenses related to our technology, or technology licenses, and the Nasdaq trade name with a gross value of \$117 million (net value of \$78 million after reduction by the portion of economic interest retained through our 33 1/3% equity investment in NASDAQ Dubai). Upon the concurrent closing of the Transactions, we recognized a non-recurring pre-tax gain of \$26 million (\$15.7 million after-tax) on the transfer of the Nasdaq trade name asset. In addition, as discussed below, we recorded deferred revenue of \$52 million related to the transfer of the technology licenses and will ratably recognize this revenue over a seven year period, which is an estimate of the relevant period for which service will be provided to NASDAQ Dubai.

The basis of the estimated fair values of the technology licenses and the Nasdaq trade name and the calculation of deferred revenue on the technology licenses and the calculation of the Nasdaq trade name pre-tax and after-tax gains are presented below.

**Estimated Fair Value of Licenses related to Technology and Calculation of Deferred Revenue**

***Estimated Fair Value of Technology Licenses***

The technology license contributed to NASDAQ Dubai was valued using the cost savings method. As part of the Transactions, NASDAQ Dubai was granted the rights to use or sublicense certain intellectual property (including in some instances, on an exclusive basis) for use in NASDAQ Dubai's operations in certain territories. Furthermore, NASDAQ Dubai can sublicense current or future commercially available technologies owned by NASDAQ OMX to any of its affiliated entities. Nasdaq estimated the hypothetical after-tax license fees saved by NASDAQ Dubai based on similar license agreements. The applicable license fees saved by the affiliated entities were based on the analysis of likely licensors of commercially available technologies. A hypothetical license agreement with NASDAQ Dubai and their affiliated entities was assumed to span a period of five years, and the license fees were assumed to be paid at the beginning of each period. The tax rate in Dubai is zero. The tax-effected license fee savings cash flows were discounted at a rate of 19.1%. The discount rate was developed using the comparable public company data and economic data reflecting the risk environment in NASDAQ Dubai's market area. The discount rate was based on the capital asset pricing model and represents the weighted-average cost of capital.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

The fair value of the technology licenses was determined to be approximately \$78 million.

*Calculation of Deferred Revenue*

As part of the perpetual technology license agreement, we are obligated to provide NASDAQ Dubai with additional unspecified software developed or marketed by NASDAQ OMX in the future. As such, we have deemed our contribution of technology to be an “insubstance subscription” in accordance with SOP 97-2. As such, revenue that is earned as a result of the license agreement will be recognized ratably over its estimated economic useful life. We have recorded deferred revenue equal to the fair value of the technology licenses. The deferred revenue will be reduced by the portion of the economic interest retained since we will have a 33 1/3% equity investment in NASDAQ Dubai and the deferred revenue will be recognized ratably over the estimated economic useful life of the technology licenses, which is seven years.

Calculation is as follows:

- \$78 million value to technology licenses \* 66 2/3% interest sold = \$52 million.

For the year ended December 31, 2008, we recorded \$5.8 million of income related to this deferred revenue in Market Technology revenues in the Consolidated Statements of Income.

Estimated Fair Value of License related to the Nasdaq Trade Name and Calculation of Gain on Transfer of the Nasdaq Trade Name

*Estimated Fair Value of Nasdaq Trade Name*

Nasdaq used the relief from royalty method in valuing NASDAQ Dubai’s right to the Nasdaq trade name. As a part of the Transactions, NASDAQ Dubai received rights to use the Nasdaq trade name. The valuation methodology used is based on the after-tax royalties saved by NASDAQ Dubai because of the licensing agreement. The royalty rate used was selected after researching publicly available information on license agreements involving similar trade names. Based on these license agreements, a royalty rate of 3.0% was selected, which was multiplied by NASDAQ Dubai’s projected revenue stream to derive the after-tax royalty savings. The tax rate in Dubai is zero. The resulting after-tax royalty savings were discounted using a rate of 19.1%, which represents the weighted average cost of capital.

The fair value of the license related to the Nasdaq trade name was determined to be approximately \$39 million.

Calculation of Gain on Transfer of Asset

As noted above, the fair value of the license related to the Nasdaq trade name was approximately \$39 million and had a zero carrying value on Nasdaq’s books and records prior to the transfer. The contribution of the Nasdaq trade name is considered an exchange of monetary assets in accordance with EITF 01-02 “Interpretations of APB Opinion No. 29”, therefore we determined that a gain should be recognized for the difference between Nasdaq’s carrying value and the fair value of this contributed asset. This gain is reduced by the portion of economic interest retained since we will have a 33 1/3% equity investment in NASDAQ Dubai.

The pre-tax gain was calculated as follows:

- \$39 million value to trade name \* 66 2/3% interest sold = \$26 million.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

The after-tax gain was calculated as follows:

- \$26 million gain less taxes at 39.55% (\$10.3 million) = \$15.7 million.

**Tax Related to the NASDAQ Dubai Investment**

For tax purposes, we recorded a current income tax payable of \$46.3 million on the total intangible asset value of \$117 million. In addition, we recorded a deferred tax asset of \$36.0 million related to the difference between the total intangible asset value of \$117 million and the gain of \$26.0 million recognized on the Nasdaq trade name contribution.

**Acquisition of PHLX**

On July 24, 2008, we completed our previously announced acquisition of PHLX, or the PHLX acquisition. NASDAQ OMX's cost to acquire PHLX of approximately \$707.5 million (\$652.0 million cash paid plus approximately \$55.5 million of direct acquisition costs and working capital adjustments) is subject to certain post-closing adjustments.

**Purchase price**

The following is a summary of the purchase price in the PHLX acquisition (in millions):

Cash component	\$652.0 <sup>(a)</sup>
Acquisition costs	11.8 <sup>(b)</sup>
Working capital adjustments	43.7 <sup>(c)</sup>
Total purchase consideration	<u>\$707.5</u>

(a) Source of the cash component is the drawdown of debt of \$650.0 million under a five-year \$2,000.0 million senior secured term loan facility and the use of \$2.0 million cash on hand.

(b) Management's direct costs of the acquisition, which primarily includes legal and advisory fees incurred by NASDAQ OMX. These costs were funded with cash on hand.

(c) Estimated working capital surplus paid at closing per the acquisition agreement. We deposited \$15.0 million of the approximately \$43.7 million into an escrow account until the final working capital adjustment is calculated. This payment was funded with cash on hand.

The above estimated purchase price has been preliminarily allocated based on an estimate of the fair value of PHLX's assets acquired and liabilities assumed. In addition, we have begun to finalize our plan to integrate certain activities related to our acquisition of PHLX. We are still gathering information from which to make final decisions regarding the optimal organization of the combined company, from which additional adjustments and refinements to our plan will arise. As such, additional adjustments to the PHLX purchase price allocation will be recorded as we estimate restructuring costs associated with integration activities of the combined company in accordance with the requirements of EITF 95-3. Upon completion of the organizational analysis and the approval of appropriate management, our plan will be finalized. The future adjustments, whether increasing or decreasing our plan's total value, will impact goodwill and accounts payable and accrued liabilities. We expect our plan to be finalized during the one year allocation period. We are completing our plan under the provisions of EITF 95-3. All other restructuring liabilities outside the scope of EITF 95-3 will be recognized in the income statement when those costs have been incurred in accordance with SFAS 146. The final valuation of net assets will be completed as soon as possible but no later than one year from the acquisition date. To the extent that the estimates need to be adjusted, we will do so, but no later than one year after closing in accordance with SFAS 141.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

The following table presents a summary of the preliminary PHLX purchase price allocation:

<u>Purchase Consideration</u>	<u>Total Net Assets (Liabilities) Acquired<sup>(1)</sup></u>	<u>Purchased Intangible Assets</u>	<u>Goodwill</u>
\$ 707.5	\$(98.9)	\$336.8	\$469.6

(1) We acquired net assets, at fair value, of PHLX totaling \$55.1 million and recorded deferred tax liabilities of \$154.0 million related to PHLX's intangible assets resulting in total net liabilities acquired of \$98.9 million. Included in the net liabilities acquired are \$7.5 million for write-offs of leasehold improvements and sublease reserves on PHLX real estate that we do not intend to occupy as well as \$23.5 million for severance costs.

In performing the preliminary purchase price allocation, NASDAQ OMX considered, among other factors, the intention for the future use of the acquired assets, analyses of historical financial performance, and an estimate of the future performance of PHLX's business. The estimate of the fair values of intangible assets is based, in part, on a valuation using an income approach, market approach, or cost approach, as appropriate. The risk-adjusted discount rates used to compute the present value of the expected net cash flows of individual intangible assets, based on PHLX's weighted average cost of capital, ranged from 12.0% to 12.5%. These discount rates were determined after consideration of PHLX's rate of return on debt and equity and the weighted-average return on invested capital. In estimating the remaining useful lives of the intangible assets, NASDAQ OMX considered the six factors presented in paragraph 11 of SFAS 142 and an analysis of the intangible assets' relevant historical attrition data.

**Intangible Assets**

The following table presents the details of the purchased intangible assets acquired in the PHLX acquisition. All purchased intangible assets are amortized using the straight-line method. See Note 4, "Goodwill and Purchased Intangible Assets," for further discussion.

	<u>Value</u>	<u>Estimated Average Remaining Useful Life (in Years)</u>
Intangible assets:		
Exchange and futures registrations	\$207.0	Indefinite
Customer relationships	112.9	19-23 years
Technology	10.5	1.5-5 years
Trade name	6.4	Indefinite
Total intangible assets	<u>\$336.8</u>	

Below is a discussion of the methods used to determine the fair value of PHLX's intangible assets, as well as a discussion of the estimated average remaining useful life of each intangible asset. The carrying value of all other assets and liabilities was deemed to approximate their estimated fair value.

**Exchange and Futures Registrations**

The national securities exchange and futures registrations represent licenses that provide PHLX with the ability to operate its equity and options and futures exchanges. NASDAQ OMX views these intangible assets as perpetual licenses to operate the exchange and futures functions so long as PHLX meets certain regulatory

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

requirements. NASDAQ OMX selected a variation of the income approach called the Greenfield Approach to value the SRO exchange registration and the cost approach to value PBOT's futures registration. PBOT has been renamed NFX and is a subsidiary of NASDAQ OMX PHLX.

An indefinite life was assumed for these registrations as PHLX is the oldest securities exchange in the United States. Furthermore, since no legal, contractual, competitive, economic, or other factors limit the useful life of these intangible assets, NASDAQ OMX considered the useful life of the exchange and futures registrations to be indefinite. We assessed the factors listed in paragraph 11 of SFAS 142 in making this indefinite life determination.

*SRO Exchange Registration*

The Greenfield Approach refers to a discounted cash flow analysis that assumes the buyer is building the exchange operation from a start-up business to a normalized level of operation as of the acquisition date. This discounted cash flow model considers the required resources and eventual returns from the build-out of an operational exchange and the acquisition of customers, once the exchange registration is obtained. The advantage of the approach is that it reflects the actual expectations that will arise from an investment in the registration and it directly values the registration. The Greenfield Approach relies on assumptions regarding projected revenues, margins, market share, capital expenditures, depreciation, and working capital during the two year pre-trade phase, the 10 year ramp-up period, and the terminal period.

A steady state projection for PHLX was established first. The projection excluded revenue from options and clearing. A steady state projection was used starting in year 12 based on the assumption that a stock exchange can expect to reach normalized operations at this time. In the terminal year, NASDAQ OMX assumed a market share equal to 80.0% of current projections. This is because PHLX would be a late entrant into this business and would not achieve the same market penetration they currently enjoy given their long history. It also reflects what a market participant would be able to achieve by the end of the 10 year ramp-up period. A terminal growth rate of 3.0% was chosen as a reasonable estimate of the growth rate of the stock exchange industry on a long-term basis.

NASDAQ OMX divided the costs into fixed costs and variable costs. Annual fixed costs were estimated to grow steadily from \$20 million in 2008 to \$50 million in 2019. Variable costs were estimated as a proportion of the revenue.

Based on historical working capital levels and a review of working capital for comparable companies operating in the industry, working capital for a typical market participant, as a percentage of incremental revenue, is projected to be approximately 34.0%.

The cash flows were then tax-effected at a rate of 40.0%, and a discounted tax amortization benefit was added to the fair value of the asset under the assumption that the SRO exchange registration would be amortized for tax purposes over a period of 15 years.

The following is a summary of the indicated fair value for the SRO exchange registration:

<u>(in millions)</u>	<u>SRO Exchange Registration</u>
Sum of costs	\$ 167.7
Discounted tax amortization benefit	39.0
Indicated fair value	<u>\$ 206.7</u>

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**NFX Futures Registration**

The fair value of NFX futures registration was valued using the cost approach, specifically the replacement cost new approach, to determine the current cost to purchase or replace the futures registration. This valuation methodology is based on the concept that a prudent investor would pay no more for an asset than the amount necessary to replace the asset.

The following is a summary of the indicated fair value for NFX futures registration:

<u>(in millions)</u>	<u>NFX Futures Registration</u>
Sum of costs	\$ 0.2
Discounted tax amortization benefit	0.1
Indicated fair value	<u>\$ 0.3</u>

**Customer Relationships**

Customer relationships represent the non-contractual and contractual relationships that PHLX has with its members. PHLX's customer relationships were valued using the income approach, specifically an excess earnings method. This valuation approach relied on assumptions regarding projected revenues, attrition rates, and operating cash flows for its customers, which were projected up to 35 years.

NASDAQ OMX assumed annual revenue attrition of 5.0% for the customers and that 95.0% of the projected revenue growth came from existing customer relationships. Charges for contributory assets were taken, and the tax-effected cash flows were discounted at a rate of 12.5%.

The cash flows were then tax-effected at a rate of 40.0%, and a discounted tax amortization benefit was added to the fair value of the asset under the assumption that the customer relationships would be amortized for tax purposes over a period of 15 years.

The following is a summary of the indicated fair value for the customer relationships asset:

<u>(in millions)</u>	<u>Total</u>
Sum of discounted cash flows	\$ 91.7
Discounted tax amortization benefit	21.2
Indicated fair value	<u>\$ 112.9</u>

The estimated remaining useful life captures 90.0% to 95.0% of the present value of the cash flows generated by the customer relationships. The remaining useful life was determined based on an analysis of the historical attrition rates of PHLX customers and paragraph 11 of SFAS 142, which included an analysis of the legal, regulatory, contractual, competitive, economic, or other factors that limit the useful life of this intangible asset. The useful life of customer relationships is addressed in the section below, "Customer Relationships and Technology Lives."

**Technology—XL, PBOT, XLE, and SCCP**

NASDAQ OMX acquired five technologies from PHLX: XL, PBOT, XLE, SCCP, and certain supporting technologies. These technologies represent the existing portfolio of software technologies that PHLX had developed or acquired to operate its exchange.

**The NASDAQ OMX Group, Inc.****Notes to Consolidated Financial Statements—(Continued)**

NASDAQ OMX will develop new integrated trading functions based on existing NASDAQ OMX technologies, and accordingly will either re-platform or discontinue using PHLX's XL, PBOT, XLE, and SCCP technologies while incorporating several supporting, peripheral technologies into the revised platform. The fair values of the technologies being re-platformed or discontinued were valued using the income approach, specifically the relief from royalty approach, relying on publicly available information to determine the royalty rate that PHLX would have to pay a third-party for the use of the technologies. This valuation methodology is based on the concept that because PHLX owns the technologies, it does not have to pay a third-party for the right to license the technology.

NASDAQ OMX researched public documents and accessed the Royalty Source database for license agreements involving similar trade names in the financial services industries. Based on the functionality of the technologies, NASDAQ OMX estimated the royalty rates to be 8.0% for XL, XLE, and SCCP technologies and 5.0% for PBOT technology.

The cash flows were then tax-effected at a rate of 40.0%, and a discounted tax amortization benefit was added to the fair value of the asset under the assumption that the technologies would be amortized for tax purposes over a period of 15 years.

The following is a summary of the indicated fair value for XL, PBOT, XLE, and SCCP technologies:

	<u>XL</u>	<u>PBOT</u>	<u>XLE</u>	<u>SCCP</u>	<u>Total</u>
Sum of discounted cash flows	\$6.1	\$ 0.0	\$0.0	\$ 0.0	\$6.1
Discounted tax amortization benefit	1.4	0.0	0.0	0.0	1.4
Indicated fair value	<u>\$7.5</u>	<u>\$ 0.0</u>	<u>\$0.0</u>	<u>\$ 0.0</u>	<u>\$7.5</u>

The estimated useful life of the technologies was based on discussions with PHLX management as to the likely duration of benefit to be derived from the technology. Since NASDAQ OMX will be re-platforming most of the existing technologies, NASDAQ OMX considered the migration cycle for re-platforming the existing technologies. NASDAQ OMX also gave consideration to paragraph 11 of SFAS 142 and to the pace of the technological changes in the industries in which PHLX sells its products.

**Technology—Supporting**

The fair values of certain supporting technologies were valued using the cost approach, specifically the replacement cost new approach, to determine the current cost to purchase or replace the supporting technologies. This valuation methodology is based on the concept that a prudent investor would pay no more for an asset than the amount necessary to replace the asset.

The following is a summary of the indicated fair value for the supporting technologies:

<u>(in millions)</u>	<u>Supporting</u>
Sum of estimated replacement costs	\$ 2.5
Discounted tax amortization benefit	0.5
Indicated fair value	<u>\$ 3.0</u>

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

Trade Name

In valuing PHLX's trade names and trademarks, we used the income approach, specifically the relief from royalty approach, relying on publicly available information to determine the royalty rate that PHLX would have to pay a third-party for the use of the trade name. This valuation methodology is based on the concept that because PHLX owns the trade name, it does not have to pay a third-party for the right to use the trade name.

NASDAQ OMX researched public documents and accessed the Royalty Source database for license agreements involving similar trade names in the financial services and technology industries. The guideline sample of license agreements yielded a typical royalty rate of 0.5% for financial services companies.

The cash flows were then tax-effected at a rate of 40.0%, and a discounted tax amortization benefit was added to the fair value of the asset under the assumption that the trade name would be amortized for tax purposes over a period of 15 years.

The following is a summary of the indicated fair value for the trade name asset:

<u>(in millions)</u>	<u>Total</u>
Sum of discounted cash flows	\$5.2
Discounted tax amortization benefit	1.2
Indicated fair value	<u>\$6.4</u>

Customer Relationships and Technology Lives

The following summarizes the methodologies and assumptions NASDAQ OMX used to estimate the remaining economic lives of the customer relationships and technology.

a. *The expected use of the asset by the entity*—As previously discussed, most of the existing technology will be re-platformed or discontinued in the next two years. The determination of the useful life of supporting technologies was based on the historical development and life cycles of existing technology products within NASDAQ OMX.

b. *The expected useful life of another asset or group of assets to which the useful life of the intangible asset may relate*—The useful lives of the technology and customer relationships assets are not significantly impacted by any other asset or group of assets. The life of the customer relationships is about 19 to 23 years. For technology, the existing technologies will be re-platformed in the next one to two years whereas supporting technologies have a 5 year life.

c. *Any legal, regulatory or contractual provisions that may limit the useful life*—We are not aware of any.

d. *Any legal, regulatory or contractual provisions that enable renewal or extension of the asset's legal or contractual life without substantial cost*—We are not aware of any other legal, regulatory, or contractual provisions that may impact the lives of the customer relationships and technology.

e. *The effects of obsolescence, demand, competition, and other economic factors*—Since NASDAQ OMX will re-platform most of the existing technologies, they would become obsolete in approximately 0.25 to two years. The life cycles were based on the business plans to re-platform the existing technologies within NASDAQ OMX and PHLX. With regards to the customer relationships, an analysis of attrition rates was performed based on historical information.

**The NASDAQ OMX Group, Inc.****Notes to Consolidated Financial Statements—(Continued)**

f. *The level of maintenance expenditures required to obtain the expected future cash flows from the asset.* PHLX expects to incur research and development expenses to maintain its technology. With respect to the customer relationships, PHLX incurs little, if any, sales and marketing expenses to maintain the current customers. NASDAQ OMX believes that historically the research and development have maintained the quality of its products and services, thus contributing to the shorter life.

**Deferred Tax Liability**

A \$5.0 million current deferred tax liability and a \$149.0 million non-current deferred tax liability (total deferred tax liability of \$154.0 million) has been set up against the \$336.8 million value of PHLX's assets outlined in the above table. The deferred tax liabilities represent the tax effect of the difference between the estimated assigned fair value of the acquired intangible assets (\$336.8 million) and the tax basis (\$0) of such assets. The estimated amount of \$154.0 million is determined by multiplying the difference of \$336.8 million by the PHLX U.S. effective tax rate of 45.72%.

**Acquisition of certain businesses of Nord Pool**

On October 21, 2008, we completed our acquisition of Nord Pool's clearing, international derivatives and consulting subsidiaries. The aggregate purchase price of NOK 2,192 million (approximately \$317.1 million) consisted of NOK 1,725 million (approximately \$249.4 million) in cash, NOK 457 million (approximately \$66.0 million) in the form of a vendor note due to the current owners of Nord Pool within 18 months of closing and NOK 10 million (approximately \$1.7 million) of direct acquisition costs. NASDAQ OMX may also be obligated to pay further earn-out payments of up to NOK 800 million (approximately \$115.6 million), based on certain volume measurements over a five-year period. In accordance with SFAS 141, we will recognize these payments as additional goodwill if and when the earn-outs are achieved.

**Purchase Price**

The following is a summary of the purchase price of the Nord Pool transaction (in millions):

Cash component	249.4 <sup>(a)</sup>
Vendor note	66.0 <sup>(b)</sup>
Acquisition costs	1.7 <sup>(c)</sup>
Total purchase consideration	<u>\$317.1</u>

(a) Based on cash consideration of NOK 1,725 million paid on October 21, 2008 divided by the NOK/USD exchange rate of 6.9175 on that date. The sources of the cash component were the drawdown of debt under a five-year \$2,000.0 million senior secured term loan facility and the use of cash on hand.

(b) Based on vendor note of NOK 457 million given on October 21, 2008 divided by the NOK/USD exchange rate of 6.9175 on that date. The vendor note will be due to the current owners of Nord Pool within 18 months of closing.

(c) Management's direct costs of the acquisition, which primarily include legal and advisory fees incurred by NASDAQ OMX. Based on acquisition costs of NOK 10 million incurred during 2008 divided by the NOK/USD average 2008 exchange rate of 5.8587. These costs were funded with cash on hand.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

The following table presents a summary of the preliminary Nord Pool transaction purchase price allocation:

<u>Purchase Consideration</u>	<u>Total Net Assets (Liabilities) Acquired<sup>(1)</sup></u> (in millions)	<u>Purchased Intangible Assets</u>	<u>Goodwill</u>
\$317.1	\$66.7	\$89.1	\$161.3

<sup>(1)</sup> We acquired net assets, at fair value, in the Nord Pool transaction totaling \$91.6 million and recorded deferred tax liabilities of \$24.9 million related to intangible assets resulting in total net assets acquired of \$66.7 million.

***Intangible Assets***

The following table presents the details of the purchased intangible assets acquired in the Nord Pool transaction. All finite-lived purchased intangible assets are amortized using the straight-line method. See Note 4, “Goodwill and Purchased Intangible Assets,” for further discussion.

	<u>Value</u>	<u>Estimated Average Remaining Useful Life (in Years)</u>
Intangible assets:		
Customer relationships	\$84.9	21 years
Trade name	3.7	10 years
SAPRI technology	0.5	7 years
<b>Total intangible assets</b>	<b><u>\$89.1</u></b>	

In performing the preliminary purchase price allocation, NASDAQ OMX considered, among other factors, the intention for the future use of the acquired assets, analyses of historical financial performance, and an estimate of the future performance of the acquired businesses. The estimate of the fair values of intangible assets is based, in part, on a valuation using an income approach, market approach, or cost approach, as appropriate. The risk-adjusted discount rates used to compute the present value of the expected net cash flows of individual intangible assets, were based on Nord Pool’s weighted average cost of capital of 11.7%. This discount rate was determined after consideration of Nord Pool’s rate of return on debt and equity and the return on invested capital. In estimating the remaining useful lives of the intangible assets, NASDAQ OMX considered the six factors presented in paragraph 11 of SFAS 142 and an analysis of the intangible assets’ relevant historical attrition data. Below is a discussion of the method used to determine the fair value of the customer relationships intangible asset.

**Customer Relationships**

Customer relationships represent the non-contractual and contractual relationships that the businesses acquired in the Nord Pool transaction have with their members. Customer relationships were valued using the income approach, specifically an excess earnings method. This valuation approach relied on assumptions regarding projected revenues, attrition rates, and operating cash flows for customers, which were projected over 38 years.

NASDAQ OMX assumed annual revenue attrition of 5.0% for the customers and revenue growth of the customers at 80% of the projected overall revenue growth of the business. Charges for contributory assets were taken, and the tax-effected cash flows were discounted at a rate of 12.8%.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

The cash flows were then tax-effected at a rate of 28.0%, and a discounted tax amortization benefit was added to the fair value of the asset under the assumption that the customer relationships would be amortized for tax purposes over a period of 21 years based on the remaining useful life of the customers and Norwegian tax law.

The following is a summary of the indicated fair value for the customer relationships asset:

<u>(in millions)</u>	<u>Total</u>
Sum of discounted cash flows	\$76.3
Discounted tax amortization benefit	8.6
Indicated fair value	<u>\$84.9</u>

The estimated remaining useful life captures approximately 95.0% of the present value of the cash flows generated by the customer relationships. The remaining useful life was determined based on an analysis of the historical attrition rates of customers and paragraph 11 of SFAS 142, which included an analysis of the legal, regulatory, contractual, competitive, economic, or other factors that limit the useful life of this intangible asset.

The following summarizes the methodologies and assumptions NASDAQ OMX used to estimate the remaining economic lives of the customer relationships.

a. *The expected use of the asset by the entity*—The determination of the useful life of the customer relationships asset was estimated based on the period in which 95% of the present value of cash flows related to the customer relationships are captured.

b. *The expected useful life of another asset or group of assets to which the useful life of the intangible asset may relate*—The useful lives of the customer relationships asset is not significantly impacted by any other asset or group of assets. The life of the customer relationships is about 20 to 22 years.

c. *Any legal, regulatory or contractual provisions that may limit the useful life*—We are not aware of any.

d. *Any legal, regulatory or contractual provisions that enable renewal or extension of the asset's legal or contractual life without substantial cost*—We are not aware of any other legal, regulatory, or contractual provisions that may impact the lives of the customer relationships and technology.

e. *The effects of obsolescence, demand, competition, and other economic factors*—With regards to the customer relationships, an analysis of attrition rates was performed based on historical information.

f. *The level of maintenance expenditures required to obtain the expected future cash flows from the asset*. With respect to the customer relationships, the businesses acquired in the Nord Pool transaction incur little, if any, sales and marketing expenses to maintain the current customers.

#### **Deferred Tax Liability**

A \$24.9 million deferred tax liability has been set up against the \$89.1 million value of the intangible assets acquired in the Nord Pool transaction outlined in the above table. The deferred tax liability represents the tax effect of the difference between the estimated assigned fair value of the acquired intangible assets (\$89.1 million) and the tax basis (\$0) of such assets. The estimated amount of \$24.9 million is determined by multiplying the difference of \$89.1 million by the effective tax rate of 28.0%.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**Pro Forma Results**

The consolidated financial statements for the year ended December 31, 2008 include the financial results of OMX AB, PHLX, BSX, certain businesses of Nord Pool and IDCG from the date of each acquisition. Unaudited pro forma combined historical results for the years ended December 31, 2008 and 2007 are included in the table below. The unaudited pro forma combined results include the historical Consolidated Statements of Income of Nasdaq, OMX AB and PHLX giving effect to the OMX AB business combination and PHLX acquisition as if they had occurred at the beginning of each period presented. We also acquired BSX in August 2008, certain businesses of Nord Pool in October 2008 and IDCG in December 2008, but have not included their results prior to their respective acquisition dates in these pro forma results as these acquisitions were not considered significant.

	Years Ended December 31,	
	2008	2007
	(in thousands, except per share amounts)	
Revenues	\$ 3,851,006	\$ 3,152,706
Revenues less liquidity rebates, brokerage, clearance and exchange fees	1,652,478	1,520,727
Net income	314,984	336,283
Basic earnings per share	\$ 1.58	\$ 1.90
Diluted earnings per share	\$ 1.48	\$ 1.62

The pro forma results for the years ended December 31, 2008 and 2007 primarily include adjustments for amortization of the intangible assets presented above, the elimination of OMX AB's historical amortization expense, elimination of PHLX's non-recurring expenses related to the acquisition, additional interest expense on the Credit Facilities and the 2.50% convertible senior notes, elimination of OMX AB's historical interest expense related to OMX AB's debt that was refinanced and related tax adjustments.

The pro forma results for the year ended December 31, 2008 also include the elimination of the non-recurring gain on the contribution of the Nasdaq trade name in the NASDAQ Dubai transaction discussed above. In addition, the pro forma results for the year ended December 31, 2007 were adjusted to exclude the material non-recurring charges or credits and related tax effects related to our previous investment in the LSE. The adjustments related to the LSE transaction include the elimination of Nasdaq's interest expense related to the financing of the purchase of the share capital of the LSE, the loss on foreign currency option contracts purchased to hedge the foreign currency exposure on our acquisition bid, dividend income received from the LSE, strategic initiative costs and related tax adjustments. In addition, pro forma results for the years ended December 31, 2008 and 2007 include adjustments to eliminate interest income related to the net cash received from the sale of our investment in the LSE.

## The NASDAQ OMX Group, Inc.

## Notes to Consolidated Financial Statements—(Continued)

## Other Acquisitions Completed in 2008, 2007 and 2006

The following table presents a summary of our other acquisitions in 2008, 2007 and 2006:

	<u>Purchase Consideration</u>	<u>Total Net (Liabilities) Assets Acquired<sup>(1)</sup></u> (in thousands)	<u>Purchased Intangible Assets</u>	<u>Goodwill</u>
<b>2008</b>				
BSX	\$ 43,365 <sup>(2)</sup>	\$ (43,725)	\$ 52,300	\$34,790
IDCG	84,531	58,743	25,788	—
Total for 2008	<u>\$ 127,896</u>	<u>\$ 15,018</u>	<u>\$ 78,088</u>	<u>\$34,790</u>
<b>2007</b>				
Directors Desk	<u>\$ 8,000<sup>(2)</sup></u>	<u>\$ (162)</u>	<u>\$ 1,660</u>	<u>\$ 6,502</u>
<b>2006</b>				
Shareholder.com	\$ 40,000 <sup>(2)</sup>	\$ (2,069)	\$ 10,159	\$31,910
GlobeNewswire	18,000 <sup>(2)</sup>	(1,300)	5,170	12,296
Total for 2006	<u>\$ 58,000</u>	<u>\$ (3,369)</u>	<u>\$ 15,329</u>	<u>\$44,206</u>

(1) We acquired net liabilities of BSX totaling \$22.3 million and recorded deferred tax liabilities of \$21.5 million related to BSX's intangible assets. The net liabilities of \$22.3 million include \$22.6 million of negative working capital, which was included as an adjustment to the purchase consideration. We acquired net assets of IDCG of \$58.7 million, which include \$68.0 million of cash received from NASDAQ OMX for the acquisition consideration. We acquired net assets of Directors Desk totaling \$0.2 million and net liabilities of \$0.4 million resulting in total net liabilities acquired of \$0.2 million. We acquired net assets of Shareholder.com totaling \$1.1 million and recorded non-current deferred tax liabilities of \$3.2 million related to Shareholder.com's intangible assets resulting in total net liabilities acquired of \$2.1 million. We acquired net assets of GlobeNewswire totaling \$0.7 million and recorded non-current deferred tax liabilities of \$2.0 million related to GlobeNewswire's intangible assets resulting in total net liabilities acquired of \$1.3 million.

(2) BSX consideration includes the \$61.0 million purchase price less \$22.6 million of negative working capital adjustments as well as \$4.9 million for the settlement of a loan. BSX consideration includes \$3.3 million held in escrow to be paid in 2009 in accordance with the purchase agreement. Directors Desk purchase consideration included \$0.5 million held in escrow to be paid in 2009 in accordance with the purchase agreement. Shareholder.com purchase consideration included \$4.0 million held in escrow for post closing settlement adjustments that were paid in 2007 in accordance with the purchase agreement. GlobeNewswire purchase consideration included \$1.8 million included in compensation and benefits expense in the December 31, 2006 Consolidated Statements of Income related to incentive payments paid in 2008 in accordance with the purchase agreement.

The NASDAQ OMX Group, Inc.

Notes to Consolidated Financial Statements—(Continued)

The following table presents the details of the purchased intangible assets acquired in the above 2008, 2007 and 2006 acquisitions. All purchased intangible assets are amortized using the straight-line method. See Note 4, “Goodwill and Purchased Intangible Assets,” for further discussion.

	Technology		Customer Relationships		Other		Total
	Estimated Useful Life (in Years)	Amount	Estimated Useful Life (in Years)	Amount	Estimated Useful Life (in Years)	Amount	Amount
(in thousands, except years)							
<b>2008</b>							
BSX	—	\$ —	17-25	\$ 2,500	Indefinite <sup>(1)</sup>	\$ 49,800	\$ 52,300
IDCG	—	—	—	—	Indefinite <sup>(2)</sup>	25,788	25,788
Total for 2008		\$ —		\$ 2,500		\$ 75,588	\$ 78,088
<b>2007</b>							
Directors Desk	4.5	\$ 750	20	\$ 910	—	\$ —	\$ 1,660
<b>2006</b>							
Shareholder.com	5	\$ 959	11	\$ 6,800	Indefinite <sup>(3)</sup>	\$ 2,400	\$ 10,159
GlobeNewswire	5	1,600	11	3,100	3-5 <sup>(4)</sup>	470	5,170
Total for 2006		\$ 2,559		\$ 9,900		\$ 2,870	\$ 15,329

(1) Includes SRO and clearing licenses which we determined to have an indefinite estimated useful life.

(2) Includes derivative clearing license for interest rate swaps which we determined to have an indefinite estimated useful life.

(3) Represents the Shareholder.com trade name which we determined to have an indefinite estimated useful life.

(4) Includes non-compete agreements which have estimated useful lives of 3 years and the PrimeNewswire tradename which we determined to have an estimated useful life of 5 years. In the third quarter 2008, we wrote down the PrimeNewswire finite-lived trade name intangible asset used in our newswire services business of \$0.2 million as we changed the name of the business to GlobeNewswire. This charge was included in asset impairment charges within other income (expense), net in the Consolidated Statements of Income in 2008. See Note 4, “Goodwill and Purchased Intangible Assets,” for further discussion.

**4. Goodwill and Purchased Intangible Assets**

**Goodwill**

The following table presents the changes in goodwill by business segment during the year ended December 31, 2008:

	Market Services	Issuer Services	Market Technology	Total
	(in thousands)			
Balance at December 31, 2007	\$ 911,179	\$ 69,557	\$ —	\$ 980,736
Goodwill acquired	3,911,158	238,720	41,253	4,191,131
Purchase accounting adjustments	71,445	4,022	61,359	136,826
Foreign currency translation adjustment	(734,644)	(57,139)	(24,488)	(816,271)
Balance at December 31, 2008	\$4,159,138	\$255,160	\$ 78,124	\$4,492,422

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

The goodwill acquired and purchase accounting adjustments for Market Services, Issuer Services and Market Technology shown above relate to our business combination with OMX AB. In addition, the goodwill acquired for Market Services includes the goodwill related to our acquisitions of PHLX and BSX and the Nord Pool transaction. See Note 3, “Business Combinations,” for further discussion. The purchase accounting adjustments for Market Services consist of direct acquisition costs, technology write-downs, additional severance costs related to former OMX AB employees, additional sublease loss reserves, and a reduction in the fair value of certain assets acquired. The purchase accounting adjustments for Issuer Services consist of direct acquisition costs and additional severance costs related to former OMX AB employees, and the purchase accounting adjustments for Market Technology consist of write-downs of customer contracts, technology write-downs, direct acquisition costs and additional severance costs related to former OMX AB employees. Goodwill is allocated to the reporting units based on the assignment of the fair values of each reporting unit of the acquired company. As we finalize the factors and assumptions that we obtained to determine the values assigned to each segment, our OMX goodwill segment allocation was revised during 2008.

**Purchased Intangible Assets**

The following table presents details of our total purchased intangible assets, both finite- and indefinite-lived:

	December 31, 2008			December 31, 2007		
	Gross Carrying Amount	Accumulated Amortization	Net Intangible Assets	Gross Carrying Amount	Accumulated Amortization	Net Intangible Assets
(in thousands)						
<b>Finite-Lived Intangible Assets</b>						
Technology	\$ 81,969	\$ (36,801)	\$ 45,168	\$ 29,409	\$ (20,682)	\$ 8,727
Customer relationships	817,260	(75,632)	741,628	206,410	(37,076)	169,334
Other	7,333	(3,312)	4,021	3,240	(2,089)	1,151
Foreign currency translation adjustment	(93,496)	—	(93,496)	—	—	—
Total Finite-Lived Intangible Assets	\$ 813,066	\$ (115,745)	\$ 697,321	\$ 239,059	\$ (59,847)	\$ 179,212
<b>Indefinite-Lived Intangible Assets</b>						
Exchange and clearing registrations	\$ 790,000	\$ —	\$ 790,000	\$ —	\$ —	\$ —
Trade names <sup>(1)</sup>	172,500	—	172,500	2,400	—	2,400
Licenses <sup>(2)</sup>	75,588	—	75,588	—	—	—
Foreign currency translation adjustment	(152,545)	—	(152,545)	—	—	—
Total Indefinite-Lived Intangible Assets	\$ 885,543	\$ —	\$ 885,543	\$ 2,400	\$ —	\$ 2,400
<b>Total Intangible Assets</b>	<b>\$ 1,698,609</b>	<b>\$ (115,745)</b>	<b>\$ 1,582,864</b>	<b>\$ 241,459</b>	<b>\$ (59,847)</b>	<b>\$ 181,612</b>

(1) Includes trade names for OMX and Shareholder.com which we have determined to have an indefinite useful life as these trade names are expected to generate future cash flows for an indefinite period of time.

(2) Includes IDCG derivative clearing license for interest rate swaps and BSX SRO and clearing licenses.

In accordance with SFAS 144, we record impairment losses on long-lived assets used in operations when events and circumstances indicate that long-lived assets might be impaired and the undiscounted cash flows estimated to be generated by those assets are less than the carrying amounts of those assets. In the third quarter

**The NASDAQ OMX Group, Inc.****Notes to Consolidated Financial Statements—(Continued)**

2008, due to a current period operating loss and a projection of future cash flow losses due to lower contract rates for our insurance agency business, which is part of Corporate Services within our Issuer Services segment, we evaluated the ongoing value of the intangible assets associated with this business. Based on this evaluation, we determined that finite-lived intangible assets, consisting primarily of customer relationships and technology, with a carrying value of approximately \$7.1 million, were no longer recoverable and were in fact impaired, and wrote them down to their estimated fair value of zero. The risk-adjusted discount rates used to compute the present value of the expected net cash flows of individual intangible assets were based on Carpenter Moore's weighted average cost of capital, which ranged from 14.5% to 16.9%. These discount rates were determined after consideration of Carpenter Moore's rate of return on debt and equity and the weighted-average return on invested capital. In addition, we wrote down the finite-lived trade name intangible asset used in our newswire services business of \$0.2 million in the third quarter of 2008 as we changed the name of the business to GlobeNewswire. We recorded these impairment losses in asset impairment charges within other income (expense), net in the Consolidated Statements of Income for the year ended December 31, 2008.

Amortization expense for purchased finite-lived intangible assets was \$47.8 million for the year ended December 31, 2008, \$19.7 million for the year ended December 31, 2007 and \$31.2 million for the year ended December 31, 2006. The increase in amortization expense in 2008 compared to 2007 was primarily due to intangible asset amortization expense on identifiable finite-lived intangible assets purchased in connection with the OMX AB business combination and PHLX acquisition from the date of each acquisition. The decrease in amortization expense in 2007 compared with 2006 was primarily due to a change in the estimated useful life of technology assets in December 2005 as a result of our acquisition of INET and migration to a single trading platform. These assets were fully amortized in 2006.

The estimated future amortization expense (excluding the impact of future foreign exchange rate changes) of purchased intangible assets as of December 31, 2008 is as follows:

	<u>(in thousands)</u>
2009	\$ 62,851
2010	58,033
2011	45,391
2012	42,917
2013	42,555
2014 and thereafter	539,070
Total	<u>\$ 790,817</u>

**5. Equity Method Investments**

We have investments in companies accounted for under the equity method of accounting which were primarily acquired through the business combination with OMX AB and the NASDAQ Dubai transaction. The equity method of accounting is used when we own less than 50% of the outstanding voting stock, but exercise significant influence over the operating and financial policies of the company.

We have \$207.4 million of equity interest in our equity method investments, which consist primarily of NASDAQ Dubai and Orc Software, included in other assets in the Consolidated Balance Sheets as of December 31, 2008. Income recognized from our equity interest in the earnings and losses of these companies was \$1.3 million for 2008 and is included in income from unconsolidated investees, net, within other income (expense), net in the Consolidated Statements of Income. For NASDAQ Dubai, we record our equity interest in the earnings and losses of this company on a quarter lag.

**The NASDAQ OMX Group, Inc.****Notes to Consolidated Financial Statements—(Continued)**

NASDAQ Dubai is a related party, as NASDAQ Dubai is primarily owned by Borse Dubai, who through the completion of the Transactions, owns 19.99% of the share capital of NASDAQ OMX, in addition to shares held by the Trust for their benefit.

In accordance with APB 18, we evaluated our equity method investments for other-than-temporary declines in value by considering a variety of factors such as the earnings capacity of the investment and the fair value of the investment compared to its carrying amount. In addition, for investments where the market value is readily determinable, we consider the underlying stock price as an additional factor. As of December 31, 2008, we have not recognized other-than-temporary declines in value on these investments.

**6. Property and Equipment, net**

The following table presents the major categories of property and equipment, net:

	December 31,	
	2008	2007
	(in thousands)	
Data processing equipment and software	\$ 258,328	\$ 112,152
Furniture, equipment and leasehold improvements	164,679	96,490
	423,007	208,642
Less: accumulated depreciation and amortization	(240,064)	(144,119)
Total property and equipment, net	<u>\$ 182,943</u>	<u>\$ 64,523</u>

Depreciation and amortization expense for property and equipment was \$44.8 million for the year ended December 31, 2008, \$19.2 million for the year ended December 31, 2007 and \$13.9 million for the year ended December 31, 2006. These amounts are included in depreciation and amortization expense in the Consolidated Statements of Income.

As of December 31, 2008 and 2007, we do not own any properties. See “Real Estate Consolidation,” of Note 22, “Cost Reduction Program and INET Integration,” for further discussion.

**7. Financial Investments, at Fair Value**

Financial investments, at fair value were \$227.3 million as of December 31, 2008 and are primarily comprised of Swedish government debt securities. These securities, which are classified as trading securities, are restricted assets to meet regulatory capital requirements for NASDAQ OMX Stockholm clearing operations.

**Investment in the LSE**

During 2006 and 2007, Nasdaq, through its wholly-owned subsidiary Nightingale Acquisition Limited, or NAL, acquired share capital of the LSE, totaling 28.4%, or 28.8% after taking into effect LSE’s buybacks.

In November 2006, we announced the terms of final offers to acquire all of the ordinary share capital of the LSE not already owned by us at a price of 1,243 pence per share and all of the B share capital of LSE at a price of 200 pence (plus accrued dividend) per share. In order to hedge the foreign currency exposure on our acquisition bid for the LSE, we purchased foreign currency option contracts. See Note 17, “Derivative Financial Instruments and Hedging Activities,” for further discussion. These final offers lapsed on February 10, 2007.

**The NASDAQ OMX Group, Inc.****Notes to Consolidated Financial Statements—(Continued)**

During 2007, we incurred costs, such as legal and advisory, of \$26.5 million in connection with our strategic initiatives related to the LSE, including our acquisition bid. In conjunction with the lapse of our final offers for the LSE in February 2007, these costs were charged to expense in 2007, of which \$24.9 million was expensed in the first quarter of 2007 and \$1.6 million was expensed in the second quarter 2007. These costs are included in strategic initiative costs in the Consolidated Statements of Income.

On September 25, 2007, Nasdaq, through NAL, sold shares, representing at that time 28.0% of the share capital of the LSE, to Borse Dubai for \$1,590.7 million in cash. Nasdaq sold the substantial balance of its remaining holdings in the LSE in open market transactions for approximately \$193.5 million in cash on September 26, 2007 for total proceeds of \$1,784.2 million. As a result of the sale, Nasdaq recognized a \$431.4 million pre-tax gain, which is net of \$18.0 million of costs directly related to the sale, primarily broker fees. On September 28, 2007, Nasdaq used approximately \$1,055.5 million of the proceeds from the above transactions to repay in full and terminate our then-outstanding credit facilities.

**8. Deferred Revenue**

We estimate that our deferred revenue at December 31, 2008 primarily related to Global Listing Services and Market Technology fees and will be recognized in the following years. The timing of recognition of our deferred Market Technology revenues is dependent upon when significant modifications are made pursuant to the contracts. As such, as it relates to these fees, the timing represents our best estimate.

	<u>Initial Listing Fees</u>	<u>Listing of Additional Shares</u>	<u>Annual and Other (in thousands)</u>	<u>Market Technology</u>	<u>Total</u>
Fiscal year ended:					
2009	\$19,351	\$ 33,154	\$ 21,132	\$ 12,691	\$ 86,328
2010	15,599	23,583	30	5,848	45,060
2011	11,366	13,664	—	5,848	30,878
2012	7,183	3,820	—	5,848	16,851
2013	3,217	—	—	5,848	9,065
2014 and thereafter	613	—	—	6,824	7,437
	<u>\$57,329</u>	<u>\$ 74,221</u>	<u>\$ 21,162</u>	<u>\$ 42,907</u>	<u>\$195,619</u>

Our deferred revenue during the years ended December 31, 2008 and 2007 is reflected in the following table. The additions primarily reflect Issuer Services revenues from listing fees and Market Technology revenues from delivered client contracts in the support phase charged during the period, as well as Market Technology deferred revenue related to the contribution of technology licenses to NASDAQ Dubai. Under contract accounting, where customization and significant modifications to the software are made to meet the needs of our customers, total revenue as well as costs incurred are deferred until these contracts are delivered and billed. Once delivered and billed, deferred revenue is recognized over the post contract support period. We have included the deferral of this revenue in other accrued liabilities and the deferral of costs in other assets in the Consolidated Balance Sheets.

The NASDAQ OMX Group, Inc.

Notes to Consolidated Financial Statements—(Continued)

OMX's beginning balances since the date of the business combination have been included in additions. The amortization primarily reflects Issuer Services revenues from listing fees and Market Technology revenues including revenues earned from the technology licenses contributed to NASDAQ Dubai and from client contracts recognized during the period in accordance with U.S. GAAP.

	Initial Listing Fees	Listing of Additional Shares	Annual and Other (in thousands)	Market Technology	Total
Balance at December 31, 2006	\$ 71,054	\$ 73,829	\$ 2,208	\$ —	\$ 147,091
Additions	22,304	46,119	153,105	—	221,528
Amortization	(22,150)	(40,566)	(151,321)	—	(214,037)
Balance at December 31, 2007	<u>\$ 71,208</u>	<u>\$ 79,382</u>	<u>\$ 3,992</u>	<u>\$ —</u>	<u>\$ 154,582</u>
Additions	8,187	34,996	203,928	73,151	320,262
Amortization	(22,066)	(40,157)	(184,796)	(16,963)	(263,982)
Translation adjustment	—	—	(1,962)	(13,281)	(15,243)
Balance at December 31, 2008	<u>\$ 57,329</u>	<u>\$ 74,221</u>	<u>\$ 21,162</u>	<u>\$ 42,907</u>	<u>\$ 195,619</u>

9. Debt Obligations

The following table presents the changes in our debt obligations during the year ended December 31, 2008:

	December 31, 2007	Additions	Payments, Conversions and Accretion	December 31, 2008
	(in thousands)			
3.75% convertible notes due October 22, 2012 (net of discount)	\$ 118,438	\$ —	\$ 318	\$ 118,756
2.50% convertible senior notes due August 15, 2013	—	475,000	—	475,000
\$2,000.0 million senior secured term loan facility credit agreement due February 27, 2013 (average interest rate of 4.85% <sup>(1)</sup> for the period February 27, 2008 through December 31, 2008)	—	2,000,000	(75,000)	1,925,000
Debt obligations assumed from the business combination with OMX AB <sup>(2)</sup>	—	352,918	(352,918)	—
Total debt obligations	118,438	2,827,918	(427,600)	2,518,756
Less current portion	—	(225,000)	—	(225,000)
Total long-term debt obligations	<u>\$ 118,438</u>	<u>\$ 2,602,918</u>	<u>\$ (427,600)</u>	<u>\$ 2,293,756</u>

(1) In the third quarter 2008, \$200.0 million was swapped to fixed rate using float-to-fixed interest rate swaps. As of December 31, 2008, taking into account these swaps, the average effective interest rate on this debt was 4.85%. For further discussion, see "Interest Rate Swap," of Credit Facilities below.

(2) OMX AB's debt obligations were refinanced with a combination of proceeds from the issuance of the 2.50% convertible senior notes and credit facilities.

3.75% Convertible Notes

The 3.75% convertible notes were originally issued to H&F (\$300.0 million), SLP (\$141.4 million) and other partners (\$3.6 million) in order to finance the INET transaction. These notes were convertible into our

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

common stock at a price of \$14.50 per share, representing 30,689,655 shares subject to adjustment, in general for any stock split, dividend, combination, recapitalization or similar event. We also issued warrants to purchase shares of our common stock at a price of \$14.50 per share to H&F (3,400,000 shares), SLP (1,523,325 shares) and other partners (39,175 shares). The warrants became exercisable on April 22, 2006 and would have expired on December 8, 2008, the third anniversary of the closing of the INET acquisition. See discussion of conversion of the 3.75% convertible notes and exercise of warrants below.

***Conversion of the 3.75% Convertible Notes and exercise of warrants***

In the fourth quarter of 2007, H&F sold its entire stake in our common stock in a public offering which included (i) shares issued through the conversion of the 3.75% convertible notes, (ii) shares acquired through the cashless exercise of warrants and (iii) shares held outright by H&F, which were previously purchased from us in a separate transaction. Also in the fourth quarter of 2007, SLP and other partners sold 1,732,491 shares of our common stock. The shares sold by SLP and other partners consisted of a portion of shares issued through the conversion of the 3.75% convertible notes issued to SLP and other partners, and the cashless exercise of a portion of the warrants issued to other partners. As of December 31, 2007, approximately \$120.1 million in aggregate principal amount of the 3.75% convertible notes remained outstanding.

In 2008, SLP converted 2,000 shares of the 3.75% convertible notes and exercised 1,523,325 warrants into common stock for cash. As part of this cash exercise, SLP paid us \$22.1 million. In addition, other partners also exercised 16,164 warrants through a cashless exercise. As part of this cashless exercise, the other partners delivered to us 10,037 shares of our common stock. Approximately \$120.1 million (\$118.6 million related to SLP and \$1.5 million related to other partners) in aggregate principal amount of the 3.75% convertible notes remained outstanding as of December 31, 2008. At December 31, 2008, there were no warrants outstanding.

On an as-converted basis at December 31, 2008, SLP owned an approximate 3.9% equity interest in us as a result of its ownership of \$118.6 million in aggregate principal amount of the 3.75% convertible notes, which are convertible into 8,177,715 shares of our common stock. We have registered for resale the shares underlying SLP's and other partners' notes on a Form S-3 registration statement.

**2.50% Convertible Senior Notes**

During the first quarter of 2008, in connection with the business combination with OMX AB, we completed the offering of \$475.0 million aggregate principal amount of 2.50% convertible senior notes due 2013. The interest rate on the notes is 2.50% per annum payable semi-annually in arrears on February 15 and August 15, beginning August 15, 2008. The notes will mature on August 15, 2013.

The notes are convertible in certain circumstances specified in the indenture for the notes. Upon conversion, holders will receive, at the election of NASDAQ OMX, cash, common stock or a combination of cash and common stock. It is our current intent and policy to settle the principal amount of the notes in cash. The conversion rate will initially be 18.1386 shares of common stock per \$1,000 principal amount of notes, which is equivalent to a conversion price of approximately \$55.13 per share of common stock. At December 31, 2008, the 2.50% convertible senior notes are convertible into 8,615,999 shares of our common stock, subject to adjustment upon the occurrence of specified events. Subject to certain exceptions, if we undergo a "fundamental change" as described in the indenture, holders may require us to purchase their notes at a price equal to 100% of the principal amount of the notes, plus accrued and unpaid interest.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**Debt Issuance Costs**

In conjunction with the issuance of the 2.50% convertible senior notes, we incurred debt issuance costs of \$9.6 million. These costs, which are capitalized and included in other assets in the Consolidated Balance Sheets, are being amortized over the life of the debt obligation. Amortization expense, which was recorded as additional interest expense, was \$1.5 million for the year ended December 31, 2008.

**Credit Facilities**

In connection with the business combination with OMX AB, on February 27, 2008, NASDAQ OMX entered into a credit agreement among NASDAQ OMX, as borrower, the financial institutions party thereto as lenders, Bank of America, N.A., as administrative agent, collateral agent, swingline lender and issuing bank, JPMorgan Chase Bank, N.A., as syndication agent, Bank of America Securities LLC and JP Morgan Securities Inc., as joint lead arrangers and joint bookrunners, and Wachovia Bank, National Association, as documentation agent. The credit agreement provides for up to \$2,075.0 million of senior secured loans, which include (i) a five-year, \$2,000.0 million senior secured term loan facility, or the Term Loan Facility, which consists of (a) a \$1,050.0 million term loan facility allocated to the OMX AB business combination; (b) a \$650.0 million term loan facility allocated to the acquisition of PHLX, and (c) a \$300.0 million term loan facility allocated to the Nord Pool transaction, and (ii) a five-year, \$75.0 million senior secured revolving credit facility, with a letter of credit subfacility and swingline loan subfacility, or the Revolving Credit Facility, and together with the Term Loan Facility, the Credit Facilities. The Revolving Credit Facility was undrawn as of December 31, 2008.

In addition, NASDAQ OMX may request that prospective additional lenders under the Credit Facilities agree to make available incremental term loans and incremental revolving commitments from time to time in an aggregate amount not to exceed \$200.0 million.

In addition to financing the business combination with OMX AB, the acquisition of PHLX and the Nord Pool transaction, we are using the debt financing under the Credit Facilities to pay fees and expenses incurred in connection with such transactions and repay certain indebtedness of OMX AB.

Borrowings under the Credit Facilities (other than swingline loans) bear interest at (i) the base rate (the higher of the prime rate announced by the Bank of America, N.A. and the federal funds effective rate plus 0.50%), plus an applicable margin, or (ii) the LIBO rate (set by the British Bankers Association LIBOR Rate), plus an applicable margin. The interest rate on swingline loans made under the Credit Facilities is the base rate, plus an applicable margin.

NASDAQ OMX's obligations under the Credit Facilities (i) are guaranteed by each of the existing and future direct and indirect material wholly-owned domestic subsidiaries of NASDAQ OMX, subject to certain exceptions, and (ii) are secured, subject to certain exceptions, by all the capital stock of each of our present and future subsidiaries (limited, in the case of foreign subsidiaries, to 65.0% of the voting stock of such subsidiaries) and all of the present and future property and assets (real and personal) of NASDAQ OMX and the guarantors.

The Credit Facilities contain customary negative covenants applicable to NASDAQ OMX and its subsidiaries, including the following:

- limitations on the payment of dividends and redemptions of NASDAQ OMX's capital stock;
- limitations on changes in NASDAQ OMX's business;
- limitations on amendment of subordinated debt agreements;

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

- limitations on prepayments, redemptions and repurchases of debt;
- limitations on liens and sale-leaseback transactions;
- limitations on business combinations, recapitalizations, acquisitions and asset sales;
- limitations on transactions with affiliates;
- limitations on restrictions on liens and other restrictive agreements; and
- limitations on loans, guarantees, investments, incurrence of debt and hedging arrangements.

In addition, the Credit Facilities contain financial covenants, specifically, maintenance of a minimum interest expense coverage ratio and a maximum total leverage ratio, as defined in the Credit Facilities.

The Credit Facilities also contain customary affirmative covenants, including access to financial statements, notice of defaults and certain other material events, maintenance of business and insurance, and events of default, including cross-defaults to our material indebtedness.

NASDAQ OMX is permitted to repay borrowings under the Credit Facilities at any time in whole or in part, without penalty. We also are required to repay loans outstanding under the Credit Facilities (i) with net cash proceeds from sales of property and assets of NASDAQ OMX and its subsidiaries (excluding inventory sales and other sales in the ordinary course of business) and casualty and condemnation proceeds, in each case subject to exceptions and thresholds to be agreed and subject to reinvestment rights; (ii) with net cash proceeds from the issuance or incurrence of additional indebtedness other than indebtedness permitted by the Credit Facilities; and (iii) with a percentage of our excess cash flow, and the percentage of such excess cash flow required to be used for repayments varies depending on our leverage ratio at the end of the year for which cash flow is calculated, starting in 2008, with the maximum repayment percentage set at 50.0% of excess cash flow.

***Interest Rate Swap***

Under the provisions of our Credit Facilities, we are required to maintain approximately 30% of our debt structure on a fixed rate basis for two years from the date of the credit agreement. As such, in August 2008, we entered into interest rate swap agreements that effectively converted \$200.0 million of funds borrowed under our Credit Facilities, which is floating rate debt, to a fixed rate basis through August 2011. The interest rate swap was fixed to a LIBOR base rate of 3.73% plus the current credit spread of 200 basis points as of December 31, 2008. The credit spread (not to exceed 200 basis points) is subject to change based upon the leverage ratio in accordance with the Credit Facilities. See Note 17, "Derivative Financial Instruments and Hedging Activities," for further discussion.

***Debt Issuance Costs***

In conjunction with our Credit Facilities, we incurred debt issuance costs of \$43.7 million. These costs, which are capitalized and included in other assets in the Consolidated Balance Sheets, are being amortized over the life of the debt obligation. Amortization expense which was recorded as additional interest expense was \$6.7 million for the year ended December 31, 2008.

At December 31, 2008, we were in compliance with the covenants of all of our debt obligations.

In addition to the \$75.0 million Revolving Credit Facility discussed above, we have credit facilities related to our clearinghouses in order to meet regulatory liquidity requirements. These credit facilities, which are

**The NASDAQ OMX Group, Inc.****Notes to Consolidated Financial Statements—(Continued)**

available in multiple currencies, primarily Swedish Krona, totaled \$245.8 million at December 31, 2008, of which \$4.4 million was drawn and was included in other accrued liabilities in the Consolidated Balance Sheets.

**10. Income Taxes**

The income tax provision consists of the following amounts:

	Year Ended December 31,		
	2008	2007	2006
	(in thousands)		
Current income taxes:			
Federal	\$ 220,240	\$ 256,738	\$ 61,789
State	49,462	34,030	9,526
Foreign	35,727	316	533
Total current income taxes	<u>305,429</u>	<u>291,084</u>	<u>71,848</u>
Deferred income taxes:			
Federal	(58,068)	(13,310)	9,264
State	(13,003)	(2,272)	4,140
Foreign	(32,074)	—	—
Total deferred income taxes	<u>(103,145)</u>	<u>(15,582)</u>	<u>13,404</u>
Total income tax provision	<u>\$ 202,284</u>	<u>\$ 275,502</u>	<u>\$ 85,252</u>

U.S. federal taxes have not been provided on undistributed earnings of certain non-U.S. subsidiaries to the extent such earnings will be reinvested abroad for an indefinite period of time. At December 31, 2008 the cumulative amount of undistributed earnings in these subsidiaries is approximately \$79.4 million. At this time it is not practicable to determine the income tax liability that would result upon the repatriation of these earnings.

A reconciliation of the income tax provision, based on the U.S. federal statutory rate, to our actual income tax provision for the years ended December 31, 2008, 2007 and 2006 is as follows:

	Year Ended December 31,		
	2008	2007	2006
	(in thousands)		
Federal income tax provision at the statutory rate	35.0%	35.0%	35.0%
State income tax provision, net of federal effect	4.5%	2.6%	4.2%
Foreign income tax provision at a rate different than the federal rate	(3.3)%	0.0%	0.2%
Foreign asset impairment loss, not deductible for tax purposes	1.9%	0.0%	0.0%
Change in valuation allowance	—	(2.6)%	(0.1)%
Other, net	0.6%	(0.3)%	0.7%
Actual income tax provision	<u>38.7%</u>	<u>34.7%</u>	<u>40.0%</u>

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

The temporary differences, which give rise to our deferred tax assets and (liabilities) consisted of the following:

	December 31,	
	2008	2007
	(in thousands)	
<b>Deferred tax assets:</b>		
Deferred revenues	\$ 37,198	\$ 35,853
U.S. federal net operating loss	5,493	—
Foreign net operating loss	105,879	568
State net operating loss	3,578	—
Compensation and benefits	42,976	20,942
Investments	43,717	—
Foreign currency translation	436,600	—
Lease reserves	17,394	8,256
Provision for bad debts	7,459	5,927
Tax credits	4,919	—
Other	4,415	3,095
<b>Gross deferred tax assets</b>	<b>709,628</b>	<b>74,641</b>
<b>Deferred tax liabilities:</b>		
Amortization of software development costs and depreciation	(17,596)	(12,979)
Amortization of acquired intangible assets	(649,275)	(68,436)
Investments	—	(14,762)
Other	(19,346)	(4,441)
<b>Gross deferred tax liabilities</b>	<b>(686,217)</b>	<b>(100,618)</b>
Net deferred tax assets (liabilities) before valuation allowance	23,411	(25,977)
Less: valuation allowance	(24,216)	(568)
<b>Net deferred tax (liabilities)</b>	<b>\$ (805)</b>	<b>\$ (26,545)</b>

A valuation allowance has been established with regards to the tax benefits associated with certain net operating losses, as it is more likely than not that these losses will not be realized in the future. The increase in the valuation allowance in 2008 primarily relates to amounts, associated with the business combination with OMX AB, that were recorded as a component of goodwill.

The U.S. federal net operating loss of \$5.5 million, related to subsidiaries of OMX that are not included in our U.S. federal consolidated income tax return, will expire in years 2022-2023. Of the \$105.9 million foreign net operating loss, \$0.4 million will expire 2009 through 2012 and \$105.5 million has no expiration date. Of the \$3.6 million state net operating loss, \$1.4 million will expire in years 2011-2012 and \$2.2 million will expire in years 2028-2029.

The following represents the domestic and foreign components of income before income tax provision:

	Year Ended December 31,		
	2008	2007	2006
	(in thousands)		
Domestic	\$ 456,747	\$ 417,665	\$ 213,256
Foreign	65,417	376,238	(111)
<b>Income before income tax provision</b>	<b>\$ 522,164</b>	<b>\$ 793,903</b>	<b>\$ 213,145</b>

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

In 2008, 2007 and 2006 we recorded income tax benefits of \$5.3 million, \$16.2 million and \$24.8 million, respectively, primarily related to employee stock option exercises. These amounts were recorded to additional paid-in-capital in the Consolidated Balance Sheets.

We are subject to examination by federal, state and local, and foreign tax authorities. We regularly assess the likelihood of additional assessments by each jurisdiction and have established tax reserves that we believe are adequate in relation to the potential for additional assessments. We believe that the resolution of tax matters will not have a material effect on our financial condition but may be material to our operating results for a particular period and upon the effective tax rate for that period.

We adopted the provisions of FIN 48 on January 1, 2007. As a result of the implementation of FIN 48, we recognized a \$1.0 million increase to reserves for uncertain tax positions. This increase was accounted for as an adjustment to the beginning balance of retained earnings in the Consolidated Balance Sheets. At the adoption date of January 1, 2007, we had \$9.2 million of unrecognized tax benefits of which \$7.9 million would affect our effective tax rate if recognized. As of December 31, 2007, we had \$7.6 million of unrecognized benefits of which \$4.0 million would affect our effective tax rate if recognized. As of December 31, 2008, we had \$9.2 million of unrecognized benefits of which \$5.4 million would affect our effective tax rate if recognized.

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

	Year Ended December 31,	
	2008	2007
Beginning balance	\$7,644	\$ 9,232
Additions as a result of tax positions taken in prior periods	711	454
Additions as a result of tax positions taken in the current period	911	1,487
Additions as a result of tax positions taken in prior years, related to acquired entities	—	1,609
Reductions due to the lapse of applicable statute of limitations	—	(5,138)
Reductions due to the settlement from tax authorities	(79)	—
Ending balance	<u>\$9,187</u>	<u>\$ 7,644</u>

Our policy is to recognize interest and/or penalties related to income tax matters in income tax expense. As of December 31, 2008, we had \$3.1 million accrued for interest and penalties, net of tax effect. As of December 31, 2007, we had \$2.7 million accrued for interest and penalties, net of tax effect.

NASDAQ OMX and its eligible subsidiaries file a consolidated U.S. federal income tax return and applicable state and local income tax returns and non-U.S. income tax returns. Federal income tax returns for years 2005-2007 are subject to examination by the Internal Revenue Service. Several state tax returns are currently under examination by the respective tax authorities for years 1996-2006 and are subject to examination for 2007. Non-U.S. tax returns are subject to review by the respective tax authorities for years 2002-2007. We anticipate that the amount of unrecognized tax benefits at December 31, 2008 will significantly decrease in the next twelve months as we expect to settle certain tax audits. The final outcome of such audits can not yet be determined. We anticipate that such adjustments will not have a material impact on our consolidated financial position or results of operations.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**11. Employee Benefits**

We maintain a non-contributory, defined-benefit pension plan named The NASDAQ OMX Group, Inc. Pension Plan, or Pension Plan, and a non-qualified SERP, for certain senior executives and other benefit plans for eligible employees in the U.S., or collectively, the NASDAQ OMX Benefit Plans.

We also provide subsidized medical benefits to a closed group of retirees and their eligible dependents, as well as a flat \$5,000 of life insurance to all retirees, who meet eligibility requirements through our post-retirement benefit plans.

In the first quarter of 2007, we announced that our Pension Plan and SERP were frozen effective May 1, 2007. Future service and salary for all participants do not count toward an accrual of benefits under the Pension Plan and SERP after April 30, 2007. All of the other features of the Pension Plan and SERP remain unchanged. As a result of the Pension Plan and SERP freeze, a curtailment gain of approximately \$6.1 million was recognized in compensation and benefits expense in the Consolidated Statements of Income for the year ended December 31, 2007. Additionally, as a result of the Pension Plan and SERP freeze, there was a \$12.6 million reduction in our December 31, 2007 year end benefit obligation since future service and salary for all participants no longer count toward the accrual of benefits. This reduction was a component of the total underfunded status of the Pension and SERP Plans that is included in other liabilities and accrued personnel costs in the Consolidated Balance Sheets.

**Benefit Plans Assumed from PHLX**

Upon completion of our acquisition of PHLX on July 24, 2008, we assumed the obligations related to a non-contributory, defined-benefit pension plan, or the NASDAQ OMX PHLX Pension Plan, a Supplemental Executive Retirement Plan, or the NASDAQ OMX PHLX SERP, for certain key executives, and a post-retirement benefit plan, which provides certain health care and life insurance benefits for retired employees, or collectively, the NASDAQ OMX PHLX Benefit Plans. The benefits payable under the NASDAQ OMX PHLX Pension Plan are based primarily on years of service and on an employee's average salary over the employee's career with NASDAQ OMX PHLX.

The NASDAQ OMX PHLX SERP, which was unfunded, was frozen on July 24, 2008. Future service and salary for the NASDAQ OMX PHLX SERP plan participants do not count toward an accrual of benefits under the NASDAQ OMX PHLX SERP after July 24, 2008. In addition, effective December 31, 2008, the NASDAQ OMX PHLX Pension Plan was frozen. Future service and salary for all participants will not count toward an accrual of benefits under the NASDAQ OMX PHLX Pension Plan after December 31, 2008.

The benefit obligation as of the measurement date (July 23, 2008) for the NASDAQ OMX PHLX Benefit Plans was approximately \$50.1 million. The fair value of plan assets as of the measurement date was approximately \$24.7 million and the under funded status of the plan was approximately \$25.4 million. The total under funded status of the NASDAQ OMX PHLX Benefit Plans of \$25.4 million is included in other liabilities and accrued personnel costs in the Consolidated Balance Sheets.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**Components of Net Periodic Benefit Cost**

The following table sets forth the components of net periodic pension, SERP and post-retirement benefits cost from both the NASDAQ OMX Benefit Plans and the NASDAQ OMX PHLX Benefit Plans recognized in compensation and benefits expense in the Consolidated Statements of Income. The NASDAQ OMX PHLX benefit costs are from the date of acquisition:

	Year Ended December 31,		
	2008	2007	2006
	(in thousands)		
<b>Components of net periodic benefit cost</b>			
Service cost	\$ 1,023	\$ 2,302	\$ 6,777
Interest cost	4,303	3,492	3,998
Expected return on plan assets	(3,422)	(2,797)	(2,831)
Amortization of unrecognized transition asset	12	(37)	(46)
Recognized net actuarial loss	204	608	1,269
Prior service cost recognized	—	(191)	(510)
Settlement loss recognized	—	905	443
Curtailement gain	(759)	(6,028)	—
<b>Benefit cost (gain)</b>	<u>\$ 1,361</u>	<u>\$ (1,746)</u>	<u>\$ 9,100</u>

**Benefit Obligations and Funded Status of the NASDAQ OMX Benefit Plans**

The following table provides a reconciliation of the changes in the benefit obligations, the plan assets and the funded status of the NASDAQ OMX Benefit Plans. For a reconciliation of the changes in benefit obligations, the plan assets and the funded status of the NASDAQ OMX PHLX Benefit Plans, see below.

	2008				2007			
	Pension	SERP	Post-retirement	Total	Pension	SERP	Post-retirement	Total
	(in thousands)							
<b>Change in benefit obligation</b>								
Benefit obligation at beginning of year	\$38,394	\$ 16,083	\$ 494	\$ 54,971	\$ 60,743	\$ 14,392	\$ 673	\$ 75,808
Service cost	—	—	21	21	1,664	620	18	2,302
Interest cost	2,231	935	25	3,191	2,588	876	28	3,492
Actuarial losses (gains)	866	(211)	56	711	245	359	(185)	419
Benefits paid	(2,016)	(580)	(143)	(2,739)	(7,646)	(580)	(24)	(8,250)
Curtailments	—	—	—	—	(13,075)	435	—	(12,640)
Settlements	—	—	—	—	(4,901)	—	—	(4,901)
Gain due to change in discount rate	(6,499)	(238)	(67)	(6,804)	(1,802)	(287)	(16)	(2,105)
Loss due to change in mortality rate	—	—	—	—	578	268	—	846
<b>Benefit obligation at end of year</b>	<u>32,976</u>	<u>15,989</u>	<u>386</u>	<u>49,351</u>	<u>38,394</u>	<u>16,083</u>	<u>494</u>	<u>54,971</u>
<b>Change in plan assets</b>								
Fair value of plan assets at beginning of year	30,975	—	—	30,975	32,525	—	—	32,525
Actual return on plan assets	(7,418)	—	—	(7,418)	(352)	—	—	(352)
Company contributions	3,050	580	143	3,773	6,449	—	24	6,473
Employee contributions	—	—	155	155	—	580	205	785
Benefits paid	(2,016)	(580)	(298)	(2,894)	(7,647)	(580)	(229)	(8,456)
<b>Fair value of plan assets at end of year</b>	<u>24,591</u>	<u>—</u>	<u>—</u>	<u>24,591</u>	<u>30,975</u>	<u>—</u>	<u>—</u>	<u>30,975</u>
<b>Under funded status of the plan</b>	<u>(8,385)</u>	<u>(15,989)</u>	<u>(386)</u>	<u>(24,760)</u>	<u>(7,419)</u>	<u>(16,083)</u>	<u>(494)</u>	<u>(23,996)</u>
<b>Accumulated benefit obligation</b>	\$32,976	\$ 15,989	\$ 386	\$ 49,351	\$ 38,394	\$ 16,083	\$ 494	\$ 54,971

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

The total under funded status of the NASDAQ OMX Benefit Plans of \$24.8 million at December 31, 2008 and \$24.0 million at December 31, 2007 are included in other liabilities and accrued personnel costs in the Consolidated Balance Sheets. No plan assets are expected to be returned to us during the year ending December 31, 2009.

**NASDAQ OMX Benefit Plans Actuarial Assumptions**

The following tables provide the weighted-average actuarial assumptions for the NASDAQ OMX Benefit Plans. For the weighted-average actuarial assumptions for the NASDAQ OMX PHLX Benefit Plans, see below.

Weighted-average assumptions used to determine benefit obligations at the end of the fiscal year:

	<u>2008</u>	<u>2007</u>
<b>Discount rate:</b>		
Pension	7.00%	6.00%
SERP	7.00%	6.00%
Post-retirement	7.00%	6.00%
<b>Rate of compensation increase:</b>		
Pension <sup>(1)</sup>	N/A	4.50%
SERP	N/A	N/A
Post-retirement	N/A	N/A

Weighted-average assumptions used to determine net benefit cost for the fiscal year:

	<u>2008</u>	<u>2007</u>	<u>2006</u>
<b>Discount rate:</b>			
Pension	6.00%	5.75%	5.75%
SERP	6.00%	5.75%	5.75%
Post-retirement	6.00%	5.75%	5.75%
<b>Rate of compensation increase:</b>			
Pension <sup>(1)</sup>	N/A	4.50%	4.50%
SERP <sup>(1)</sup>	N/A	4.00%	4.00%
Post-retirement	N/A	N/A	N/A
<b>Expected return on plan assets:</b>			
Pension	8.50%	8.50%	8.50%
SERP	N/A	N/A	N/A
Post-retirement	N/A	N/A	N/A

N/A—Not applicable

<sup>(1)</sup> For the year ended December 31, 2007, the compensation rate increase was calculated up to the Pension and SERP Plans freeze date of May 1, 2007.

The assumptions above are used to develop the benefit obligations at fiscal year-end and to develop the net periodic benefit cost for the subsequent fiscal year. Therefore, the assumptions used to determine benefit obligations were established at each year-end while the assumptions used to determine net periodic benefit cost for each year are established at the end of each previous year.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

The net periodic benefit obligations and the net periodic benefit cost are based on actuarial assumptions that are reviewed on an annual basis. We revise these assumptions based on an annual evaluation of long-term trends, as well as market conditions, which may have an impact on the cost of providing retirement benefits.

The weighted-average assumed healthcare cost trend rate used for post-retirement measurement purposes is 9.0% for 2009 and for the remaining life of the post-retirement medical plan, which will terminate when the last eligible participant (including spouses) reaches the age of 65. A one percent increase or decrease in the assumed healthcare cost trend would have an immaterial effect on the post-retirement service and interest cost and post-retirement benefit obligation.

The investment policy and strategy of the plan assets, adopted by NASDAQ OMX's Pension and 401(k) Committee, is to provide for preservation of principal, both in nominal and real terms, in order to meet the long-term spending needs of the Pension Plan by investing assets per the target allocations stated below. Asset allocations are reviewed quarterly and adjusted, as appropriate, to remain within target allocations. The investment policy is reviewed on an annual basis, under the advisement of an investment consultant, to determine if the policy or asset allocation targets should be changed. The plan assets consisted of the following as of December 31:

	<u>Target Allocation</u>	<u>2008</u>	<u>2007</u>
Equity securities	60.0%	42.5%	53.8%
Debt securities and cash equivalents	20.0%	36.6	26.3
Other investment strategies	20.0%	20.9	19.9
Total		<u>100.0%</u>	<u>100.0%</u>

The expected rate of return on plan assets for our Pension Plan represents our long-term assessment of return expectations which may change based on significant shifts in economic and financial market conditions. The long-term rate of return on plan assets are derived from return assumptions determined for each of the above asset categories, weighted based on the current target allocation for each class. Equity securities are expected to return 7.0% to 9.0% over the long-term, other investment strategies are anticipated to yield between 6.0% and 8.0%, while cash and fixed-income is expected to return between 4.0% and 6.0%. While we considered the Pension Plan's recent performance and other economic growth and inflation factors, which are supported by long-term historical data, the return expectations for each of these asset categories represents a long-term prospective return. Based on historical experience, the committee expects that the plan's asset managers overall will provide a modest (1.0% per annum) premium to their respective market benchmark indexes.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**Benefit Obligations and Funded Status of the NASDAQ OMX PHLX Benefit Plans**

The following table provides a reconciliation of the changes in the benefit obligations, the plan assets and the funded status of the NASDAQ OMX PHLX Benefit Plans:

	2008			Total
	Pension	SERP	Post-retirement (in thousands)	
<b>Change in benefit obligation</b>				
PHLX's benefit obligation at acquisition date	\$29,907	\$ 14,614	\$ 10,495	\$ 55,016
Service cost	732	—	269	1,001
Interest cost	815	—	297	1,112
Actuarial losses (gains)	(1,473)	355	—	(1,118)
Benefits paid	(274)	(909)	(58)	(1,241)
Curtailments	—	—	(759)	(759)
Gain due to change in discount rate	(1,716)	(578)	(491)	(2,785)
<b>Benefit obligation at end of year</b>	<u>27,991</u>	<u>13,482</u>	<u>9,753</u>	<u>51,226</u>
<b>Change in plan assets</b>				
Fair value of plan assets at acquisition date	24,736	—	—	24,736
Actual return on plan assets	(6,540)	909	—	(5,631)
Company contributions	270	—	58	328
Employee contributions	—	—	9	9
Benefits paid	(274)	(909)	(67)	(1,250)
<b>Fair value of plan assets at end of year</b>	<u>18,192</u>	<u>—</u>	<u>—</u>	<u>18,192</u>
<b>Under funded status of the plan</b>	<u>(9,799)</u>	<u>(13,482)</u>	<u>(9,753)</u>	<u>(33,034)</u>
<b>Accumulated benefit obligation</b>	\$27,991	\$ 13,482	\$ 9,753	\$ 51,226

The total under funded status of the NASDAQ OMX PHLX Benefit Plans of \$33.0 million at December 31, 2008 is included in other liabilities and accrued personnel costs in the Consolidated Balance Sheets. No plan assets are expected to be returned to us during the year ending December 31, 2009.

**NASDAQ OMX PHLX Benefit Plans Actuarial Assumptions**

The following tables provide the weighted-average actuarial assumptions for the NASDAQ OMX PHLX Benefit Plans:

Weighted-average assumptions used to determine benefit obligations at the end of the fiscal year:

	2008
Discount rate:	
Pension	7.00%
SERP	7.00%
Post-retirement	7.00%

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

Weighted-average assumptions used to determine net benefit cost for the fiscal year:

	<b>2008</b>
Discount rate:	
Pension	6.60%
SERP	6.50%
Post-retirement	6.00%
Expected return on plan assets:	
Pension	8.00%
SERP	N/A
Post-retirement	N/A

N/A—Not applicable

The asset allocations are reviewed quarterly by NASDAQ OMX's Pension and 401(k) Committee and adjusted, as appropriate, to remain within target allocations. The investment policy is reviewed on an annual basis, under the advisement of an investment consultant, to determine if the policy or asset allocation targets should be changed. The NASDAQ OMX PHLX Pension Plan assets consisted of the following as of December 31, 2008:

	<b>Target Allocation</b>	<b>2008</b>
Equity securities	65.0%	59.7%
Fixed-income securities	30.0%	40.2
Cash	5.0%	0.1
Total		100.0%

The expected long-term rate of return on plan assets for the NASDAQ OMX PHLX Pension Plan is 8%, which is based on the aggregate historical returns of the investments that comprise the defined benefit plan portfolio. The investment strategy of the plan is to achieve an asset allocation balance within planned targets to preserve principal while obtaining an average 8% annual return for the long-term.

**Accumulated Other Comprehensive Income**

Accumulated other comprehensive income, as of December 31, 2008, consisted of the following amounts that have yet to be recognized in net periodic benefit costs for both the NASDAQ OMX and NASDAQ OMX PHLX Benefit Plans:

	<b>Pension</b>	<b>SERP</b>	<b>Post- retirement</b>	<b>Total</b>
		<small>(in thousands)</small>		
Unrecognized net actuarial (gain)/loss	\$15,370	\$2,464	\$ (643)	\$17,191
Unrecognized transition obligation	—	—	117	117
Employee benefit adjustments	15,370	2,464	(526)	17,308
Income tax (expense)/benefit	(4,265)	(974)	238	(5,001)
Employee benefit adjustments, net of tax	\$11,105	\$1,490	\$ (288)	\$12,307

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**Estimated Future Benefit Payments**

We expect to make the following benefit payments to participants (includes both NASDAQ OMX and PHLX participants) in the next ten fiscal years:

	<u>Pension</u>	<u>SERP</u>	<u>Post- retirement</u>	<u>Total</u>
	(in thousands)			
Fiscal year ended:				
2009	\$ 2,406	\$ 1,775	\$ 337	\$ 4,518
2010	2,425	4,433	384	7,242
2011	3,647	1,970	509	6,126
2012	3,551	5,710	688	9,949
2013	3,661	1,895	731	6,287
2014 through 2018	<u>23,562</u>	<u>10,525</u>	<u>4,259</u>	<u>38,346</u>
	<u>\$39,252</u>	<u>\$26,308</u>	<u>\$ 6,908</u>	<u>\$72,468</u>

**Non—U.S. Benefit Plans**

Most employees outside the U.S. are covered by local retirement plans or by applicable social laws. Benefits under social laws are generally expensed in the periods in which the costs are incurred. These costs are included in compensation and benefits expense in the Consolidated Statements of Income.

As part of the Nord Pool transaction, we assumed the obligation for several pension plans providing benefits for their employees. Employees covered under these pension plans are entitled to defined future pension benefits based on the number of years of employment and pay at retirement age. The measurement date of the plan obligations is December 31. At December 31, 2008, the projected benefit obligation was \$8.9 million and the fair value of the plan assets were \$3.9 million. The under funded status of the plans were \$5.0 million. This was included in other liabilities in the Consolidated Balance Sheets.

**Defined Contribution Savings Plan**

We sponsor a voluntary defined contribution savings plan, or 401(k) Plan, for U.S. employees. Employees are immediately eligible to make contributions to the plan and are also eligible for an employer contribution match at an amount equal to 100.0% of the first 4.0% of eligible employee contributions. Savings plan expense included in compensation and benefits expense in the Consolidated Statements of Income was \$3.8 million in 2008 and \$3.2 million in both 2007 and 2006.

PHLX also sponsored a voluntary defined contribution 401(k) plan for former PHLX employees. This plan was merged into our 401(k) Plan effective January 1, 2009.

We also added a profit-sharing contribution feature to our 401(k) plan on July 1, 2007. Eligible U.S. employees receive employer retirement contributions, or ERCs, when we meet our annual corporate goals. In addition, we adopted a supplemental ERC for select highly compensated employees whose ERCs are limited by the annual Internal Revenue Service compensation limit. Included in compensation and benefits expense in the Consolidated Statement of Income was ERC expense of \$4.0 million in 2008 and \$3.3 million in 2007. Former active PHLX employees are also eligible to receive ERCs in 2008.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**12. Share-Based Compensation**

We have a share-based compensation program that provides our Board of Directors broad discretion in creating employee equity incentives. Grants of stock options, restricted stock, which includes awards and units, and PSUs, are designed to reward employees for their long-term contributions to us and provide incentives for them to remain with us. For accounting purposes, we consider PSUs to be a form of restricted stock. Restricted stock is generally time-based and vests over two to five-year periods beginning on the date of the grant. Stock options are also generally time-based. Stock option awards granted prior to January 1, 2005 generally vest 33% on each annual anniversary of the grant date over three years and expire ten years from the grant date. Stock option awards granted after January 1, 2005 generally vest 25% on each anniversary of the grant date over four years and also expire ten years from the grant date.

In December 2008, we granted non-qualified stock options and/or restricted stock to most active employees. Both of these grants included a performance based accelerated vesting feature based on us achieving specific levels of performance. If we achieve the applicable performance parameters in 2009, 100% of the grant will vest on the fourth anniversary of the grant date. If we exceed the applicable performance parameters in 2009, the grant will vest on the third anniversary of the grant date, and if we do not meet the applicable performance parameters in 2009, the grant will be extended to vest on the fifth anniversary of the grant date.

In December 2008, certain executive officers and a select group of non-officer employees also received grants of 244,034 PSUs. Similar to our December 2008 grant of non-qualified stock options and restricted stock, the PSUs are based on performance levels. However, for the non-qualified stock options and restricted stock, the performance measure impacts the vesting period, and for the PSUs, the performance measure impacts the amount of shares that each recipient will receive upon vesting. PSUs are granted at the fair market value of our stock at the grant date and compensation cost is recognized over the performance period and, in certain cases, an additional vesting period. For each grant of PSUs, an employee may receive from 0% to 150% of the target amount granted, depending on the achievement of performance measures. We report the target number of PSUs granted, unless we have determined that it is more likely than not, based on the actual achievement of performance measures, that an employee will receive a different amount of shares underlying the PSUs, in which case we report the amount of shares the employee is likely to receive. These PSUs are subject to a one year performance period and will vest three years after the end of the performance period.

Also in 2008, certain executive officers received grants of 120,896 PSUs. Of these PSUs granted, 80,000 units are subject to a three year performance and vest at the end of the period. The remaining 40,896 units are subject to a one year performance period and vest three years after the end of the performance period. During 2008, we exceeded the applicable performance parameters for the one year performance PSUs and determined that it would be more likely than not that the target performance levels will be exceeded for the three year performance PSUs. As a result an additional 60,449 units were considered granted. The total expense for PSUs was \$1.4 million in 2008 and \$1.0 million in 2007.

In December 2007 and 2006, we granted non-qualified stock options and/or restricted stock to most active employees. Both of these grants included a performance based accelerated vesting feature based on us achieving specific levels of performance. For the 2007 grant, if we achieved the applicable performance parameters in 2008, 100% of the grant would vest on the fourth anniversary of the grant date. If we exceeded the applicable performance parameters in 2008, the grant would vest on the third anniversary of the grant date, and if we did not meet the applicable performance parameters in 2008, the grant would be extended to vest on the fifth anniversary of the grant date. In 2008, we exceeded the applicable performance parameters. Therefore, in accordance with SFAS 123(R), we accelerated the related stock option and restricted stock expense on a prospective basis in 2008 as the award will vest over a shorter period. For the 2006 grant, we exceeded the applicable performance parameters in 2007. Therefore, 50% of the 2006 award will vest on the third anniversary of the grant date and

**The NASDAQ OMX Group, Inc.****Notes to Consolidated Financial Statements—(Continued)**

50% of the 2006 award will vest of the fourth anniversary of the grant date. In accordance with SFAS 123(R), we accelerated the related stock option and restricted stock expense on a prospective basis in 2007 as the award will vest over a shorter period. Options issued under both the 2007 and 2006 grants expire ten years from the grant date.

In 2007, certain executive officers also received grants of 181,152 PSUs. Of the 181,152 PSUs granted, 120,000 units are subject to a three year performance period and vest at the end of the period. The remaining 61,152 units are subject to a one year performance period and vest three years after the end of the performance period. For these remaining PSUs, we exceeded the applicable performance parameters in 2008 and as a result, an additional 30,576 units were considered granted.

Additionally, in December 2006, there was an executive grant of 960,000 stock options, which vests over six years. The total expense for this grant was \$2.6 million in 2008, \$3.6 million in 2007 and \$0.2 million in 2006.

Our ESPP allows eligible employees to purchase a limited number of shares of our common stock at six-month intervals, called offering periods, at 85.0% of the lower of the fair market value on the first or the last day of each offering period. The 15.0% discount given to our employees is included in compensation and benefits expense in the Consolidated Statements of Income.

As of December 31, 2008, we had approximately 8.1 million shares of common stock reserved for future issuance under our equity award plan and ESPP. Shares issued as a result of equity awards and our ESPP are generally issued out of common stock as newly issued shares in the future.

The following table shows the total share-based compensation expense resulting from equity awards and the 15.0% discount for the ESPP for the years ended December 31, 2008, 2007 and 2006 in the Consolidated Statements of Income:

	Year Ended December 31,		
	2008	2007 (in thousands)	2006
Share-based compensation expense before income taxes	\$ 25,681	\$16,746	\$ 9,871
Income tax benefit	(10,157)	(6,623)	(3,872)
Total share-based compensation expense after income taxes	<u>\$ 15,524</u>	<u>\$10,123</u>	<u>\$ 5,999</u>

We estimated the fair value of share-based awards using the Black-Scholes valuation model with the following weighted-average assumptions:

	Year Ended December 31,		
	2008	2007	2006
Expected life (in years)	5	5	5
Weighted-average risk free interest rate	1.63%	3.84%	4.87%
Expected volatility	35.5%	35.0%	33.8%
Dividend yield	—	—	—
Weighted-average fair value at grant date	\$9.17	\$16.22	\$13.90

Our computation of expected life is based on historical exercise patterns. The interest rate for periods within the expected life of the award is based on the U.S. Treasury yield curve in effect at the time of grant. Our computation of expected volatility is based on a combination of historical and market-based implied volatility. Our Credit Facilities restrict our ability to pay dividends. Before our Credit Facilities were in place, it was not our policy to declare or pay cash dividends on our common stock.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

A summary of stock option activity for the years ended December 31, 2008, 2007 and 2006 is as follows:

	<u>Stock Options Outstanding</u>	
	<u>Number Outstanding</u>	<u>Weighted-Average Exercise Price Per Share</u>
Outstanding at January 1, 2006	12,112,103	\$ 9.23
Grants	2,444,393	36.09
Exercises	(2,470,545)	11.76
Forfeitures or expirations	(441,976)	11.85
Outstanding at December 31, 2006	11,643,975	\$ 14.24
Grants	542,879	44.09
Exercises	(1,597,005)	10.08
Forfeitures or expirations	(591,735)	18.79
Outstanding at December 31, 2007	9,998,114	\$ 16.25
Grants	1,686,839	27.48
Exercises	(712,860)	8.96
Forfeitures or expirations	(245,188)	31.43
Outstanding at December 31, 2008	<u>10,726,905</u>	<u>\$ 18.08</u>

We received net cash proceeds from the exercise of approximately 0.7 million stock options of \$7.2 million for the year ended December 31, 2008, received net cash proceeds from the exercise of approximately 1.6 million stock options of \$16.1 million for the year ended December 31, 2007, and received net cash proceeds from the exercise of approximately 2.5 million stock options of \$28.4 million for the year ended December 31, 2006. In accordance with SFAS 123(R), we present excess tax benefits from the exercise of stock options, if any, as financing cash flows.

The following table summarizes significant ranges of outstanding and exercisable stock options as of December 31, 2008:

<u>Range of Exercise Prices</u>	<u>Number Outstanding</u>	<u>Weighted-Average Contractual Life-Remaining Outstanding (in years)</u>	<u>Weighted-Average Exercise Price Per Share</u>	<u>Aggregate Intrinsic Value (in thousands)</u>	<u>Number Exercisable</u>	<u>Weighted-Average Contractual Life-Exercisable (in years)</u>	<u>Weighted-Average Exercise Price Per Share</u>	<u>Aggregate Intrinsic Value (in thousands)</u>
\$ 5.28 - \$ 7.34	2,024,600	4.3	\$ 5.94	\$ 38,003	2,024,600	4.3	\$ 5.94	\$ 38,003
\$ 7.35 - \$ 8.34	2,602,239	5.9	\$ 7.37	45,122	1,257,714	5.9	\$ 7.37	21,977
\$ 8.35 - \$10.24	1,240,334	4.9	\$ 8.85	19,666	1,250,268	4.9	\$ 8.85	19,665
\$10.25 - \$14.49	478,826	2.3	\$ 12.96	5,627	478,826	2.3	\$ 12.96	5,627
\$14.50 - \$19.69	30,550	6.4	\$ 16.42	253	20,075	6.4	\$ 16.48	163
\$19.70 - \$25.01	64,235	5.2	\$ 20.92	243	48,835	4.7	\$ 20.66	198
\$25.02 - \$30.09	1,523,921	9.8	\$ 25.22	—	55,858	7.1	\$ 26.48	—
\$30.10 - \$35.91	75,822	7.8	\$ 32.69	—	34,485	7.4	\$ 35.52	—
\$35.92 - \$38.99	1,834,360	7.9	\$ 36.01	—	322,823	7.9	\$ 36.17	—
\$39.00 - \$42.28	394,169	8.4	\$ 40.37	—	94,500	7.5	\$ 40.25	—
\$42.29 - \$48.81	457,849	9.0	\$ 45.39	—	952	8.9	\$ 46.94	—
Total	<u>10,726,905</u>	6.5	\$ 18.08	<u>\$ 108,914</u>	<u>5,588,936</u>	4.9	\$ 10.38	<u>\$ 85,633</u>

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

The aggregate intrinsic value in the above table represents the total pre-tax intrinsic value (i.e., the difference between our closing stock price on December 31, 2008 of \$24.71 and the exercise price, times the number of shares) based on stock options with an exercise price less than NASDAQ OMX's closing price of \$24.71 as of December 31, 2008, which would have been received by the option holders had the option holders exercised their stock options at that date. This amount changes based on the fair market value of our common stock. The total number of in-the-money stock options exercisable as of December 31, 2008 was 5.1 million. As of December 31, 2007, 4.6 million outstanding stock options were exercisable and the weighted-average exercise price was \$9.58.

Total fair value of stock options vested was \$7.7 million for the year ended December 31, 2008 and \$7.4 million for the year ended December 31, 2007. The total pre-tax intrinsic value of stock options exercised was \$16.0 million during 2008, \$41.8 million during 2007 and \$67.4 million during 2006.

At December 31, 2008, \$21.3 million of total unrecognized compensation cost related to stock options is expected to be recognized over a weighted-average period of 1.9 years.

The following table summarizes our restricted stock and PSU activity for the years ended December 31, 2008, 2007 and 2006:

	Restricted Stock	Weighted Average Grant Date Fair Value	PSUs	Weighted Average Grant Date Fair Value
Unvested balances at January 1, 2006	453,406	\$ 15.02	—	\$ —
Granted	527,619	35.77	—	—
Vested	(180,518)	12.11	—	—
Forfeited	(217)	35.92	—	—
Unvested balances at December 31, 2006	800,290	\$ 29.35	—	\$ —
Granted	453,177	43.42	181,152	37.31
Vested	(136,750)	18.18	—	—
Forfeited	(121,994)	29.91	—	—
Unvested balances at December 31, 2007	994,723	\$ 37.23	181,152	\$ 37.31
Granted	1,158,875	27.36	455,955 <sup>(1)</sup>	32.60
Vested	(164,507)	23.75	—	—
Forfeited	(104,619)	38.70	(5,139)	41.36
Unvested balances at December 31, 2008	<u>1,884,472</u>	<u>\$ 32.23</u>	<u>631,968</u>	<u>\$ 33.87</u>

<sup>(1)</sup> This amount includes 91,025 additional PSUs for which we determined that performance measures will more likely than not be achieved.

At December 31, 2008, \$48.2 million of total unrecognized compensation cost related to restricted stock and PSUs are expected to be recognized over a weighted-average period of 1.9 years.

Under our ESPP, employees may purchase shares having a value not exceeding 10.0% of their annual compensation, subject to applicable annual Internal Revenue Service limitations. During 2008 employees purchased 112,852 shares at a weighted-average price of \$22.01. During 2007 employees purchased 93,472 shares at a weighted average price of \$25.25 and during 2006 employees purchased 81,481 shares at a weighted-average price \$24.58 under the ESPP. We recorded \$0.4 million for each of the years ended December 31, 2008, 2007 and 2006 of compensation expense for the 15.0% discount that is given to our employees.

**13. Regulatory and Related Party Transactions**

Prior to December 20, 2006 we were a subsidiary of FINRA and transactions between Nasdaq and FINRA were considered related party transactions. FINRA fully divested ownership of our common stock in 2006 and the preferred stock held by FINRA was redeemed by Nasdaq on December 20, 2006. Therefore, as of December 20, 2006, FINRA was no longer considered a related party.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

Since we sought to preserve a regulatory separation upon operation as a national securities exchange, FINRA continues to provide regulatory services and charges us for costs incurred related to our market regulation and enforcement. These charges were included in regulatory expense in 2008 and 2007 and were included in support costs from related parties, net for 2006 in the Consolidated Statements on Income.

**Surveillance and Other Regulatory Charges from FINRA**

As noted above, FINRA provides regulatory services to The NASDAQ Stock Market, The NASDAQ Options Market and, once fully implemented in March 2009, the markets operated or regulated by NASDAQ OMX BX, including the regulation of trading activity and surveillance and investigative functions. FINRA charges us for these services based upon FINRA management's estimated percentage of costs incurred by each FINRA department that are attributable directly to us.

The following table represents the composition of costs, primarily charged by FINRA to us, which are included in regulatory expense for 2008 and 2007 and support costs from related parties, net expense for 2006 in the Consolidated Statements of Income:

	Year Ended December 31,		
	2008	2007	2006
		(in thousands)	
Compensation and benefits	\$ 13,091	\$ 14,167	\$ 16,187
Professional and contract services	11,048	7,211	8,133
Occupancy	906	711	991
Computer operations and data communications	1,057	2,317	2,447
Depreciation	2,264	3,755	4,879
General, administrative and other	577	704	1,134
Total	<u>\$ 28,943</u>	<u>\$ 28,865</u>	<u>\$ 33,771</u>

**Other FINRA Related Party Transactions**

As discussed above, prior to December 20, 2006, we were a subsidiary of FINRA and transactions between Nasdaq and FINRA were considered related party transactions. The following transactions between Nasdaq and FINRA were entered into prior to December 20, 2006:

*Preferred Stock.* There were several preferred stock transactions with FINRA prior to December 20, 2006. See "Preferred Stock," of Note 14, "Stockholders' Equity," for further discussion.

*Public Offerings.* In 2006, we completed a public offering of common stock owned by FINRA. See "Public Equity Offerings," of Note 14, "Stockholders' Equity," for further discussion.

*Trade Reporting Facility.* To facilitate our operations as a national securities exchange, we formed the FINRA/NASDAQ TRF. Through the FINRA/NASDAQ TRF we continue to collect reports of trades executed by broker-dealers outside of our exchange. FINRA regulates the FINRA/NASDAQ TRF as one of its facilities. The FINRA/NASDAQ TRF began operating on August 1, 2006 for NASDAQ-listed securities and began operating in March 2007 for non-NASDAQ-listed securities. For further discussion of the FINRA/NASDAQ TRF, see Item 1. "Business—Products and Services, Market Services."

*Other.* In October 2005, we transferred responsibility for the OTCBB, an electronic screen-based quotation service for securities that, among other things, are not listed on The NASDAQ Stock Market or any U.S. national

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

securities exchange, back to FINRA, but agreed to continue to operate the OTCBB on a contract basis for two years, subject to renewals. We currently operate the OTCBB on a month to month basis.

In addition, Nasdaq Technology Services, LLC was established in 2004 and provides software, hosting and disaster recovery services to third parties. Effective November 1, 2004, Nasdaq Technology and FINRA entered into a contract for technology development support services for a fixed-income trade reporting platform. Revenues for the services are recorded in Other Market Services revenues.

**Other Related Party Transactions**

NASDAQ Dubai is a related party, as NASDAQ Dubai is primarily owned by Borse Dubai, who through the completion of the Transactions, owns 19.99% of the share capital of NASDAQ OMX, in addition to shares held by the Trust for their benefit. Included in the Consolidated Balance Sheet is our equity method investment in NASDAQ Dubai. See Note 3, "Business Combinations," and Note 5, "Equity Method Investments," for further discussion of our investment in NASDAQ Dubai.

**14. Stockholders' Equity**

**Common Stock**

At December 31, 2008, 300,000,000 shares of our common stock were authorized, 202,188,144 shares were issued and 201,896,700 shares were outstanding. The holders of common stock are entitled to one vote per share except that our certificate of incorporation limits the ability of any person to vote in excess of 5.0% of the then-outstanding voting interests in us. This limitation does not apply to persons exempted from this limitation by our board of directors prior to the time such person owns more than 5.0% of the then-outstanding voting interests in us.

In connection with our acquisition of INET, we acquired warrants to purchase our common stock that were originally purchased by INET from FINRA. In June 2006, we exercised these warrants. We paid FINRA approximately \$0.7 million for these warrant shares, which were immediately retired to common stock in treasury. These shares remain held in treasury stock at December 31, 2008.

On February 27, 2008, we issued 60,561,515 shares of Nasdaq common stock to Borse Dubai and the Trust for Borse Dubai's economic benefit in connection with the OMX AB business combination. See Note 3, "Business Combinations," for further discussion.

**Public Equity Offerings**

In the first quarter of 2006, we completed a public offering of 15,979,513 shares of common stock, of which we sold 8,042,142 shares issued from common stock in treasury and FINRA and other selling stockholders sold 7,937,371 shares. We used a portion of the net proceeds obtained from this offering to fund the redemption of our Series C Cumulative preferred stock. See "Preferred Stock," below for further discussion.

In May 2006, we completed another public offering of 18,500,000 shares of our common stock, for net proceeds of \$665.2 million before deducting offering expenses. These proceeds were used to prepay a portion of the amount outstanding under our then-outstanding credit facilities.

**3.75% Convertible Notes and Warrants**

The 3.75% convertible notes were originally issued to H&F (\$300.0 million), SLP (\$141.4 million) and other partners (\$3.6 million) in order to finance the INET transaction. These notes were convertible into our common stock at a price of \$14.50 per share, representing 30,689,655 shares subject to adjustment, in general for

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

any stock split, dividend, combination, recapitalization or similar event. We also issued warrants to purchase shares of our common stock at a price of \$14.50 per share to H&F (3,400,000 shares), SLP (1,523,325 shares) and other partners (39,175 shares). The warrants became exercisable on April 22, 2006 and would have expired on December 8, 2008, the third anniversary of the closing of the INET acquisition.

In the fourth quarter of 2007, H&F sold its entire stake in Nasdaq in a public offering which included (i) shares issued through the conversion of the 3.75% convertible notes, (ii) shares acquired through the cashless exercise of warrants and (iii) shares held outright by H&F, which were previously purchased from us in a separate transaction. As part of the cashless exercise of warrants, H&F delivered to us 1,044,276 shares of our common stock. Nasdaq did not receive any proceeds from the offering.

Also in the fourth quarter of 2007, SLP and other partners sold 1,732,491 shares of our common stock. The shares sold consisted of a portion of shares issued through the conversion of the 3.75% convertible notes issued to SLP and other partners, and the cashless exercise of a portion of the warrants issued to other partners. As part of the cashless exercise of warrants, the other partners delivered to us 7,350 shares of our common stock. SLP did not exercise any of their warrants. As a result of the above, approximately \$120.1 million in aggregate principal amount of the 3.75% convertible notes, which were convertible into 8,283,162 shares of our common stock, and 1,539,489 shares underlying the warrants were outstanding at December 31, 2007.

In 2008, SLP converted 2,000 shares of the 3.75% convertible notes and exercised 1,523,325 warrants into common stock for cash. In addition, other partners also exercised 16,164 warrants through a cashless exercise. As part of this cashless exercise, the other partners delivered to us 10,037 shares of our common stock. We issued new shares of common stock for these transactions. Approximately \$120.1 million in aggregate principal amount of the 3.75% convertible notes remained outstanding as of December 31, 2008. At December 31, 2008, there were no warrants outstanding. See Note 9, "Debt Obligations," for further discussion.

**Preferred Stock**

On February 15, 2006, we redeemed our Series C Cumulative preferred stock for \$104.7 million including accrued and unpaid dividends and a make-whole premium. We used a portion of the net proceeds obtained from the first quarter 2006 public equity offering to fund the redemption. See "Public Equity Offerings," above for further discussion.

On December 20, 2005, FINRA exchanged its one share of our Series B preferred stock for one newly issued share of Series D preferred stock, which had terms substantially similar to the terms of the Series B preferred stock. The Series D preferred stock did not pay dividends. FINRA, as holder of the one share of the Series D preferred stock, was entitled to cast the number of votes that, together with all other votes that FINRA was entitled to vote by virtue of ownership, proxies or voting trusts, enabled FINRA to cast one vote more than one-half of all votes entitled to be cast by stockholders. On December 20, 2006, Nasdaq redeemed for \$1.00 the one outstanding share of Series D preferred stock that had been issued to FINRA.

At December 31, 2008, 30,000,000 shares of preferred stock were authorized, However no shares of preferred stock were issued and outstanding.

**Accumulated Other Comprehensive Income**

Comprehensive income is composed of net income and other comprehensive income, which includes the after-tax change in unrealized gains and losses on available-for-sale securities, the change in unrealized gains and losses on derivative financial instruments that qualify as cash flow hedges, foreign currency translation adjustments and employee benefit adjustments.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

The following table outlines the components of other comprehensive income (loss):

	Unrealized (Losses) Gains On Available- For-Sale Securities <sup>(1)</sup>	Cash Flow Hedges <sup>(2)</sup>	Foreign Currency Translation Adjustments <sup>(3)</sup> (in thousands)	Employee Benefit Adjustments <sup>(4)</sup>	Accumulated Other Comprehensive Income (Loss)
Balance, December 31, 2005	\$ (577)	\$ —	\$ 1,605	\$ (2,318)	\$ (1,290)
Net Change	<u>147,320</u>	<u>—</u>	<u>37</u>	<u>(9,863)</u>	<u>137,494</u>
Balance, December 31, 2006	\$ 146,743	\$ —	\$ 1,642	\$ (12,181)	\$ 136,204
Net Change	<u>(146,743)</u>	<u>—</u>	<u>(184)</u>	<u>6,026</u>	<u>(140,901)</u>
Balance, December 31, 2007	\$ —	\$ —	\$ 1,458	\$ (6,155)	\$ (4,697)
Net Change	<u>—</u>	<u>(6,738)</u>	<u>(601,423)</u>	<u>(6,152)</u>	<u>(614,313)</u>
Balance, December 31, 2008	<u>\$ —</u>	<u>\$(6,738)</u>	<u>\$ (599,965)</u>	<u>\$ (12,307)</u>	<u>\$ (619,010)</u>

- (1) The 2007 amount includes the reversal of the unrealized gain related to our investment in the LSE, net of tax, which includes foreign currency gains, as we sold this investment in September 2007. The 2006 amount includes the unrealized gain related to our investment in the LSE, net of tax, which includes foreign currency gains. See Note 7, "Financial Investments, at Fair Value," for further discussion.
- (2) The 2008 amount represents the change in fair value of our cash flow hedges, net of tax, which we entered into in the third quarter of 2008 to effectively convert a portion of our floating rate debt to a fixed rate basis. See Note 9, "Debt Obligations," and Note 17, "Derivative Financial Instruments and Hedging Activities," for further discussion.
- (3) Includes after-tax gains and losses on foreign currency translation from operations for which the functional currency is other than the U.S. dollar. The year ended December 31, 2007 amount includes a \$0.2 million foreign currency gain realized upon the liquidation of Brut Europe Limited.
- (4) For 2008, 2007 and 2006, amounts represent the after-tax adjustment to record the unrecognized obligation adjustment related to the NASDAQ OMX Benefit Plans and the NASDAQ OMX PHLX Benefit Plans in accordance with SFAS No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans- an amendment of FASB Statements No. 87, 88, 106 and 132(R)," or SFAS 158. In addition, as a result of the Pension Plan and SERP freeze in 2007, there was a reduction in the benefit obligation and other comprehensive income balances as of December 31, 2007. See Note 11, "Employee Benefits," for further discussion.

**Reclassification From Accumulated Other Comprehensive Income to Earnings**

As discussed in "Financial Investments," of Note 2, "Summary of Significant Accounting Policies," we account for financial investments in accordance with SFAS 115. We determine the fair value of our available-for-sale investment securities based on quoted market prices. When the fair value of an available-for-sale investment security is less than its cost for an extended period, we consider whether there is an other-than-temporary impairment in the value of the security. If, in our judgment, an other-than-temporary impairment exists, the cost basis of the available-for-sale security is written down to the then-current fair value, and the unrealized loss is transferred from accumulated other comprehensive income, as an immediate reduction of current earnings. In connection with our business combination of OMX AB, we acquired a long-term available-for-sale investment security which was accounted for under SFAS 115. In the fourth quarter of 2008, we recorded an other-than-temporary impairment on this long-term available-for-sale investment security and realized a loss of \$34.9 million. This charge was included in asset impairment charges within other income (expense), net in the Consolidated Statements of Income

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**15. Earnings Per Common Share**

The following table sets forth the computation of basic and diluted earnings per share:

	Year Ended December 31,		
	2008	2007	2006
	(in thousands, except share and per share amounts)		
<b>Numerator:</b>			
<b>Net income applicable to common stockholders:</b>			
Net income	\$ 319,880	\$ 518,401	\$ 127,893
Preferred stock:			
Dividends declared	—	—	(359)
Accretion of preferred stock	—	—	(331)
Net income applicable to common stockholders for basic earnings per share	\$ 319,880	\$ 518,401	\$ 127,203
Interest impact of convertible notes, net of tax	2,722	9,196	10,142
Net income applicable to common stockholders for diluted earnings per share	\$ 322,602	\$ 527,597	\$ 137,345
<b>Denominator:</b>			
Weighted-average common shares outstanding for basic earnings per share <sup>(1)</sup>	190,362,605	116,064,240	104,311,040
Weighted-average effect of dilutive securities:			
Employee stock options and awards	5,061,943	5,829,533	6,315,735
Convertible notes assumed converted into common stock	8,281,167	27,977,026	30,689,655
Warrants	809,147	2,657,892	2,912,425
Denominator for diluted earnings per share	204,514,862	152,528,691	144,228,855
<b>Basic and diluted earnings per share:</b>			
Basic earnings per share	\$ 1.68	\$ 4.47	\$ 1.22
Diluted earnings per share	\$ 1.58	\$ 3.46	\$ 0.95

<sup>(1)</sup> For the year ended December 31, 2008, amounts include 60,561,515 shares of common stock issued to Borse Dubai and the Trust in conjunction with the business combination with OMX AB on a weighted-average basis from the date of the business combination.

Options to purchase 10,726,905 shares of common stock and 2,516,440 shares of restricted stock and PSUs were outstanding at December 31, 2008. The 3.75% convertible notes have been accounted for under the if-converted method of SFAS 128 as we will settle the convertible notes in shares of our common stock. As such, the 3.75% convertible notes are convertible into 8,281,167 shares of common stock as of December 31, 2008. The 2.50% convertible notes are accounted for under the treasury stock method of SFAS 128 as it is our intent and policy to settle the principal amount of the notes in cash. Based on the settlement structure of the notes, which permit the principal amount to be settled in cash and the conversion premium to be settled in shares of our common stock or cash, we will reflect the impact of the convertible spread portion of the convertible notes in the diluted calculation using the treasury stock method.

For the year ended December 31, 2008, we included 6,654,784 of the options outstanding, 2,000,424 shares of restricted stock and PSUs, all of the shares underlying the 3.75% convertible notes, which includes all outstanding 3.75 % convertible notes and 3.75% convertible notes converted into 2,000 shares of common stock

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

during 2008 and warrants exercised into 1,539,489 shares of common stock, up to the time of exercise in the computation of diluted earnings per share, on a weighted-average basis, as their inclusion was dilutive. The remaining options and shares of restricted stock and PSUs are antidilutive and the conversion spread of our 2.50% convertible senior notes was out of the money, and as such, they were properly excluded.

Options to purchase 9,998,114 shares of common stock, 1,175,875 shares of restricted stock and PSUs, convertible notes convertible into 8,283,162 shares of common stock and warrants exercisable into 1,539,489 shares of common stock were outstanding at December 31, 2007. For the year ended December 31, 2007, we included 7,206,371 of the options outstanding, 1,138,122 shares of restricted stock and PSUs, all of the shares underlying the convertible notes, which includes all outstanding convertible notes and convertible notes converted into 22,406,485 shares of common stock up to the time of conversion and all of the shares underlying the warrants, which includes all outstanding warrants and warrants exercised into 3,423,011 shares of common stock up to the time exercised in the computation of diluted earnings per share, on a weighted-average basis, as their inclusion was dilutive. The remaining options and shares of restricted stock were considered antidilutive and were properly excluded.

Options to purchase 11,643,975 shares of common stock, 800,290 shares of restricted stock, convertible notes convertible into 30,689,655 shares of common stock and warrants exercisable into 4,962,500 shares of common stock were outstanding at December 31, 2006. For the year ended December 31, 2006, we included 9,080,508 of the options outstanding, 313,210 shares of restricted stock, all of the shares underlying the convertible notes and all of the shares underlying the warrants in the computation of diluted earnings per share, on a weighted average basis, as their inclusion was dilutive. The remaining options and shares of restricted stock were considered antidilutive and were properly excluded.

**16. Fair Value of Financial Instruments**

***Fair Value Measurement—Definition and Hierarchy***

As of January 1, 2008, we adopted on a prospective basis certain required provisions of SFAS 157, as amended by FSP 157-2. Under SFAS 157, fair value is defined as the price that would be received to sell an asset or paid to transfer a liability, or the exit price, in an orderly transaction between market participants at the measurement date. SFAS 157 establishes a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect NASDAQ OMX's market assumptions. These two types of inputs create the following fair value hierarchy:

- Level 1—Quoted prices for identical instruments in active markets.
- Level 2—Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.
- Level 3—Instruments whose significant value drivers are unobservable.

This hierarchy requires the use of observable market data when available.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

The following table presents for each of the above hierarchy levels, our financial assets and liabilities that are measured at fair value on a recurring basis at December 31, 2008.

	Balance as of December 31, 2008	Fair Value Measurements		
		(Level 1)	(Level 2) (in thousands)	(Level 3)
<b>Financial Assets Measured at Fair Value on a Recurring Basis</b>				
Market value, outstanding derivative positions <sup>(1)</sup>	\$ 4,121,797	\$ —	\$4,121,797	\$ —
Financial investments, at fair value <sup>(2)</sup>	227,305	227,305	—	—
Other assets <sup>(3)</sup>	53,066	29,000	24,066	—
Total	<u>\$ 4,402,168</u>	<u>\$ 256,305</u>	<u>\$4,145,863</u>	<u>\$ —</u>
<b>Financial Liabilities Measured at Fair Value on a Recurring Basis</b>				
Market value, outstanding derivative positions <sup>(1)</sup>	\$ 4,121,797	\$ —	\$4,121,797	\$ —
Other liabilities <sup>(4)</sup>	26,683	3,463	23,220	—
Total	<u>\$ 4,148,480</u>	<u>\$ 3,463</u>	<u>\$4,145,017</u>	<u>\$ —</u>

(1) Represents net amounts associated with our clearing operations in the derivatives markets with NASDAQ OMX Commodities and NASDAQ OMX Stockholm. See Note 17, "Derivative Financial Instruments and Hedging Activities," for further discussion.

(2) See "Financial Investments," of Note 2, "Summary of Significant Accounting Policies," and Note 7, "Financial Investments, at Fair Value," for further discussion.

(3) Primarily includes our long-term available-for-sale investment securities and derivative financial instruments. See "Financial Investments," of Note 2, "Summary of Significant Accounting Policies," and Note 17, "Derivative Financial Instruments and Hedging Activities," for further discussion.

(4) Primarily includes our derivative financial instruments included in other accrued liabilities the Consolidated Balance Sheets. See Note 17, "Derivative Financial Instruments and Hedging Activities".

We also consider our debt obligations to be financial instruments. The fair value of our debt obligations was estimated using discounted cash flow analyses based on our assumed incremental borrowing rates for similar types of borrowing arrangements and a Black-Scholes valuation technique that is utilized to calculate the convertible option value for the 3.75% convertible notes and the 2.50% convertible senior notes. At December 31, 2008, the carrying value of our debt obligations was approximately \$12.9 million more than fair value primarily due to a decrease in fair value on the 2.50% convertible senior notes with a convertible option feature equivalent to a conversion price of approximately \$55.13 compared to the closing price of \$24.71 at December 31, 2008, partially offset by stock appreciation on the 3.75% convertible notes' convertible option feature from \$14.50 at the time of issuance to \$24.71 at December 31, 2008. At December 31, 2007, the carrying value of our debt obligations was approximately \$266.9 million less than fair value due to the stock appreciation on the 3.75% convertible notes option feature from \$14.50 at time of issuance to \$49.49 at December 31, 2007. See Note 9, "Debt Obligations," for further discussion.

**Financial Instruments Not Measured at Fair Value on a Recurring Basis**

Some of our financial instruments are not measured at fair value on a recurring basis but are recorded at amounts that approximate fair value due to their liquid or short-term nature. Such financial assets and financial liabilities include: cash and cash equivalents, receivables, net, certain other assets, accounts payable and accrued expenses, Section 31 fees payable to SEC, accrued personnel costs, and other current liabilities.

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

**17. Derivative Financial Instruments and Hedging Activities**

In the ordinary course of business, we may enter into various types of derivative transactions. These derivative transactions include:

- *Futures and foreign currency forward contracts* which are commitments to buy or sell at a future date a financial instrument, commodity or currency at a contracted price and may be settled in cash or through delivery.
- *Interest rate swap contracts* which are agreements between two parties to exchange one stream of future interest payments for another based on a specified principal amount over a set period of time.
- *Foreign currency option contracts* which give the purchaser, for a fee, the right, but not the obligation, to buy or sell within a limited time a financial instrument or currency at a contracted price that may also be settled in cash, based on differentials between specified indices or prices.

NASDAQ OMX may use these derivative financial instruments to manage exposure to various market risks, primarily foreign currency exchange rate fluctuations and changes in interest rates on our variable rate debt, and are an integral component of our market risk and related asset/liability management strategy and processes.

Depending on market conditions, we may use foreign currency future, forward and option contracts to limit our exposure to foreign currency exchange rate fluctuations on contracted revenue streams (hedged item) relating to our market technology sales. When the contracted revenue streams meet the definition of a firm commitment in accordance with SFAS 133, these derivative contracts may be designated as fair value hedges, if the applicable hedge criteria is met. Changes in fair value on the derivatives and the related hedged items are recognized in other income (expense), net in the Consolidated Statements of Income.

**Derivatives Designated as Cash Flow Hedges**

In the third quarter of 2008, we entered into interest rate swap agreements that effectively converted \$200.0 million of our Credit Facilities, which is floating rate debt, to a fixed rate basis through August 2011, thus reducing the impact of interest rate changes on future interest expense.

All derivative contracts used to manage interest rate risk are measured at fair value and reported in other current assets or other current liabilities as appropriate with the offset in accumulated other comprehensive income within stockholders' equity in the Consolidated Balance Sheets. Any ineffectiveness would impact earnings through interest expense. There was no material ineffectiveness recorded in earnings for the year ended December 31, 2008.

**Derivatives Not Designated as Hedges**

NASDAQ OMX may also enter into economic hedges that either do not qualify or are not designated for hedge accounting treatment. This type of hedge is undertaken when SFAS 133 hedge requirements cannot be achieved or management decides not to apply SFAS 133 hedge accounting.

In order to economically hedge the foreign currency exposure on our business combination with OMX AB, we entered into foreign currency option and forward contracts beginning at the time of the announcement of the proposed combination. In accordance with SFAS 133, a derivative used to hedge exposure related to an anticipated business combination does not qualify for specialized hedge accounting, and as such, was marked to market through the income statement in other income (expense), net each reporting period. See below for further discussion. For the Nord Pool transaction, we also entered into a forward contract. This contract was settled at the

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

closing of the Nord Pool transaction in the fourth quarter of 2008. See below for further discussion. For additional discussion of the business combination with OMX AB and the Nord Pool transaction, see Note 3, “Business Combinations.”

We also entered into foreign currency contracts, primarily foreign currency option and forward contracts, to partially or fully economically hedge foreign currency transactions and non-U.S. dollar cash flow exposures on our market technology contracts. These hedges generally mature within one year and changes in fair value of these derivatives are recognized in other income (expense), net in the Consolidated Statement of Income.

The following table presents the realized and unrealized gain/(loss) recognized in the Consolidated Statements of Income for the year ended December 31, 2008 related to our foreign currency forward contracts. For the cumulative realized gain (loss) related to our foreign currency option contracts, see below.

	<u>Realized Gain (Loss)</u>	<u>Unrealized Loss (in thousands)</u>	<u>Total Gain/ (Loss) for the Year Ended December 31, 2008</u>
SEK 2008 Forward Contracts	\$ 33,712	\$ —	\$ 33,712
NOK 2008 Forward Contract	(71,580)	—	(71,580)
Other <sup>(1)</sup>	(4,456)	(8,942)	(13,398)
<b>Total</b>	<u>\$ (42,324)</u>	<u>\$ (8,942)</u>	<u>\$ (51,266)</u>

<sup>(1)</sup> Primarily represents market technology forward currency contracts used to limit our exposure to foreign currency exchange rate fluctuations on contracted revenue streams which do not qualify for hedge accounting.

In the first quarter of 2008, we entered into forward contracts to hedge the SEK cash payment made in connection with the business combination with OMX AB and recorded a gain of \$33.7 million in the first quarter 2008 at the time of the business acquisition relating to the cash payments for the SEK forward contracts.

Also in the first quarter of 2008, we entered into a forward contract to hedge the NOK cash payment for the Nord Pool transaction. We agreed to purchase certain businesses of Nord Pool for approximately \$320 million. We entered into a forward contract to buy NOK and sell U.S. dollars at an exchange rate of 5.2129. The closing of the Nord Pool transaction occurred on October 21, 2008. At that time, we closed out the NOK forward contract, resulting in a realized loss of approximately \$71.5 million.

The following table presents the cumulative realized gain/(loss) on each option contract and the total loss recognized in the Consolidated Statements of Income for year ended December 31, 2008 related to our foreign currency option contracts.

	<u>Purchase</u>	<u>Sale/Expiration</u>	<u>Cumulative Realized Gain (Loss) (in thousands)</u>	<u>Change in Unrealized Gain (Loss)</u>	<u>Total Gain/(Loss) for the Year Ended December 31, 2008</u>
SEK 2007 Option Contract <sup>(1)</sup>	\$39,026	\$ 66,515	\$ 27,489	\$ (21,682)	\$ 5,807
SEK 2008 Option Contract <sup>(2)</sup>	12,500	—	(12,500)	—	(12,500)
<b>Total</b>	<u>\$51,526</u>	<u>\$ 66,515</u>	<u>\$ 14,989</u>	<u>\$ (21,682)</u>	<u>\$ (6,693)</u>

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

- (1) This contract, which was originally purchased in October 2007, had a fair value at December 31, 2007 of \$60.7 million. On January 7, 2008, we sold the SEK 2007 option contract for \$66.5 million and recorded a \$5.8 million gain in the first quarter of 2008.
- (2) On January 7, 2008, we purchased a new contract for \$12.5 million which expired out-of-the-money in February of 2008 and we recorded a loss for the purchase amount of \$12.5 million.

As shown in the above two tables, for the year ended December 31, 2008, we recognized a loss of \$6.7 million related to option contracts and also recognized a loss of \$51.2 million related to forward contracts for a total loss of \$57.9 million in 2008.

The following table presents the realized and unrealized gains and losses in 2007 related to our OMX foreign currency option contracts:

	<u>Purchase</u>	<u>Sale</u>	<u>Realized (Losses) Gains</u> (in thousands)	<u>Unrealized (Losses) Gains</u>	<u>Total Gain/(Loss) for the Year Ended December 31, 2007</u>
OMX May 2007 Contract	\$12,988	\$20,100	\$ 7,112	\$ —	\$ 7,112
OMX July 2007 Contract	20,100	43,063	22,963	—	22,963
OMX October 2007 Contract	39,026	—	—	21,682 <sup>(1)</sup>	21,682
Total	<u>\$72,114</u>	<u>\$63,163</u>	<u>\$30,075</u>	<u>\$ 21,682</u>	<u>\$ 51,757</u>

- (1) The fair value of the OMX October 2007 option contract was \$60.7 million at December 31, 2007 and is included in other current assets in the Consolidated Balance Sheets.

The gain on foreign currency contracts was \$44.0 million in 2007. The gain in 2007 is related to our business combination with OMX AB as presented in the above table, partially offset by a \$7.8 million loss recorded in the first half of 2007 related to our hedge of the foreign currency exposure on our acquisition bid for the LSE. At the time of the commencement of the bid for the LSE in the fourth quarter of 2006, we purchased foreign currency option contracts. In conjunction with the lapse of our final offers for LSE, we traded out of these foreign exchange contracts in February 2007. Due to the improving exchange rate of the dollar when compared to the pound sterling a \$7.8 million loss was recorded on these foreign currency option contracts.

**Other Derivative Positions at NASDAQ OMX Commodities and NASDAQ OMX Stockholm**

***NASDAQ OMX Commodities***

NASDAQ OMX Commodities enters into energy derivative and carbon product contracts as the contractual counterparty. In doing so, NASDAQ OMX Commodities guarantees the completion of the transaction and market participants can thereby limit their counterparty risk. Market participants must provide collateral to cover the daily margin call, which is in addition to the initial collateral placed when signing the clearing membership agreement. Acceptable collateral is cash on a pledged bank account and/or an on-demand guarantee. We also act as the counterparty for trades on the OTC derivative market subject to our approval on a case by case basis. Trading on the contracts can take place up until the delivery period which can occur over a period of up to six years.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**NASDAQ OMX Stockholm**

On NASDAQ OMX Stockholm, we offer clearing services for fixed-income options and futures, stock options and futures and index options and futures by serving as the central counterparty. In doing so, we guarantee the completion of the transaction, exposing us to counterparty risk. We also act as the counterparty for certain over-the-counter contracts. The transactions are reported electronically prior to central counterparty clearing and we thereby guarantee the completion of the transaction. Following the completion of a transaction, settlement takes place between parties with the exchange of the securities and funds. The transfer of ownership is registered and the securities are stored on the owner's behalf. Settlement and registration of cash trading takes place in Sweden and Finland via the local central securities depositories.

The counterparty risks are measured using models that are agreed with the financial inspection authority of the country in question which requires us to provide minimum guarantees and maintain certain levels of regulatory capital.

**Market Value, Outstanding Derivative Positions**

The market value of the above mentioned derivative contracts for NASDAQ OMX Commodities and NASDAQ OMX Stockholm are reported gross on the balance sheet as a receivable pertaining to the purchasing party and a payable pertaining to the selling party. Such receivables and liabilities attributable to outstanding derivative positions have been netted to the extent that such a legal offset right exists and, at the same time, that it is our intention to settle these items. At December 31, 2008, our market value, outstanding derivative positions in the Consolidated Balance Sheet was \$4.1 billion. See Note 19, "Commitments, Contingencies and Guarantees," for further discussion of our guarantees on the fulfillment of these contracts and collateral received.

The following table presents the fair value of our outstanding derivative positions at December 31, 2008 prior to netting.

	<u>Asset</u>	<u>Liability</u>
	(in millions)	
Forwards and options	\$ 3,306.2	\$ 3,306.2
Stock options and futures	514.9	514.9
Index options and futures	239.4	239.4
Fixed-income options and futures	460.0	460.0
Total	<u>\$ 4,520.5</u>	<u>\$ 4,520.5</u>

**18. Leases**

We lease office space and equipment under non-cancelable operating leases with third parties. Some of our leases contain renewal options and escalation clauses based on increases in property taxes and building operating costs.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

As of December 31, 2008, future minimum lease payments under non-cancelable operating leases (net of sublease income) are as follows:

	<u>Gross Lease Commitments</u>	<u>Sublease Income</u> (in thousands)	<u>Net Lease Commitments</u>
Year ending December 31:			
2009	\$ 58,473	\$ 8,900	\$ 49,573
2010	54,936	8,890	46,046
2011	52,636	8,643	43,993
2012	46,088	8,044	38,044
2013 and thereafter	249,869	47,489	202,380
Total future minimum lease payments	<u>\$ 462,002</u>	<u>\$81,966</u>	<u>\$ 380,036</u>

Rent expense for operating leases (net of sublease income of \$6.7 million in 2008 and \$3.0 million in both 2007 and 2006) was \$42.1 million in 2008, \$27.5 million in 2007 and \$25.6 million in 2006.

## 19. Commitments, Contingencies and Guarantees

### *Brokerage Activities*

In accordance with FIN 45, Nasdaq Execution Services and NASDAQ Options Services provide guarantees to securities clearinghouses and exchanges under their standard membership agreements, which require members to guarantee the performance of other members. If a member becomes unable to satisfy its obligations to the clearinghouses, other members would be required to meet its shortfalls. To mitigate these performance risks, the exchanges and clearinghouses often require members to post collateral as well as meet certain minimum financial standards. Nasdaq Execution Services' and NASDAQ Options Services' maximum potential liability under these arrangements cannot be quantified. However, we believe that the potential for Nasdaq Execution Services and NASDAQ Options Services to be required to make payments under these arrangements is unlikely. Accordingly, no contingent liability is recorded in the Consolidated Balance Sheets for these arrangements.

### *Obligations Under Guarantee*

In connection with our registration as a national securities exchange, Nasdaq completed an internal reorganization in November 2006. As part of the reorganization, Nasdaq transferred the ownership of some of its subsidiaries, including its broker-dealer subsidiaries, to The NASDAQ Stock Market LLC. The NASDAQ Stock Market LLC assumed Nasdaq's obligations under the 3.75% convertible notes due October 22, 2012 and the related indenture. NASDAQ OMX guarantees the obligations of The NASDAQ Stock Market LLC under the indenture.

### *Guarantees Issued and Collateral Received for Clearing Operations*

Through our clearing operations in the derivative markets with NASDAQ OMX Commodities, IDCG and NASDAQ OMX Stockholm, we are the legal counterparty for each derivative position traded and thereby guarantee the fulfillment of each contract. We are required to pledge collateral for commitments with other clearinghouses. The amount of these commitments is calculated on the gross exposure between the clearinghouses. As collateral for these obligations, we have obtained financial guarantees and credit facilities which are guaranteed by us through counter indemnities. At December 31, 2008 these guarantees and credit facilities totaled \$636.9 million. We require our customers to pledge collateral and meet certain minimum

**The NASDAQ OMX Group, Inc.****Notes to Consolidated Financial Statements—(Continued)**

financial standards to mitigate the risk if they become unable to satisfy their obligations. At December 31, 2008, total customer pledged collateral was \$3.5 billion. The pledged collateral is held by a custodian bank. Since these funds are not held by NASDAQ OMX and they are not available for NASDAQ OMX to use, we do not receive any interest income on these funds. We believe that the potential for us to be required to make payments under these arrangements is mitigated through the pledged collateral, our risk management policies and in the case of NASDAQ OMX Commodities a default insurance policy. Accordingly, no contingent liability is recorded in the Consolidated Balance Sheets for these arrangements.

**Other Guarantees**

We have provided guarantees as of December 31, 2008 of \$31.3 million, primarily related to obligations for our rental and leasing contracts. We have received financial guarantees from various financial institutions to support these guarantees.

**Leases**

We lease some of our office space and equipment under non-cancelable operating leases with third parties and sublease office space to third parties. Some of our leases contain renewal options and escalation clauses based on increases in property taxes and building operating costs. See Note 18, "Leases," for further discussion.

**Litigation**

We may be subject to claims arising out of the conduct of our business. We are not currently a party to any litigation that we believe could have a material adverse effect on our business, financial condition, or operating results. However, from time to time, we have been threatened with, or named as a defendant in, lawsuits or involved in regulatory proceedings.

**20. Other Income (Expense), net**

The following table presents the components of other income (expense), net:

	Year Ended December 31,		
	2008	2007 (in thousands)	2006
Interest income	\$ 34,509	\$ 37,646	\$ 24,633
Interest expense	(86,606)	(72,863)	(91,097)
Net interest expense <sup>(1)</sup>	(52,097)	(35,217)	(66,464)
Dividend and investment income <sup>(2)</sup>	8,382	14,763	16,195
Income from unconsolidated investees, net <sup>(3)</sup>	27,321	—	—
Gain (loss) on foreign currency contracts <sup>(4)</sup>	(57,959)	43,950	48,391
Asset impairment charges <sup>(5)</sup>	(42,184)	—	(5,925)
Gain on sale of strategic initiative <sup>(6)</sup>	—	431,383	—
Strategic initiative costs <sup>(7)</sup>	—	(26,511)	—
Total other income (expense), net	<u>\$ (116,537)</u>	<u>\$ 428,368</u>	<u>\$ (7,803)</u>

<sup>(1)</sup> The increase in net interest expense for the year ended December 31, 2008 compared with the same period in 2007 was primarily due to:

- a decrease in interest income due to lower interest rates and the use of cash to fund acquisitions in 2008, partially offset by the inclusion of OMX's interest income of \$16.6 million;

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

- an increase in debt issuance amortization costs due to the draw-down of debt to fund the OMX AB business combination, the PHLX acquisition and the Nord Pool transaction, compared to minimal debt issuance costs in 2007 due to the costs being included in general, administrative and other expenses due to the early extinguishment of debt related to the repayment in full of our outstanding debt obligations in September 2007 from the proceeds of the sale of our share capital of the LSE. See Note 7, “Financial Investments, at Fair Value,” to the consolidated financial statements for further discussion; and
- a higher average outstanding debt balance, partially offset by lower interest rates. Our higher outstanding debt balance was due to the draw-down of debt to fund the OMX AB business combination, the PHLX acquisition and the Nord Pool transaction.

The decrease in net interest expense for the year ended December 31, 2007 compared with the same period in 2006 was primarily due to higher interest income due to higher cash balances and lower interest expense due to a lower average outstanding debt balance and lower interest rates year over year. Our lower outstanding debt balance was due to the repayment in full and termination of our then-outstanding credit facilities from the proceeds of the sale of our share capital of the LSE. In addition, our lower outstanding debt balance was due to H&F converting \$300.0 million of its 3.75% convertible notes to equity and SLP and other partners converting a portion of their 3.75% convertible notes to equity in the fourth quarter of 2007. See Note 9, “Debt Obligations,” for further discussion.

- (2) Dividend and investment income for the year ended December 31, 2008 primarily relates to the inclusion of OMX’s and NASDAQ OMX PHLX’s dividend and investment income. Dividend and investment income for the year ended December 31, 2007 and 2006 primarily include ordinary dividends declared from our investment in the LSE.
- (3) The income in the year ended December 31, 2008 primarily relates to the \$26.0 million gain on the non-monetary contribution of the Nasdaq trade name to obtain an equity interest in NASDAQ Dubai. See “Equity Investment in NASDAQ Dubai,” of Note 3, “Business Combinations,” for further discussion. Also included is income from our share of the earnings and losses from our ownership in unconsolidated equity method investees.
- (4) The loss for the year ended December 31, 2008 primarily relates to our Nord Pool transaction (\$71.5 million) and our market technology forward currency contracts (\$13.4 million), partially offset by gains related to our business combination with OMX AB (\$27.0 million). The gain for the year ended December 31, 2007 is also related to our business combination with OMX AB (\$51.8 million) and is partially offset by a \$7.8 million loss recorded for our acquisition bid for the LSE. The gain for the year ended December 31, 2006 primarily relates to our acquisition bid for LSE. See Note 17, “Derivative Financial Instruments and Hedging Activities,” for further discussion.
- (5) In 2008, asset impairment charges include a realized loss on a non-cash other-than-temporary impairment of \$34.9 million related to a long-term available-for-sale investment security. See Note 2, “Summary of Significant Accounting Policies,” and “Accumulated Other Comprehensive Income,” of Note 14, “Stockholders’ Equity,” for further discussion. We also recorded a non-cash impairment loss of \$7.3 million from the write-down of finite-lived intangibles assets, primarily related to our insurance agency business. See Note 4, “Goodwill and Purchased Intangible Assets,” for further discussion. In 2006, we recorded write-downs for property and equipment of \$5.9 million related to the sale of a building and related assets.
- (6) The pre-tax gain on sale of strategic initiative for the year ended December 31, 2007 of \$431.4 million represents the sale of our share capital of the LSE and is net of costs directly related to the sale of \$18.0 million, primarily broker fees. See Note 7, “Financial Investments, at Fair Value,” for further discussion.
- (7) The strategic initiative costs for the year ended December 31, 2007 were incurred in connection with our strategic initiatives related to the LSE, including our acquisition bid. In conjunction with the lapse of our final offers, these costs were charged to expense. See Note 7, “Financial Investments, at Fair Value,” for further discussion.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

**21. Segments**

We manage, operate and provide our products and services in three business segments, our Market Services segment, our Issuer Services segment and our Market Technology segment. Our Market Services segment includes our U.S. and European Transaction Services businesses and our Market Data business, which are interrelated because the Transaction Services businesses generate the quote and trade information that we sell to market participants and data distributors. Market Services also includes our Broker Services business. The Issuer Services segment includes our Global Listing Services and Global Index Group businesses. The companies listed on The NASDAQ Stock Market and the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic represent a diverse array of industries. This diversity of companies listed on NASDAQ OMX markets allows us to develop industry-specific and other indexes that we use to develop and license NASDAQ OMX branded indexes, associated derivatives and index products as part of our Global Index Group. The Global Listing Services business also includes revenues from Corporate Services which includes revenues generated through our insurance agency business, shareholder, directors and newswire services. Our Corporate Services business provides customer support services, products and programs to companies, including companies listed on our exchanges. Through our Corporate Services offerings, companies gain access to innovative products and services that facilitate transparency, mitigate risk, maximize board efficiency and inspire better corporate governance. Through our Market Technology segment we provide technology solutions for trading, clearing and settlement, and information dissemination, and also offer facility management integration and advisory services. Our management allocates resources, assesses performance and manages these businesses as three separate segments.

We evaluate the performance of our segments based on several factors, of which the primary financial measure is income before income taxes. Results of individual businesses are presented based on our management accounting practices and our management structure. Certain amounts are allocated to corporate items in our management reports based on the decision that those activities should not be used to evaluate the segment's operating performance, including amounts related to the business combination with OMX AB, the Nord Pool transaction and our acquisition bid for the LSE. See below for further discussion.

The following table presents certain information regarding these operating segments for the years ended December 31, 2008, 2007 and 2006.

	<u>Market Services</u>	<u>Issuer Services</u>	<u>Market Technology</u> (in thousands)	<u>Corporate Items and Eliminations</u>	<u>Consolidated</u>
<b>2008</b>					
Total revenues	\$ 3,207,294	\$330,594	\$106,151	\$ 4,654	\$ 3,648,693
Cost of revenues	<u>(2,188,615)</u>	—	—	—	<u>(2,188,615)</u>
Revenues less liquidity rebates, brokerage, clearance and exchange fees	<u>1,018,679</u>	<u>330,594</u>	<u>106,151</u>	<u>4,654</u>	<u>1,460,078</u>
Depreciation and amortization	62,858	14,345	9,713	5,662	92,578
Income (loss) before income taxes	517,593	73,043	(26,890)	(41,582) <sup>(2)</sup>	522,164
Total assets <sup>(1)</sup>	10,411,593	698,289	202,442	1,382,551	12,694,875
Purchases of property and equipment	30,309	10,313	13,141	956	54,719

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

	<u>Market Services</u>	<u>Issuer Services</u>	<u>Corporate Items and Eliminations</u>	<u>Consolidated</u>
	(in thousands)			
<b>2007</b>				
Total revenues	\$ 2,152,390	\$ 283,885	\$ 317	\$ 2,436,592
Cost of revenues	(1,624,353)	—	—	(1,624,353)
Revenues less liquidity rebates, brokerage, clearance and exchange fees	528,037	283,885	317	812,239
Depreciation and amortization	27,812	11,078	—	38,890
Income before income taxes	306,068	75,636	412,199 <sup>(3)</sup>	793,903
Total assets <sup>(1)</sup>	1,322,096	239,125	1,418,176	2,979,397
Purchases of property and equipment	11,940	6,549	—	18,489
	<u>Market Services</u>	<u>Issuer Services</u>	<u>Corporate Items and Eliminations</u>	<u>Consolidated</u>
	(in thousands)			
<b>2006</b>				
Total revenues	\$ 1,408,297	\$ 249,016	\$ 463	\$1,657,776
Cost of revenues	(970,381)	—	—	(970,381)
Revenues less liquidity rebates, brokerage, clearance and exchange fees	437,916	249,016	463	687,395
Depreciation and amortization	60,412	10,495	9	70,916
Income before income taxes	137,509	50,791	24,845 <sup>(4)</sup>	213,145
Purchases of property and equipment	10,893	10,132	10	21,035

<sup>(1)</sup> Total assets increased \$9.7 billion at December 31, 2008 as compared with December 31, 2007. This increase is primarily due to the business combination with OMX, our acquisition of PHLX and the Nord Pool transaction. See Note 3, “Business Combinations,” for further discussion.

<sup>(2)</sup> The 2008 amounts primarily include:

- a net loss on foreign currency contracts of \$44.5 million, primarily related to our Nord Pool transaction (\$71.5 million), partially offset by a \$27.0 million gain related to our business combination with OMX AB. See Note 17, “Derivative Financial Instruments and Hedging Activities,” for further discussion;
- income from unconsolidated investees, net of \$27.3 million, primarily related to our gain on the non-monetary contribution of the Nasdaq trade name to obtain an equity interest in NASDAQ Dubai. See “Equity Investment in NASDAQ Dubai,” of Note 3, “Business Combinations,” for further discussion; and
- an other-than-temporary impairment on a long-term available-for-sale investment security of \$34.9 million. See Note 2, “Summary of Significant Accounting Policies,” and “Accumulated Other Comprehensive Income,” of Note 14, “Stockholders’ Equity,” for further discussion.

<sup>(3)</sup> The 2007 amounts primarily include:

- gain from the sale of our share capital of the LSE of \$431.4 million;
- gain on foreign currency option contract of \$51.8 million, which was purchased to hedge the foreign exchange exposure in connection with our acquisition bid for OMX AB. We also incurred a \$7.8 million loss on foreign currency option contracts which we entered into to hedge the foreign exchange exposure on the acquisition bid for the LSE;

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

- charges of \$19.5 million for a tax sharing payment owed to Instinet for the benefit of SLP and \$5.8 million for the loss on the early extinguishment of debt related to the payment in full of our Credit Facilities;
- dividend income of \$14.5 million, related to our investment in the LSE;
- strategic initiative costs of \$26.5 million, incurred in connection with acquiring our current investment in the LSE and our acquisition bid; and
- interest expense of \$27.4 million, related to our investment in the LSE.

(4) The 2006 amounts primarily include:

- gain on foreign currency option contracts of \$48.4 million, which was purchased to hedge the foreign currency exposure on our acquisition bid for the LSE;
- foreign currency gain of \$8.2 million, related to our investment in the LSE;
- dividend income of \$16.2 million, related to our investment in the LSE;
- loss on early extinguishment of debt of \$22.0 million, related to the financing of the purchase of our investment in the LSE; and
- interest expense of \$24.1 million, related to our investment in the LSE.

For further discussion of our segments' results, see "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Segment Operating Results."

**Geographic Data**

The following table presents revenues and property and equipment, net by geographic area for 2008, 2007 and 2006. Revenues are classified based upon the location of the customer. Property and equipment information is based on the physical location of the assets.

	<u>Total Revenues</u>	<u>Property and Equipment, Net</u>
	(in thousands)	
<b>2008:</b>		
United States	\$3,092,043	\$ 108,837
All other countries	556,650	74,106 <sup>(1)</sup>
Total	<u>\$3,648,693</u>	<u>\$ 182,943</u>
<b>2007:</b>		
United States	\$2,265,635	\$ 64,157
All other countries	170,957	366
Total	<u>\$2,436,592</u>	<u>\$ 64,523</u>
<b>2006:</b>		
United States	\$1,580,824	\$ 64,798
All other countries	76,952	471
Total	<u>\$1,657,776</u>	<u>\$ 65,269</u>

<sup>(1)</sup> Of this amount, \$42.5 million of property and equipment is located in Sweden.

**The NASDAQ OMX Group, Inc.**  
**Notes to Consolidated Financial Statements—(Continued)**

No single customer accounted for 10.0% or more of our revenues in 2008, 2007 and 2006.

## 22. Cost Reduction Program and INET Integration

Charges associated with our cost reduction program ceased during the second quarter of 2007 and charges associated with our integration of INET ceased during the first quarter of 2007. We incurred charges of approximately \$4.1 million in 2007 and \$40.9 million in 2006 in connection with actions we took to improve our operational efficiency as well as to integrate INET. The following table summarizes these charges which are included in the Consolidated Statements of Income:

	Year Ended December 31,	
	2007	2006
	(in millions)	
Real estate consolidation, net	\$ —	\$ 5.9
Reductions in force	2.5	6.5
Technology migration	1.6	28.5
Total cost reduction charges	<u>\$ 4.1</u>	<u>\$ 40.9</u>

### Real Estate Consolidation

We continually evaluate all of our real estate to determine whether we can consolidate staff into fewer locations to save significant costs.

In connection with our review of our owned and leased real estate which began in 2003, we have consolidated staff into fewer locations and have saved significant costs. As part of our real estate consolidation plans, in the second quarter of 2006, we decided to sell our building and related assets located at 80 Merritt Boulevard, Trumbull, Connecticut. As a result of this decision, the carrying value of the building and related assets was adjusted to \$30.8 million, its fair market value less costs to sell, which was determined based on a quoted market price from an independent third-party. This resulted in a \$5.4 million charge recorded in the second quarter of 2006. In July 2006, we completed the sale of this building and related assets for approximately \$30.3 million and an additional \$0.5 million charge was recorded in the third quarter of 2006 for a total charge of \$5.9 million for the year ended December 31, 2006. These charges are included in asset impairment charges within other income (expense), net in the Consolidated Statements of Income in 2006.

### Sublease Loss Reserve

The estimated sublease loss reserve for all subleased properties related to the cost reduction program was approximately \$21.1 million at December 31, 2008 and \$21.5 million at December 31, 2007 and is primarily included in accounts payable and accrued expenses and other liabilities in the Consolidated Balance Sheets. The reserve is adjusted throughout the year to reflect interest accretion, rental payments made during the year, depreciation on leasehold improvements if applicable and sublease receipts. The estimated losses were calculated using a 7.0% net discount rate and estimated sublease terms ranging from 2 years to 16 years at estimated market rates. In reviewing our sublease loss reserve analyses, we considered changes in current market conditions.

### Reductions in Force

We eliminated 35 positions in 2007 and 100 positions in 2006 and recorded charges of \$2.5 million in 2007 and \$6.5 million in 2006 for severance and outplacement costs. These charges were included in compensation

**The NASDAQ OMX Group, Inc.**

**Notes to Consolidated Financial Statements—(Continued)**

and benefits expense in the Consolidated Statements of Income. We paid all the severance and outplacement costs related to the charges recorded in 2006 as of December 31, 2007. For the charge recorded in 2007, approximately \$2.2 million was paid as of December 31, 2007 and the remaining \$0.3 million was paid in 2008.

**Technology Migration**

As a result of a continued review of our technology infrastructure, we previously shortened the estimated useful life of certain assets and changed the lease terms on certain operating leases associated with our quoting platform and our trading and quoting network, which resulted in incremental depreciation and amortization expense. The INET integration, which is now complete, accelerated our migration to a low-cost trading platform. As a result, the charges associated with these assets were \$1.6 million in 2007 and \$28.5 million in 2006 and the majority of these charges were included in depreciation and amortization expense in the Consolidated Statements of Income.

**Schedule II—Valuation and Qualifying Accounts**  
**Three Years Ended December 31, 2008**  
**(in thousands)**

	<b>Reserve for Bad Debts</b>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
Balance at beginning of period	\$ 2,913	\$ 2,752	\$ 7,234
Additions:			
Charges to income	4,118	1,858	464
Recoveries of amounts previously written-off	941	650	717
Acquisitions <sup>(1)</sup>	3,252	—	22
Deductions:			
Charges for which reserves were provided	(1,817)	(2,347)	(5,685)
Balance at end of period	<u>\$ 9,407</u>	<u>\$ 2,913</u>	<u>\$ 2,752</u>

<sup>(1)</sup> Relates to the business combination with OMX AB and the acquisitions of PHLX in 2008 and Shareholder.com in 2006.

**Exhibit Index**

<u>Exhibit Number</u>	
3.1	Restated Certificate of Incorporation of Nasdaq (incorporated herein by reference to Exhibit 3.1 to the Quarterly Report on Form 10-Q for the quarter ended September 30, 2003 filed on November 14, 2003).
3.1.1	Certificate of Amendment of the Restated Certificate of Incorporation of Nasdaq filed on May 25, 2005 (incorporated herein by reference to Exhibit 3.1.1 to the Annual Report on Form 10-K for the year ended December 31, 2005 filed on March 15, 2006).
3.1.2	Certificate of Amendment of the Restated Certificate of Incorporation of Nasdaq filed on March 13, 2006 (incorporated herein by reference to Exhibit 3.1.2 to the Annual Report on Form 10-K for the year ended December 31, 2005 filed on March 15, 2006).
3.1.3	Certificate of Amendment of the Restated Certificate of Incorporation of Nasdaq filed on August 1, 2006 (incorporated herein by reference to Exhibit 3.1.3 to the Quarterly Report on Form 10-Q for the quarter ended September 30, 2006 filed on November 8, 2006).
3.1.4	Certificate of Amendment to the Restated Certificate of Incorporation of Nasdaq filed on February 27, 2008 (incorporated herein by reference to the language appearing under the caption "Approval of an Amendment to Nasdaq's Restated Certificate of Incorporation to Change Nasdaq's Name to "The NASDAQ OMX Group, Inc." beginning on page 44 of the Definitive Proxy Statement filed on November 19, 2007).
3.1.5	Certificate of Designations, Preferences and Rights of Series C Cumulative Preferred Stock of Nasdaq (incorporated herein by reference to Exhibit 5.03 to the Current Report on Form 8-K filed on December 1, 2004).
3.1.6	Certificate of Designations, Preferences and Rights of Series D Cumulative Preferred Stock of Nasdaq (incorporated herein by reference to Exhibit 3.1 to the Current Report on Form 8-K filed on December 20, 2005).
3.1.7	Certificate of Elimination (incorporated herein by reference to Exhibit 3.1 to the Current Report on Form 8-K filed on April 4, 2006).
3.2	By-laws of The NASDAQ OMX Group, Inc. (incorporated herein by reference to Exhibit 3.2 to the Current Report on Form 8-K filed on July 29, 2008).
4.1	Form of Common Stock certificate (incorporated herein by reference to Exhibit 4.1 to the Registration Statement on Form 10 filed on April 30, 2001).
4.2	Securities Purchase Agreement, dated as of April 22, 2005, between Norway Acquisition SPV, LLC and Nasdaq (incorporated herein by reference to Exhibit 4.1 to the Current Report on Form 8-K filed on April 28, 2005).
4.3	Indenture, dated as of April 22, 2005, between Nasdaq and Law Debenture Trust Company of New York, as Trustee (incorporated herein by reference to Exhibit 4.3 to the Current Report on Form 8-K filed on April 28, 2005).
4.3.1	First Supplemental Indenture, dated as of December 8, 2005, between Nasdaq and Law Debenture Trust Company of New York (incorporated herein by reference to Exhibit 4.1 to the Current Report on Form 8-K filed on December 14, 2005).
4.3.2	Second Supplemental Indenture, dated as of November 9, 2006, among Nasdaq, The NASDAQ Stock Market LLC and Law Debenture Trust Company of New York, as trustee (incorporated herein by reference to Exhibit 4.4.2 to the Annual Report on Form 10-K filed on February 28, 2007).

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### Exhibit Number

- 4.4 Amended and Restated Securityholders Agreement, dated as of April 22, 2005, among Norway Acquisition SPV, LLC, Hellman & Friedman Capital Partners IV, L.P., H&F Executive Fund IV, L.P., H&F International Partners IV-A, L.P., and H&F International Partners IV-B, L.P., Silver Lake Partners TSA, L.P., Silver Lake Investors, L.P., VAB Investors, LLC and Integral Capital Partners VI, L.P. (incorporated herein by reference to Exhibit 4.5 to the Current Report on Form 8-K filed on April 28, 2005).
- 4.5 Registration Rights Agreement, dated as of April 22, 2005, among Nasdaq, Hellman & Friedman Capital Partners IV, L.P., H&F Executive Fund IV, L.P., H&F International Partners IV-A, L.P., and H&F International Partners IV-B, L.P., Silver Lake Partners TSA, L.P., Silver Lake Investors, L.P., VAB Investors, LLC and Integral Capital Partners VI, L.P. (incorporated herein by reference to Exhibit 4.4 to the Current Report on Form 8-K filed on April 28, 2005).
- 4.6 Purchase Agreement, dated February 20, 2008, among Nasdaq, J.P. Morgan Securities Inc. and Banc of America Securities LLC (as Initial Purchasers) (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on February 21, 2008).
- 4.7 Indenture, dated as February 26, 2008, between Nasdaq and The Bank of New York (incorporated herein by reference to Exhibit 4.1 to the Current Report on Form 8-K filed on March 3, 2008)
- 4.8 Form of 2.50% Convertible Senior Note due 2013 (incorporated herein by reference to Exhibit 4.2 to the Current Report on Form 8-K filed on March 3, 2008).
- 4.9 Registration Rights Agreement, dated February 26, 2008, among The NASDAQ OMX Group, Inc., J.P. Morgan Securities Inc. and Banc of America Securities LLC (incorporated herein by reference to Exhibit 4.3 to the Current Report on Form 8-K filed on March 3, 2008).
- 4.10 The NASDAQ OMX Group Inc.'s Stockholders' Agreement, dated as of February 27, 2008, between The NASDAQ OMX Group, Inc. and Borse Dubai Limited (incorporated herein by reference to Exhibit 10.2 to the Current Report on Form 8-K filed on March 3, 2008).
- 4.10.1 First Amendment to The NASDAQ OMX Group Inc.'s Stockholders' Agreement, dated as of February 19, 2009, between The NASDAQ OMX Group, Inc. and Borse Dubai Limited.
- 4.11 Registration Rights Agreement, dated as of February 27, 2008, among The NASDAQ OMX Group, Inc., Borse Dubai Limited and Borse Dubai Nasdaq Share Trust (incorporated herein by reference to Exhibit 10.3 to the Current Report on Form 8-K filed on March 3, 2008).
- 4.11.1 First Amendment to Registration Rights Agreement, dated as of February 19, 2009, among The NASDAQ OMX Group, Inc., Borse Dubai Limited and Borse Dubai Nasdaq Share Trust.
- 10.1 Amended and Restated Board Compensation Policy, approved as of December 17, 2008.\*
- 10.2 Amended and Restated Executive Corporate Incentive Plan, dated as of December 17, 2008.\*
- 10.3 Form of NASDAQ OMX Non-Qualified Stock Option Agreement (incorporated herein by reference to Exhibit 10.5 to the Annual Report on Form 10-K for the year ended December 31, 2007 filed on February 25, 2008).\*
- 10.4 Form of NASDAQ OMX Restricted Stock Award Agreement (directors) (incorporated herein by reference to Exhibit 10.7 to the Annual Report on Form 10-K for the year ended December 31, 2006 filed on February 28, 2007).\*
- 10.5 Form of NASDAQ OMX Performance Share Unit Agreement (incorporated herein by reference to Exhibit 10.8 to the Annual Report on Form 10-K for the year ended December 31, 2007 filed on February 25, 2008).\*

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<u>Exhibit Number</u>	
10.6	Amended and Restated Supplemental Executive Retirement Plan, dated as of December 17, 2008.*
10.6.1	Amendment No. 1 to Amended and Restated Supplemental Executive Retirement Plan, effective as of December 31, 2008.*
10.7	The NASDAQ OMX Group, Inc. Supplemental Employer Retirement Contribution Plan, dated as of December 17, 2008.*
10.8	Employment Agreement by and between Nasdaq and Robert Greifeld, effective as of January 1, 2007 (incorporated herein by reference to Exhibit 10.5 to the Annual Report on Form 10-K filed on February 28, 2007).*
10.8.1	Amendment to Employment Agreement by and between NASDAQ OMX and Robert Greifeld, effective as of December 31, 2008.*
10.9	Nonqualified Stock Option Agreement, dated as of February 21, 2008, between Nasdaq and Robert Greifeld (incorporated herein by reference to Exhibit 10.13 to the Annual Report on Form 10-K for the year ended December 31, 2007 filed on February 25, 2008).*
10.10	2007 Performance Share Unit Agreement, dated as of February 21, 2008, between Nasdaq and Robert Greifeld (incorporated herein by reference to Exhibit 10.14 to the Annual Report on Form 10-K for the year ended December 31, 2007 filed on February 25, 2008).*
10.11	2008 Performance Share Unit Agreement, dated as of February 21, 2008, between Nasdaq and Robert Greifeld (incorporated herein by reference to Exhibit 10.15 to the Annual Report on Form 10-K for the year ended December 31, 2007 filed on February 25, 2008).*
10.12	Form of Amended and Restated Letter Agreement, effective as of December 31, 2008, between NASDAQ OMX and Certain Executive Officers.*
10.13	Employment Agreement between Nasdaq and Edward Knight, effective as of December 29, 2000 Nasdaq (incorporated herein by reference to Exhibit 10.14 to the Annual Report on Form 10-K for the year ended December 31, 2002 filed on March 31, 2003).*
10.13.1	First Amendment to Employment Agreement between Nasdaq and Edward Knight, effective February 1, 2002 Nasdaq (incorporated herein by reference to Exhibit 10.14.1 to the Annual Report on Form 10-K for the year ended December 31, 2002 filed on March 31, 2003).*
10.13.2	Second Amendment to Employment Agreement between NASDAQ OMX and Edward Knight, effective as of December 31, 2008.*
10.14	Letter Agreement, dated as of September 19, 2007, among Nasdaq, Nightingale Acquisition Limited and Borse Dubai Limited (incorporated herein by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q filed on November 9, 2007).
10.15	Terms of Sale, dated as of September 21, 2007, among UBS Limited, J.P. Morgan Securities Ltd. and Nightingale Acquisition Limited (incorporated herein by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q filed on November 9, 2007).
10.16	Transaction Agreement, dated as of May 25, 2007, between OMX AB and Nasdaq (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on May 31, 2007).
10.16.1	Supplement, dated as of September 20, 2007, between OMX AB and Nasdaq (incorporated herein by reference to Exhibit 10.4 to the Quarterly Report on Form 10-Q filed on November 9, 2007).
10.16.2	Letter Agreement, dated as of January 2, 2008, between OMX AB and Nasdaq (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on January 7, 2008).

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<u>Exhibit Number</u>	
10.17	OMX Transaction Agreement, dated as of November 15, 2007, among Nasdaq, Borse Dubai Limited and BD Stockholm AB (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on November 16, 2007).
10.17.1	Amendment to the OMX Transaction Agreement, dated as of February 27, 2008, among Nasdaq, Borse Dubai Limited and BD Stockholm AB (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on March 3, 2008).
10.18	DIFX Transaction Agreement, dated as of November 15, 2007, among Nasdaq, Borse Dubai Limited and Dubai International Financial Exchange Limited (incorporated herein by reference to Exhibit 10.2 to the Current Report on Form 8-K filed on November 16, 2007).
10.19	Agreement and Plan of Merger, dated as of November 6, 2007, among Nasdaq, Pinnacle Merger Corporation, Philadelphia Stock Exchange, Inc., and Citadel Derivatives Group LLC (incorporated herein by reference to Exhibit 2.1 to the Current Report on Form 8-K filed on November 7, 2007).
10.20	Share Purchase Agreement, dated as of February 21, 2008, between Nord Pool ASA and OMX AB (publ).
10.21	Credit Agreement, dated February 27, 2008, among NASDAQ OMX, the Lenders party thereto, Bank of America, N.A., as Administrative Agent, Collateral Agent, Swingline Lender and Issuing Bank, and JPMorgan Chase Bank, N.A., as Syndication Agent, and the other parties thereto (incorporated herein by reference to Exhibit 10.4 to the Current Report on Form 8-K filed on March 3, 2008).
10.21.1	Amendment No. 1 to Credit Agreement and Collateral Agreement, dated as of December 4, 2008, among NASDAQ OMX, the Lenders party thereto, Bank of America, N.A., as Administrative Agent, Collateral Agent, Swingline Lender and Issuing Bank, and JPMorgan Chase Bank, N.A., as Syndication Agent, and the other parties thereto.
11	Statement regarding computation of per share earnings (incorporated herein by reference from Note 15 to the consolidated financial statements under Part II, Item 8 of this Form 10-K).
12.1	Computation of Ratio of Earnings to Fixed Charges.
21.1	List of all subsidiaries.
23.1	Consent of Ernst & Young.
24.1	Powers of Attorney.
31.1	Certification of President and Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley").
31.2	Certification of Executive Vice President and Chief Financial Officer pursuant to Section 302 of Sarbanes-Oxley.
32.1	Certifications Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of Sarbanes-Oxley.

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\* Management contract or compensatory plan or arrangement.

## FIRST AMENDMENT TO NASDAQ STOCKHOLDERS' AGREEMENT

**THIS FIRST AMENDMENT TO NASDAQ STOCKHOLDERS' AGREEMENT** (this "**Amendment**") is made as of February 19, 2009, among The NASDAQ OMX Group, Inc. (formerly known as The Nasdaq Stock Market, Inc.), a Delaware corporation (together with any successor entity thereto, "Nasdaq") and Borse Dubai Limited, a company registered in the Dubai International Financial Centre with company number CL0447 (together with any successor entity thereto, "Borse Dubai"). Nasdaq and Borse Dubai are sometimes referred to herein individually as a "Party" and collectively as the "Parties". Capitalized terms used herein but not defined herein shall have the meanings given to such terms in the Nasdaq Stockholders' Agreement (as herein defined).

**WHEREAS:**

- (A) The Parties entered into that certain Nasdaq Stockholders' Agreement (the "Nasdaq Stockholders' Agreement") dated as of February 27, 2008.
- (B) The Parties hereto desire to amend the Nasdaq Stockholders' Agreement as set forth in this Amendment.

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the Parties hereby agree as follows:

1. All references to "The Nasdaq Stock Market, Inc." in the Nasdaq Stockholders' Agreement shall be deleted and replaced with references to "The NASDAQ OMX Group, Inc."
2. The definition of "2008 Registration Rights Agreement" in Section 1.1(a) of the Nasdaq Stockholders' Agreement is hereby deleted in its entirety and replaced with the following:  
"2008 Registration Rights Agreement" means that certain Registration Rights Agreement, dated as of February 27, 2008 among Nasdaq, Borse Dubai and the Trust, as amended, amended and restated or otherwise modified from time to time.
3. The definition of "Facilities Agreement" in Section 1.1(a) of the Nasdaq Stockholders' Agreement is hereby deleted in its entirety.
4. A definition of "Finance Party" is hereby added immediately following the definition of "Fair Market Value" in Section 1.1(a) of the Nasdaq Stockholders' Agreement to read as follows:  
"Finance Party" means an entity selected by Borse Dubai that executes a Nasdaq Share Charge that is a bank, a financial services provider other than a bank, or an agent or trustee of a bank or of a financial services provider, provided that Nasdaq has specifically consented in advance in writing to such an entity executing such Nasdaq Share Charge, and provided further that Nasdaq may not unreasonably withhold or delay its consent in this regard.

5. The definition of "HSBC" in Section 1.1(a) of the Nasdaq Stockholders' Agreement is hereby deleted in its entirety.
6. The definition of "Nasdaq Share Charge" in Section 1.1(a) of the Nasdaq Stockholders' Agreement is hereby deleted in its entirety and replaced with the following:

"Nasdaq Share Charge" means any pledge agreement or other security document entered into from time to time between Borse Dubai and any Finance Party over some or all of its right, title and interest in and to the Shares of Nasdaq that it owns to secure the indebtedness and other obligations of Borse Dubai and/or any of its Subsidiaries, together with any amendments, novations, restatements, and/or other modifications thereto from time to time.
7. The definition of "Trust Agreement" in Section 1.1(a) of the Nasdaq Stockholders' Agreement is hereby deleted in its entirety and replaced with the following:

"Trust Agreement" means that certain Trust Agreement, dated as of February 21, 2008, among Nasdaq, Borse Dubai and the Trustee, as amended, amended and restated or otherwise modified from time to time.
8. Section 2.1(a)(v) of the Nasdaq Stockholders' Agreement is hereby deleted in its entirety and replaced with the following:

(v) by way of a grant of a security interest under any Nasdaq Share Charge;
9. Section 2.1(a)(vi) of the Nasdaq Stockholders' Agreement is hereby deleted in its entirety and replaced with the following:

(vi) to any Person in connection with the exercise by any Finance Party of any of its rights and remedies under a Nasdaq Share Charge, provided that upon any such Transfer, such Finance Party or any transferee in connection with the exercise by such Finance Party of any such rights and remedies shall be bound by Section 2.1(b)(i) of this Nasdaq Stockholders' Agreement; or
10. Section 2.1(b)(i) of the Nasdaq Stockholders' Agreement is hereby deleted in its entirety and replaced with the following:

(i) to any Competitor except (A) pursuant to a merger, consolidation, share exchange, tender offer or other similar transaction involving Nasdaq, (B) in any such Transfer pursuant to a public offering or a sale pursuant to Rule 144 under the Securities Act, provided that Borse Dubai does not have actual knowledge that a purchaser pursuant thereto is a Competitor, or (C) to any investment bank or its Affiliate (1) in the capacity of an underwriter, placement agent, broker, dealer or similar function or (2) in a transaction (or series of related transactions) involving the transfer of Shares representing less than 5.0% of the outstanding Common Stock, provided, that, for the avoidance of doubt, the provisions of this Section 2.1(b)(i) shall not operate so as to prevent the grant by Borse

Dubai of a security interest in the Shares of Nasdaq that it owns in favor of a Finance Party pursuant to a Nasdaq Share Charge or any Transfer to a Finance Party in connection with the exercise by such Finance Party of its rights under a Nasdaq Share Charge, provided, further, that upon any such Transfer, such Finance Party or any transferee in connection with the exercise by such Finance Party of its rights under a Nasdaq Share Charge shall be bound by this Section 2.1(b); and

11. This Amendment amends solely the provisions of the Nasdaq Stockholders' Agreement set forth herein and nothing in this Amendment is intended or shall be construed as amending or waiving any other terms or provisions of the Nasdaq Stockholders' Agreement or any other rights of the Parties under the Nasdaq Stockholders' Agreement. The Parties acknowledge that the Nasdaq Stockholders' Agreement (as amended by this Amendment) is in full force and effect and is hereby confirmed and ratified in all respects. References in the Nasdaq Stockholders' Agreement to the Nasdaq Stockholders' Agreement shall mean the Nasdaq Stockholders' Agreement as amended by this Amendment.
12. This Amendment may be executed in any number of counterparts (including by facsimile), each of which will be an original with the same effect as if the signatures thereto and hereto were upon the same instrument. This Amendment shall become effective when each Party shall have received counterparts hereof signed by all of the other Parties.
13. The enforceability and validity of this Amendment, the construction of its terms and the interpretation of the rights and duties of the Parties shall be governed by the laws of the State of New York, without regard to conflict of law principles thereof that would mandate the application of the laws of another jurisdiction.

IN WITNESS WHEREOF, the parties have duly executed this Amendment as of the date first written above.

**THE NASDAQ OMX GROUP, INC.**

By: /s/ Adena T. Friedman

Name: Adena T. Friedman

Title: Executive Vice President

**BORSE DUBAI LIMITED**

By: /s/ Essa Kazim

Name: Essa Kazim

Title: Chairman

By: /s/ Soud Ba'alawy

Name: Soud Ba'alawy

Title: Vice Chairman

## FIRST AMENDMENT TO REGISTRATION RIGHTS AGREEMENT

**THIS FIRST AMENDMENT TO REGISTRATION RIGHTS AGREEMENT** (this "Amendment") is made as of February 19, 2009, among The NASDAQ OMX Group, Inc. (formerly known as The Nasdaq Stock Market, Inc.), a Delaware corporation (together with its successors, "Nasdaq"), Borse Dubai Limited, a company registered in the Dubai International Financial Centre with company number CL0447 (together with its successors and permitted assigns, "Borse Dubai") and Borse Dubai Nasdaq Share Trust, a Delaware statutory trust, (the "Trust" and, together with Borse Dubai, the "Initial Holders"). Borse Dubai, Nasdaq and the Trustee are sometimes referred to herein individually as a "Party" and collectively as the "Parties". Capitalized terms used herein but not defined herein shall have the meanings given to such terms in the Registration Rights Agreement (as herein defined).

**WHEREAS:**

- (A) The Parties entered into that certain Registration Rights Agreement (the "Registration Rights Agreement") dated as of February 27, 2008.
- (B) The Parties hereto desire to amend the Registration Rights Agreement as set forth in this Amendment.

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the Parties hereby agree as follows:

1. All references to "The Nasdaq Stock Market, Inc." in the Registration Rights Agreement shall be deleted and replaced with references to "The NASDAQ OMX Group, Inc."
2. The definition of "Facilities Agreement" in Section 1.1(a) of the Registration Rights Agreement is hereby deleted in its entirety and replaced with the definition of a "Finance Party" to read as follows:  
"Finance Party" means an entity selected by Borse Dubai that executes a Nasdaq Share Charge that is a bank, a financial services provider other than a bank, or an agent or trustee of a bank or of a financial services provider, provided that Nasdaq has specifically consented in advance in writing to such an entity executing such Nasdaq Share Charge, and provided further that Nasdaq may not unreasonably withhold or delay its consent in this regard.  
The definition of "HSBC" in Section 1.1(a) of the Registration Rights Agreement is hereby deleted in its entirety.
3. The definition of "Nasdaq Share Charge" in Section 1.1(a) of the Registration Rights Agreement is hereby deleted in its entirety and replaced with the following:  
"Nasdaq Share Charge" means any pledge agreement or other security document entered into from time to time between Borse Dubai and any Finance Party over some or

all of its right, title and interest in and to shares of Common Stock that it owns to secure the indebtedness and other obligations of Borse Dubai and/or any of its Subsidiaries, together with any amendments, novations, restatements, and/or other modifications thereto from time to time.

4. Section 2.7 of the Registration Rights Agreement is hereby deleted in its entirety and replaced with the following:  
2.7 Rights of Transferee Under A Nasdaq Share Charge. If, subsequent to the filing of any registration statement by Nasdaq pursuant to the terms of this Article II, any Person or Persons shall become a Holder (directly by way of a transfer by Borse Dubai or a Finance Party) in connection with the exercise by a Finance Party of its rights and remedies under a Nasdaq Share Charge, Nasdaq agrees that it shall take all measures necessary either to amend the registration statement (including, if such registration statement has been declared effective and if necessary, by way of a post-effective amendment to such registration statement) or if necessary and applicable, a prospectus supplement, in either case to name any such Holder as a selling shareholder under such registration statement, and any such Holder shall benefit from the rights afforded by Section 2.4 in connection with any such amendment. The undertakings by Nasdaq under this Section 2.7 shall be enforceable and exercisable irrespective of any limitation imposed by Sections 2.1(e)(ii) through (v).
5. This Amendment amends solely the provisions of the Registration Rights Agreement set forth herein and nothing in this Amendment is intended or shall be construed as amending or waiving any other terms or provisions of the Registration Rights Agreement or any other rights of the Parties under the Registration Rights Agreement. The Parties acknowledge that the Registration Rights Agreement (as amended by this Amendment) is in full force and effect and is hereby confirmed and ratified in all respects. References in the Registration Rights Agreement to the Registration Rights Agreement shall mean the Registration Rights Agreement as amended by this Amendment.
6. This Amendment may be executed in any number of counterparts (including by facsimile), each of which will be an original with the same effect as if the signatures thereto and hereto were upon the same instrument. This Amendment shall become effective when each Party shall have received counterparts hereof signed by all of the other Parties.
7. The enforceability and validity of this Amendment, the construction of its terms and the interpretation of the rights and duties of the Parties shall be governed by the laws of the State of New York, without regard to conflict of law principles thereof that would mandate the application of laws of another jurisdiction.

IN WITNESS WHEREOF, the parties have duly executed this Amendment as of the date first written above.

**BORSE DUBAI NASDAQ SHARE TRUST**

By: /s/ Tracy M. McLamb  
Name: Tracy M. McLamb  
Title: Vice President

**BORSE DUBAI LIMITED**

By: /s/ Essa Kazim  
Name: Essa Kazim  
Title: Chairman

By: /s/ Soud Ba'alawy  
Name: Soud Ba'alawy  
Title: Vice Chairman

**THE NASDAQ OMX GROUP, INC.**

By: /s/ Adena T. Friedman  
Name: Adena T. Friedman  
Title: Executive Vice President

**The NASDAQ OMX Group, Inc.****Board Compensation Policy****Amended and Restated on December 17, 2008****Annual Retainer Compensation for Non-Employee Directors**

- Annual Non-Employee Director (“Director”) compensation will be based on a compensation year in connection with the Annual Meeting. This enables Directors to receive equity immediately following election and appointment to the Board at the annual shareholders meeting.
- Annual Retainer compensation will be equal to a total value of \$75,000 for each Director, other than the Chairman of the Board and the Deputy Chairman of the Board.
- Annual Retainer compensation will be equal to a total value of \$125,000 for the Chairman of the Board.
- Annual Retainer compensation will be equal to a total value of \$95,000 for the Deputy Chairman of the Board.
- Directors may annually elect to receive 100% or 50% of the Annual Retainer compensation in cash, equity, or two equal portions of cash and equity. If selected, the equity portion of the annual retainer will be paid in the form of equity awards permitted under The Nasdaq OMX Group, Inc. Equity Incentive Plan (the “Equity Plan”) to be awarded automatically on the date of the annual shareholders meeting immediately following election and appointment to the Board. Each Director will have the opportunity to make this election during the thirty (30) day period preceding the annual shareholders meeting.
- Directors will be given an opportunity to review the Director Compensation Policy in advance of the shareholders meeting, and will be asked to make the election prior to the shareholders meeting if a grant of equity is requested. If the Director declines to make an election, the entire Annual Retainer will be paid in cash.
- Calculation of the number of shares of equity to be awarded to Directors who elect to receive part or all of their annual retainer in equity will be valued at 100% of face value and based on the closing price of Common Stock on the date of the grant. Equity awards are non-transferable and must be issued to the Director.
- The cash portion selected will be paid quarterly on arrears, in equal installments, no later than the fifteenth day of the third month following

the end of the quarter; provided, however, that a Director will have a right to receive a cash payment for any given quarter only if that person serves as a Director during all or a portion of that quarter, with the cash payment for a quarter being prorated in the case of a person who serves as a Director during only a portion of a quarter (other than on account of death or disability).

- All Director equity awards will be granted under the Equity Plan.
- A Director appointed after the annual shareholders meeting will be eligible to receive a prorated share of the annual retainer compensation.

#### **Annual Equity for Non-Employee Directors**

- All Directors will receive equity in the form of equity awards permitted under the Equity Plan, such as Restricted Stock Units, in the amount of \$75,000 per annum. Equity awards are non-transferable and must be issued to the Director.
- The annual equity award will be granted to each Director automatically on the date of the annual shareholders meeting immediately following the Director's election and appointment to the Board.
- Calculation of the number of shares of equity to be awarded will be valued at 100% of face value and based on the closing price of Common Stock on the date of the grant at a value of \$75,000.
- The equity award vesting schedule and other pertinent information related to the equity grants are discussed below in the equity award section.
- A Director appointed after the annual shareholders meeting will be eligible to receive a prorated equity grant at the Director's first Board meeting.

#### **Board and Committee Meeting Fees for Non-Employee Directors**

- Each Director will receive a fee of \$1,000 for each Board meeting attended. These fees will be paid quarterly in arrears, no later than the end of the following quarter.
- Each Director will receive a fee of \$1,000 for each Committee meeting attended. These fees will be paid quarterly in arrears, no later than the end of the following quarter.

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### **Annual Committee Chair Fees**

- The Chairperson of the Audit Committee will receive an Annual Chair Fee of \$25,000.
- Each Chairperson of the Finance, Management Compensation, and Corporate Governance Committees will receive an Annual Chair Fee of \$15,000.
- Annual Chair fees will be paid in the form of cash within the first 30 days after the beginning of the annual compensation cycle.

### **Audit Committee Member Fees**

- Each Non-Chair Member of the Audit Committee will receive an annual membership fee of \$5,000.
- Annual Member fees will be paid in the form of cash within the first 30 days after the beginning of the annual compensation cycle.

### **Equity Awards**

- **Vesting**
  - Equity awards will vest 100% two (2) years from the date of grant. Equity awards will also vest upon the scheduled expiration of a Director's term, if such term is not renewed.
  - Upon a Director's resignation (other than for death or disability) prior to the end of the Director's term, equity awards will be forfeited.
  - Upon termination of a Director for "Misconduct," all equity awards will be forfeited without further consideration to the Director.
  - Upon termination of a Director on account of his death or disability, Equity Awards will vest.
  - Shortly after vesting, your vested shares will appear in your account at E\*trade. You may view your information by logging directly onto your online E\*Trade account at [https://us.etrade.com/e/t/user/login\\_sp](https://us.etrade.com/e/t/user/login_sp). Additionally, you may contact E\*Trade's Executive Services Team at 1.866.987.2339 or via email at [executive.services@etrade.com](mailto:executive.services@etrade.com)

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- **Equity Agreements, Share Restrictions & Voting Rights**

- Equity awards will be evidenced by an Equity Award Agreement to be entered into with each Director and will be governed by the Equity Plan.
- Once vested, shares will be freely tradable. NASDAQ OMX does not have a repurchase right or obligation.
- Shares will be freely transferable upon vesting. Trading in these shares, however, will be subject to the Policy Statement On Trading In NASDAQ OMX and Other Securities By Directors and Officers and to any contractual restrictions on transfer, such as lock-up agreements, that may be applicable

- **Reporting and Disclosure**

- SEC Form 4s (Change in Beneficial Ownership) must be filed by each Director with the SEC within 2 days of equity grants. The Director may request NASDAQ OMX's assistance in the preparation and filing of Section 16 reports via the "COMPANY ASSISTANCE WITH SECTION 16 REPORTING" form and by providing a completed Power of Attorney and CIK/CCC Code, if the Director has a CIK/CCC Code currently assigned.
- Equity will be reflected as stock owned by Directors, if required, in the Beneficial Ownership Table of the NASDAQ OMX Proxy and will be disclosed under the general Director compensation section of the Proxy.

**Executive Corporate Incentive Plan**

The NASDAQ OMX Group, Inc.  
(Effective January 1, 2003)

Amended and Restated as of December 17, 2008

**The NASDAQ OMX Group, Inc.**  
**Executive Corporate Incentive Plan**

**Article 1 Establishment and Purpose**

**1.1 Establishment of the Plan.** The NASDAQ OMX Group, Inc., a Delaware corporation (the “Company” or “NASDAQ OMX”), hereby establishes The NASDAQ OMX Group, Inc. Executive Corporate Incentive Plan (the “ECIP”). Upon approval by the Board of Directors, the ECIP shall be effective as of January 1, 2003 (the “Effective Date”) and shall remain in effect until terminated by the Board.

**1.2 Shareholder Approval.** Notwithstanding anything herein to the contrary, the ECIP shall be null and void if it is not approved, in a separate affirmative vote of the holders of at least a majority of the shares of the common stock of the Company cast, in person or by proxy, at the first shareholders meeting to occur in 2003.

**1.3 Purpose.** The purpose of the ECIP is to attract, retain, and motivate key executives by providing cash incentive awards to designated executives of the Company, Subsidiaries, and affiliates. The ECIP is designed to further link an executive’s interests with that of NASDAQ OMX’s shareholders. The ECIP is intended to provide annual incentives, contingent upon continued employment and meeting certain Company and individual business unit performance goals, to certain key executives who make substantial contributions to the Company. The ECIP also provides that Awards reflect individual performance, subject to Article 5. Awards paid under the ECIP are intended to qualify as performance-based compensation deductible by the Company under the qualified performance based exception to Section 162(m) of the Code.

**Article 2 Definitions**

As used in the ECIP, the following terms shall have the meanings set forth below:

**2.1 “Award”** means the actual award earned during a Plan Year by a Participant, as determined by the Committee following the end of the Plan Year.

**2.2 “Board”** means the Board of Directors of the Company.

**2.3 “Cause”** means, unless otherwise defined in an employment agreement between the Participant and the Company, (i) the engaging by the Participant in willful misconduct that is injurious to the Company or its affiliates, (ii) the embezzlement or misappropriation of funds or property of the Company or its affiliates by the Participant, or the conviction of the Participant of a felony or the entrance of a plea of guilty or nolo contendere by the Participant to a felony, (iii) the willful failure or refusal by the Participant to substantially perform his or her duties or responsibilities that continues after being brought to the attention of the Participant (other than any such failure resulting from the Participant’s incapacity due to Disability), or (iv) the violation by the Participant of any restrictive covenants entered into between the Participant and the Company or the Company’s Code of Conduct.

**2.4 “Code”** means the Internal Revenue Code of 1986, as amended, and any final treasury regulations promulgated thereunder.

**2.5 “Committee”** means the Management Compensation Committee of the Board, which Committee has been designated by the Board to among other things, administer the ECIP. Each member of the Committee to the extent necessary to comply with Section 16 of the Securities Exchange Act of 1934, as amended and Section 162(m) of the Code shall be a “Non-Employee Director” and an “Outside Director” within the meaning of Section 16 and Section 162(m) of the Code, respectively.

**2.6 “Company”** means The NASDAQ OMX Group, Inc., a Delaware corporation (including any Subsidiaries designated to participate in the ECIP), and any successor thereto.

**2.7 “Disability”** means, unless otherwise defined in an employment agreement between the Participant and the Company, a disability that would qualify as such under the Company’s then current long-term disability plan.

**2.8 “Individual Target Award”** means the target award established for each Participant under Article 5 of the ECIP.

**2.9 “Participant”** means an active employee of the Company, or Subsidiaries, who is employed in an executive capacity, and designated by the Committee to participate in the ECIP during a Plan Year.

**2.10 “Payment Date”** means the date upon which an Award shall be paid out in accordance with Article 6.

**2.11 “Performance Goals”** means the goals selected by the Committee for any Plan Year based upon one or more of the Performance Measures, set forth in Article 5 of the ECIP.

**2.12 “Performance Measures”** means, unless and until the Committee or Board proposes for shareholder vote and shareholders approve a change in the general Performance Measures set forth herein, the performance criteria upon which the Performance Goal(s) for a particular Plan Year are based; the performance criteria shall be limited to the following Performance Measures:

- (a) Earnings per Share of NASDAQ OMX Common Stock;
- (b) Revenue growth;
- (c) Net income or net profits (before or after taxes);
- (d) Return measures (including, but not limited to, return on assets or net assets, capital, equity, or sales);
- (e) Cash flow (including, but not limited to, operating cash flow and free cash flow);

- (f) Expense targets;
- (g) Planning accuracy (as measured by comparing planned results to actual results);
- (h) Market share
- (i) Corporate reputation
- (j) Business Effectiveness Survey Results
- (k) Performance Measure (a) through (j) above as compared to various stock market indices; and
- (l) Any Performance Measure in (a) through (j) above as compared to the performance of other companies.

Any Performance Measure(s) may be used to measure the performance of the Company as a whole or any business unit of the Company individually.

**2.13 “Plan Year”** means the Company’s fiscal year, which commences each January 1st and concludes each December 31st.

**2.14 “Retirement”** means, unless otherwise defined in an employment agreement between the Participant and the Company, a Participant who is eligible to retire from the Company or an Affiliate under the terms of any tax qualified Company retirement plan or, if a Participant is not covered by any such plan, retirement on or after such date as of which the Participant has both attained the age of 55 years and has 10 years of employment with the Company and terminates his employment with the Company other than for Cause or death.

**2.15 “Subsidiary”** shall have the meaning set forth in Section 424(f) of the Code.

### **Article 3 Administration**

**3.1 The Plan Administrator.** The Committee shall administer the ECIP.

**3.2 Administration of the ECIP.** The Committee, in its sole discretion, will determine eligibility for participation, establish the maximum Award which may be earned by each Participant (which may be expressed in terms of dollar amount, percentage of salary or any other measurement), establish goals for each Participant (which may be objective or subjective, and based on individual, Company, Subsidiary and/or business unit performance), calculate and determine each Participant’s level of attainment of such goals, and calculate the Award for each Participant based upon such level of attainment. Except as otherwise herein expressly provided, full power and authority to construe, interpret, and administer the Plan shall be vested in the Committee, including the power to amend or terminate the Plan as further described herein. The Committee may at any time adopt such rules, regulations, policies, or practices, as, in its sole discretion, it shall determine to be necessary or appropriate for the administration of, or the performance of its respective responsibilities under, the Plan. The Committee may at any time amend, modify, suspend, or terminate such rules, regulations, policies, or practices.

**3.3 Decisions Binding.** All determinations and decisions of the Committee as to any disputed question arising under the ECIP, including questions of construction and interpretation, shall be final, binding, and conclusive upon all parties.

**3.4 No Liability to Committee Members.** No member of the Committee shall be personally liable by reason of any contract or other instrument related to the ECIP executed by such member or on his or her behalf in his or her capacity as a member of the Committee, nor for any mistake of judgment made in good faith, and the Company shall indemnify and hold harmless each employee, officer, or director of the Company to whom any duty or power relating to the administration or interpretation of the ECIP may be allocated or delegated, against any cost or expense (including legal fees, disbursements and other related charges) or liability (including any sum paid in settlement of a claim with the approval of the Board) arising out of any act or omission to act in connection with the ECIP unless arising out of such person's own fraud or bad faith.

**3.4.1** The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

#### **Article 4 Eligibility and Participation**

**4.1 Eligibility.** Only active employees of the Company, its participating Subsidiaries, or affiliates who are employed in an executive capacity may participate in the ECIP and receive Awards hereunder.

**4.2 Participation.** Only individuals who are chosen and designated by the Committee to participate in the ECIP in any given Plan Year may participate in the ECIP for that Plan Year. The Chief Executive Officer (CEO) of the Company, and such other persons as the CEO may designate, shall recommend to the Committee employees (who may include such recommending person) for selection as Participants. Such designated employees shall be so notified in writing or via electronic communication, as soon as is practicable after selection. The Committee may add to or delete individuals from the list of designated Participants at any time and from time to time, at its sole discretion.

**4.3 No Right to Participate.** No Participant shall at any time have a right to be selected for participation in the ECIP for any Plan Year, despite having previously participated in the ECIP.

#### **Article 5 Award Determination**

**5.1 Targets, In General.** At the beginning of each Plan Year, but not later than the 89th day of the Plan Year, the Committee shall establish Individual Target Awards for each Participant, payment of which shall be conditioned upon satisfaction of specific Performance Goals for the Plan Year established by the Committee in writing in advance of the Plan Year, or

within such period as may be permitted by regulations issued under Section 162(m) of the Code. The payment of an Award, if any shall be based upon the degree of achievement of the Performance Goals; provided, however, that the Committee may, in its sole discretion, reduce some or all of the amount which would otherwise be payable with respect to an Award.

**5.2 Performance Goals.** The Performance Goals established by the Committee for a Plan Year shall be based on one or more Performance Measures.

**5.2.1** The Committee may provide in any Award that any evaluation of performance may include or exclude any one or more of the following events that occur during a Plan Year: (a) write downs; (b) significant litigation or claim judgments or settlements; (c) the effect of changes in tax laws, accounting principles, or other laws or provisions affecting reported Company results; (d) accruals for reorganization and restructuring programs; (e) extraordinary nonrecurring items as described in Accounting Principles Board Opinion No. 30 and/or management's discussion and analysis of stockholders for the applicable plans year; (f) acquisitions or divestures; and (g) foreign exchange gains and losses. Such inclusion or exclusion shall be prescribed in a form that meets the requirements of Code Section 162(m) for deductibility.

**5.2.2** In the event that applicable tax and/or securities laws change to permit Committee discretion to alter the governing Performance Measures without obtaining shareholder approval of such changes, the Committee shall have sole discretion to make such changes without obtaining shareholder approval.

**5.3 Payment of Awards.** At the time the Performance Goals are established, the Committee shall prescribe a formula to determine the percentage of the Individual Target Award, which may be payable based upon the degree of attainment of the Performance Goals during the Plan Year. If the minimum Performance Goals established by the Committee are not met, no payment will be made to any Participant. To the extent that the minimum Performance Goals are satisfied or surpassed, and upon written certification by the Committee that the Performance Goals have been satisfied to a particular extent, payment of the Award shall be made in accordance with the prescribed formula based upon a percentage of the Individual Target Award unless the Committee determines, in its sole discretion, to reduce the payment to be made.

**5.4 Maximum Award.** The maximum award payable to any Participant for any Plan Year shall not exceed the greater of 3% of the Company's before tax net income or \$3 million.

## **Article 6 Payment of Awards**

**6.1 Form and Timing of Payment.** Each Participant's Award shall be paid in one (1) lump sum cash payment, no later than March 1st of the Plan Year following the Plan Year with respect to which an Award relates (such date being hereinafter referred to as the "Payment Date").

**6.2 Unsecured Interest.** No Participant or any other party claiming an interest in amounts earned under the ECIP shall have any interest whatsoever in any specific asset of the Company. To the extent that any party acquires a right to receive payments under the ECIP, such right shall be equivalent to that of an unsecured general creditor of the Company.

**6.3 Active Employment.** Except as provided in Article 7, no Award shall be paid to any Participant who is not an active employee of the Company or one of its Subsidiaries or affiliates on the last day of the applicable Plan Year and on the Payment Date, as such term is defined in Section 6.1 hereof.

#### **Article 7 Termination of Employment**

**7.1 Termination of Employment Due to Death, Disability, or Retirement.** In the event a Participant's employment is terminated by reason of death, Disability, or Retirement, the Award determined in accordance with Section 5.3 herein shall be reduced to reflect partial Plan Year participation through the date of such termination. A reduced Award shall be determined by multiplying said Award by a fraction: the numerator of which shall be the number of days of employment in the Plan Year through the date of employment termination, and the denominator of which shall be three hundred sixty-five (365). In the case of a Participant's Disability, the employment termination shall be deemed to have occurred on the date that the Committee determines the Participant to be Disabled. The reduced Award thus determined shall be paid on the Payment Date with respect to the Plan Year, as to which such Award relates to the Participant or his beneficiary in accordance with Article 9 hereof.

**7.2 Termination of Employment for Other Reasons.** In the event a Participant's employment is terminated for any reason other than death, Disability, or Retirement all of the Participant's rights to an Award for the Plan Year then in progress shall be forfeited. However, the Committee, in its sole discretion, may pay a prorated Award for the portion of the Plan Year that the Participant was employed by the Company, computed as determined by the Committee. Notwithstanding the foregoing, in the event a Participant is terminated for Cause, the Participant shall in all events forfeit any Award not already paid. The reduced Award thus determined shall be paid on the Payment Date with respect to the Plan Year as to which such Award relates.

#### **Article 8 Rights of Participants**

**8.1 Employment.** The Company intends that the Awards provided under the ECIP be a term of employment and a part of each Participant's compensation. Participation in the ECIP shall not constitute an agreement (a) of the Participant to remain in the employ of and to render his/her services to the Company, or (b) of the Company to continue to employ such Participant, and the Company may subject to any applicable employment agreement terminate the employment of a Participant at any time with or without cause.

**8.2 Nontransferability.** No right or interest of any Participant in the ECIP shall be assignable or transferable, or subject to any lien, directly, by operation of law or otherwise, including, but not limited to, execution, levy, garnishment, attachment, pledge, and bankruptcy.

#### **Article 9 Beneficiary Designation and Payment to Persons Other Than the Participant**

Each Participant under the ECIP may, from time to time, name any beneficiary or beneficiaries (who may be named contingently or successively) to whom any benefit under the ECIP is to be paid in case of his death before he receives any or all of such benefit. Each designation will revoke all prior designations by the same Participant, shall be in a form prescribed by the Committee, and will be effective only when filed by the Participant in writing with the Committee during his lifetime. In the absence of any such designation, benefits remaining unpaid at the Participant's death shall be paid to the Participant's estate.

**9.1** If the Committee shall find that any person to whom any amount is payable under the ECIP is unable to care for his affairs because of incapacity, illness or accident, or is a minor, or has died, then any payment due to such person or his estate (unless a prior claim therefore has been made by a duly appointed legal representative) may, if the Committee so directs, be paid to his spouse, a child, a relative, an institution maintaining or having custody of such person, or any other person deemed by the Committee, in its sole discretion, to be a proper recipient on behalf of such person otherwise entitled to payment. Any such payment shall be a complete discharge of the liability of the Company therefore.

**Article 10 Amendments**

The Committee may amend, suspend or terminate the ECIP at any time; provided that no amendment may be made without the approval of the Company's shareholders if the effect of such amendment would be to cause outstanding or pending Awards to cease to qualify for the performance-based compensation exception to Section 162(m) of the Code.

**Article 11 Miscellaneous**

**11.1 Governing Law.** The validity, construction, and effect of the ECIP and any rules and regulations relating to the ECIP and any Award shall be determined in accordance with the laws of the State of New York without giving effect to the conflict of law principles thereof.

**11.2 Withholding Taxes.** The Company shall deduct from all payments under the ECIP any Federal, state, local or other taxes required by law to be withheld with respect to such payments.

**11.3 Gender and Number.** Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine; the plural shall include the singular, and the singular shall include the plural.

**11.4 Severability.** In the event any provision of the ECIP shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the ECIP, and the ECIP shall be construed and enforced as if the illegal or invalid provision had not been included.

**11.5 Costs of the Plan and Unfunded Plan.** All costs of implementing and administering the ECIP shall be borne by the Company. Participants shall have no right, title, or interest whatsoever in or to any investments which the Company may make to aid it in meeting its obligations under the ECIP. Nothing contained in the ECIP, and no action taken pursuant to its provisions, shall create or be construed to create a trust of any kind, or a fiduciary relationship between the Company and any Participant, beneficiary, legal representative or any other person. To the extent that any person acquires a right to receive payments from the Company under the ECIP, such right shall be no greater than the right of an unsecured general creditor of the Company. All payments to be made hereunder shall be paid from the general funds of the Company and no special or separate fund shall be established and no segregation of assets shall be made to assure payment of such amounts except as expressly set forth in the Plan.

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The ECIP is not intended to be subject to the Employee Retirement Income Security Act of 1974, as amended.

**11.6 Retirement Plans and Welfare Benefit Plans.** Except as specified in the employee benefit plan in question, Awards under the ECIP will not be included as “compensation” for purposes of the Company’s retirement plans (both qualified and nonqualified) or welfare benefit plans,

**11.7 Nonexclusivity.** The adoption of the ECIP shall not be construed as creating any limitations on the power of the Board or Committee to adopt such other compensation arrangements, as it may deem desirable for any Participant.

**11.8 Successors.** All obligations of the Company under the ECIP with respect to Individual Target Awards and Awards granted hereunder shall be binding upon any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Company.

**11.9 Interpretation.** The ECIP, the Individual Target Awards, and Awards are designed and, to the extent determined by the Committee, in its sole discretion, intended to comply with Code Section 162(m) and all provisions hereof, shall be construed in a manner to so comply.

THE NASDAQ OMX GROUP, INC.  
SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN  
Amended and Restated, effective as of December 17, 2008

THE NASDAQ OMX GROUP, INC.  
SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN

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**THE NASDAQ OMX GROUP, INC.**

**SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN**

**ARTICLE I**

**GENERAL**

- 1.1 **Effective Date.** The Plan was established effective as of November 1, 2003, by the Nasdaq Stock Market, Inc. (now known as The NASDAQ OMX Group, Inc.). Effective as of December 31, 2008, the Plan is hereby amended and restated in its entirety, on the terms and conditions hereinafter stated, so as to comply with the deferred compensation requirements of Section 409A of the Internal Revenue Code (the "Code"). The Plan, as so amended and restated, shall apply solely with respect to "Participants" (as hereafter defined) who have not received (or have not yet started to receive, as the case may be) benefits under the Plan prior to January 1, 2009 and their "Beneficiaries" (as also hereafter defined). The rights, if any, of any person whose status as an employee of an Employer has terminated prior to January 1, 2009 shall be determined pursuant to the Plan as in effect on the date such employee terminated, unless a subsequently adopted provision of the Plan is made specifically applicable to such person.
- 1.2 **Purpose.** The purpose of the Plan is to attract, retain and encourage the productive efforts of a select group of senior executives who render valuable services to an Employer that constitute an important contribution toward the Company's continued growth and success by providing supplemental retirement income to such designated executives and their beneficiaries.
- 1.3 **Scope.** The Plan is intended to be (and shall be construed and administered as) an "employee pension benefit plan" under the provisions of the Employee Retirement Income Security Act of 1974, as defined ("ERISA"), which is funded and maintained by the Company to provide retirement benefits to a select group of management or highly compensated employees as such group is described under Sections 201(2), 301(a)(3), and 401(a)(1) of ERISA.
- 1.4 **Source of Funds.** The obligation of the Company to make payments under the Plan constitutes nothing more than an unsecured promise of the Company to make such payments; any property of an Employer that may be set aside for the payment of benefits under the Plan shall, in the event of the Company's or an Employer's bankruptcy or insolvency, remain subject to the claims of the Company's and an Employer's general creditors until such property is distributed in accordance with Articles VI and VII (Supplemental Retirement Benefits) and/or Article VIII (Death Benefits) hereof.

ARTICLE II

**DEFINITIONS AND USAGE**

2.1 Definitions. Wherever used in the Plan, the following words and phrases shall have the meanings set forth below unless the context plainly requires a different meaning:

- (a) "Actuarial Equivalent" means the actuarial equivalent value determined by using the interest rate and mortality assumptions that would be applicable under the Pension Plan as of the date such assumptions are utilized under the Plan.
- (b) "Accrued Benefit" means a benefit which, if expressed as a single life annuity (payable monthly) commencing as of the Participant's Normal Retirement Date, is an amount determined as follows:
  - (i) Executive Participants. In the case of an Executive Participant, the Accrued Benefit shall be a monthly amount equal to sixty percent (60%) of his or her Career Average Compensation, multiplied by a fraction, the numerator of which is the Participant's number of days of Service, and the denominator of which is three thousand six hundred and fifty (3,650). If the fraction provided in the prior sentence shall be greater than one (1), the fraction shall be deemed to equal one (1). Accordingly, each Executive Participant's Accrued Benefit shall accrue at a rate of six percent (6%) per year of Service.
  - (ii) Senior Participants. In the case of a Senior Participant, the Accrued Benefit shall be a monthly amount equal to the excess of sixty percent (60%) of his or her Career Average Compensation, multiplied by a fraction, the numerator of which is the Participant's number of days of Service, and the denominator of which is five thousand four hundred and seventy-five (5,475) and, after such multiplication, reduced by his or her Primary Social Security Benefit. If the fraction provided in the prior sentence shall be greater than one (1), the fraction shall be deemed to equal one (1). Accordingly, each Senior Participant's Accrued Benefit shall accrue at a rate of four percent (4%) per year of Service.
- (c) "Base Compensation" means compensation as defined under the Pension Plan for purposes of determining a Participant's Pension Plan Accrued Benefit; provided, however, that compensation shall be determined without regard to the compensation limit set forth in Section 401(a)(17) of the Code, as adjusted to reflect cost-of-living increases by the Secretary of the Treasury or his or her delegate from time to time under such Code section.
- (d) "Beneficiary" means with respect to a Participant, the beneficiary entitled to receive any benefits due such Participant under the Pension Plan upon his or her

death.

- (e) "Board" means the Board of Directors of the Company.
- (f) "Career Average Compensation" means Career Average Compensation as defined in the Pension Plan (but taking into account Compensation as defined in this Plan); provided, however, that a Participant shall not be deemed to be paid Incentive Compensation for purposes of determining his or her Compensation while on an authorized leave of absence or away from active employment pursuant to the Selective Service Act or similar act, except to the extent required by law. Subject to the limitation in the preceding sentence, a Disabled Participant shall be deemed to receive Compensation during his or her Disability Period at the same rate that such Compensation was received at the time his or her disability was incurred.
- (g) "Code" means the Internal Revenue Code of 1986 as amended from time to time, and any regulations issued thereunder. A reference to any section of the Code shall also be deemed to refer to any successor statutory provision.
- (h) "Company" means The NASDAQ OMX Group, Inc. (formerly known as the Nasdaq Stock Market, Inc.), and any successor thereto.
- (i) "Compensation" means Base Compensation, but for purposes of determining Compensation, Base Compensation shall be deemed to include one-third (1/3) of a Participant's Incentive Compensation earned during the "determination period."

For purposes of determining a Participant's Career Average Compensation, the "determination period" for Incentive Compensation (i) for a Participant who has a Termination of Employment on or after November 1, 2003, but prior to January 1, 2009 shall be the five (5) consecutive Plan Years ending on the December 31st that coincides with or precedes the Participant's Termination of Employment; and (ii) for a Participant who has a Termination of Employment on or after January 1, 2009 shall be the period beginning on the later of (x) January 1, 2004 or (y) the date such Participant first became an employee of an Employer, and ending on his or her Termination of Employment

For purposes of the Plan, annual Incentive Compensation shall be attributed to the Plan Year in which the services giving rise to such compensation were performed, rather than the Plan Year in which the Participant actually receives such Incentive Compensation.

- (j) "Death Benefit" means the benefit, if any, a Participant's Beneficiary is entitled to receive following the death of such Participant pursuant to Article VIII hereof

- (k) “Disabled Participant” means a Participant (i) eligible to receive payments under an Employer’s long-term disability program, regardless of whether such Participant is in fact covered by such program or (ii) who is otherwise considered “disabled” as such term is defined in an employment agreement entered into by and between such Participant and an Employer.
- (l) “Disability Period” means the period that commences with the date as of which the Participant becomes a Disabled Participant and ceases with the earliest of the following dates: (i) the date as of which the Participant would cease to receive disability benefits under an Employer’s long-term disability program, if such Participant were covered by such program; (ii) the date as of which the Participant ceases to have a disability within the meaning of an Employer’s long-term disability program or within the meaning of such term as set forth in an employment agreement entered into by and between the Participant and an Employer; (iii) the date as of which the Participant is considered by the SERP Committee to have refused to furnish proof that he or she continues to have a disability within the meaning of an Employer’s long-term disability program; and (iv) the death of the Participant
- (m) “Employer” means the Company and any other entity which adopts the Plan for the benefit of a select group of its management or highly compensated employees in accordance with Section 11.12 hereof.
- (n) “ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any regulations issued thereunder. A reference to any section of ERISA shall also be deemed to refer to any successor statutory provision.
- (o) “Executive Participant” means a Participant who is a Chairman and/or Chief Executive Officer, Chief Financial Officer, President, Chief Operating Officer, or Executive Vice President of an Employer or any other Participant that the Management Compensation Committee deems in its sole discretion to be an Executive Participant.
- (p) “Grandfathered Accrued Benefit” means, in the case of any given Participant, an amount equal to what the Participant’s Accrued Benefit would have been had such person terminated employment with the Company on December 31, 2004.
- (q) “Grandfathered Benefit Ratio” means, in the case of any given Participant, an amount equal to:
  - (i) such Participant’s monthly benefit amount determined under Section 6.3, divided by,
  - (ii) the excess of (A) such Participant’s Accrued Benefit over (B) such Participant’s Pension Plan Accrued Benefit.

- (r) "Grandfathered Pension Plan Accrued Benefit" means, in the case of any given Participant, an amount equal to what the Participant's Pension Plan Accrued Benefit would have been (and determined without regard to any vesting requirements under the Pension Plan) had such Participant terminated employment with the Company on December 31, 2004.
- (s) "Incentive Compensation" means the annual payment earned by a Participant under The NASDAQ OMX Group, Inc. Corporate Incentive Plan (formerly known as the Nasdaq Stock Market, Inc. Corporate Incentive Plan) or the Executive Corporate Incentive Plan or any successor bonus plan or arrangement maintained or sponsored by an Employer.
- (t) "Management Compensation Committee" means the Management Compensation Committee of the Board or any other committee of the Board authorized by the Board to act as the Management Compensation Committee.
- (u) "Non-Grandfathered Accrued Benefit" means, in the case of any given Participant, an amount, expressed as a single life annuity (payable monthly) commencing at his or her Normal Retirement Date, equal to the excess of:
  - (i) such person's Accrued Benefit, over
  - (ii) such person's Grandfathered Accrued Benefit.
- (v) "Non-Grandfathered Benefit Ratio" means, in the case of any given Participant, an amount equal to:
  - (i) such Participant's monthly benefit amount determined under Section 7.3, divided by,
  - (ii) the excess of (A) such Participant's Accrued Benefit over (B) such Participant's Pension Plan Accrued Benefit.
- (w) "Non-Grandfathered Pension Plan Accrued Benefit" means, in the case of any given Participant, a benefit expressed as a single life annuity (payable monthly) commencing at his or her Normal Retirement Date (and without regard to the date on which such Participant actually commences to receive (or receives, as the case may be) his or her benefit under the Pension Plan), equal to the excess of:
  - (i) such person's Pension Plan Accrued Benefit, over
  - (ii) his or her Grandfathered Pension Plan Accrued Benefit.
- (x) "Normal Retirement Age" means age sixty-five (65), except that in the case of an employee who becomes a Participant after his or her sixtieth (60th) birthday, it shall mean the tenth (10th) anniversary of the date he or she became an employee of an Employer.

- (y) "Normal Retirement Date" means the later (a) of the first day of the month next following the month in which a Participant attains Normal Retirement Age or (b) the first day of the month next following the month in which occurs the Participant's Termination of Employment.
- (z) "Participant" means an employee of an Employer who has been designated as a Participant by the Management Compensation Committee pursuant to Section 4.2 hereof and continues to be entitled to benefits under the Plan.
- (aa) "Pension Plan" means the NASDAQ Pension Plan as, except as otherwise provided to the contrary in the Plan, from time to time in effect.
- (bb) "Pension Plan Accrued Benefit" means, with respect to any given Participant, the Participant's accrued benefit under the Pension Plan expressed as a single life annuity (payable monthly) commencing at his or her Normal Retirement Date.
- (cc) "Pension Plan Benefit Commencement Date" means the date a Participant begins to receive payment (or receives payment, as the case may be) of his or her retirement benefit from the Pension Plan.
- (dd) "Plan" means The NASDAQ OMX Group, Inc. Supplemental Executive Retirement Plan (formerly known as the Nasdaq Stock Market, Inc. Supplemental Executive Retirement Plan).
- (ee) "Plan Year" means the calendar year.
- (ff) "Preretirement Survivor's Benefit" means the Death Benefit payable to a Beneficiary under Sections 8.1 and 8.2 hereof.
- (gg) "Primary Social Security Benefit" means primary social security benefit as defined in the Pension Plan.
- (hh) "Senior Participant" means a Participant who is a Senior Vice President or any other Participant that the Management Compensation Committee deems in its sole discretion to be a Senior Participant.
- (ii) "SERP Benefit Commencement Date" means, with respect to any given Participant, the date determined in accordance with Article III hereof.
- (jj) "SERP Committee" means The NASDAQ OMX Group, Inc. SERP Committee (formerly known as the Nasdaq Stock Market, Inc. SERP Committee), whose members shall be appointed by the Management Compensation Committee pursuant to Article IX hereof.

- (kk) "Service" means service as defined in the Pension Plan for purposes of determining a Participant's accrued benefit thereunder. In addition to Service credited under the preceding sentence, a Disabled Participant shall be credited with Service equal to such Participant's Disability Period.
- (ll) "Termination of Employment" means termination of employment as defined in the Pension Plan; provided, however, that for purposes of Article III hereof, "Termination of Employment" shall instead mean a "separation from service" within the meaning of Section 409A of the Code where it is reasonably anticipated that no further services would be performed after that date or that the level of services the Participant would perform after that date (whether as an employee or independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed over the immediately preceding thirty-six (36)-month period.

2.2 Usage. Except where otherwise indicated by the context, the definition of any term herein in the singular shall also include the plural and vice versa.

ARTICLE III

**SERP BENEFIT COMMENCEMENT DATE**

3.1 **Initial SERP Benefit Commencement Date.** With respect to any Participant who, by December 31, 2008 has not yet received (nor started to receive, as the case may be) benefits under the Plan, such person's SERP Benefit Commencement Date shall (unless thereafter changed in accordance with Section 3.2) be the later of:

- (a) such number of days following such person's Termination of Employment as shall be elected by such Participant in writing not later than December 31, 2008, and
- (b) such Participant's attainment of age 55,

subject to meeting the vesting requirements of Section 5.1. The last such election which is made by such Participant prior to the close of business on December 31, 2008 shall govern and, except as otherwise provided in Section 3.2, shall thereafter be irrevocable.

If such Participant fails to make such a written election by December 31, 2008, such person's SERP Benefit Commencement Date shall (unless thereafter changed in accordance with Section 3.2) be the day following the later of:

- (a) such person's Termination of Employment, and
- (b) such person's attainment of age 55,

subject to meeting the vesting requirements of Section 5.1.

3.2 **Subsequent Change in SERP Benefit Commencement Date.** A Participant described in Section 3.1 shall, subject to meeting the vesting requirements of Section 5.1, have the right to thereafter elect in writing a new SERP Benefit Commencement Date which is later than the SERP Benefit Commencement Date otherwise determined in accordance with Section 3.1, but only if both of the following requirements are met:

- (a) such written election is made at least twelve months prior to what would otherwise have been such person's SERP Participant Benefit Commencement Date, determined without regard to this Section 3.2, and
- (b) such written election specifies a new SERP Benefit Commencement Date which is at least five years after what would otherwise have been such person's SERP Benefit Commencement Date, determined without regard to this Section 3.2.

ARTICLE IV

**ELIGIBILITY AND PARTICIPATION**

- 4.1 Eligibility. Employees who are designated as Participants pursuant to Section 4.2 hereof must be members of a select group of management or highly compensated employees as such group is described under Sections 201(2), 301(a)(3), and 401(a)(1) of ERISA.
- 4.2 Participation. Subject only to the restriction provided in Section 4.1 hereof, the Management Compensation Committee shall be the sole judge in determining who shall be eligible to be a Participant, and accordingly, shall from time to time designate the Participants in the Plan. Participation shall be evidenced by a written instrument (which may, but need not, form part of an agreement between the employee and an Employer) signed on behalf of an Employer.
- 4.3 Special Provisions. The Management Compensation Committee may, with respect to any Participant it designates pursuant to Section 4.2 hereof, establish any special provision(s) with respect to the Plan that will be incorporated herein by reference and that supplement or override otherwise applicable provisions of this Plan; provided, however, that such special provisions must be reduced to writing and executed on behalf of an Employer and approved by specific resolution of the Management Compensation Committee. Notwithstanding the foregoing, any agreement entered into by and between the Company and an executive who was a participant in the NASD SERP on October 31, 2003, which contained special provisions with respect to the NASD SERP shall be applied to the Plan as if such agreement were intended to supplement or override the otherwise applicable provisions of this Plan.

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**ARTICLE V**

**VESTING REQUIREMENTS**

- 5.1 Vesting. Subject only to Section 1.4 hereof, from and after the date on which a Participant attains age 55 and completes ten (10) years of Service, the right of such Participant to receive his or her benefits under the Plan shall at all times thereafter be fully vested and nonforfeitable. Accordingly, a Participant who has a Termination of Employment prior to attaining age 55 and completing ten (10) years of Service shall not be entitled to any benefits under the Plan.

ARTICLE VI

**SUPPLEMENTAL RETIREMENT BENEFIT —  
GRANDFATHERED ACCRUED BENEFIT**

- 6.1 Eligibility for Retirement Benefits. Each Participant whose benefit under the Plan has vested, pursuant to Section 5.1 hereof, shall be eligible for a benefit under the Plan with respect to his or her Grandfathered Accrued Benefit, determined in accordance with this Article VI.
- 6.2 Time of Payment. The payment of a Participant's benefit under this Article VI shall commence (or shall be paid, as the case may be) on the Participant's Pension Plan Benefit Commencement Date.
- 6.3 Normal Retirement Benefit. If a Participant's Pension Plan Benefit Commencement Date is such Participant's Normal Retirement Date, the amount of the benefit payable to such Participant under this Article VI, expressed as a single life annuity (payable monthly) shall be an amount equal to the excess of:
- (a) such person's Grandfathered Accrued Benefit, over
  - (b) such person's Grandfathered Pension Plan Accrued Benefit.
- 6.4 Early Retirement Benefit. If a Participant's Pension Plan Benefit Commencement Date is before such person's Normal Retirement Date, the amount of the benefit payable to such Participant under this Article VI, expressed as a single life annuity (payable monthly) shall be an amount equal to the excess of:
- (a) such Participant's Grandfathered Accrued Benefit, reduced by 1/4 of 1% for each month by which such Participant's Pension Plan Benefit Commencement Date precedes the first day of the first calendar month after the calendar month in which such Participant attains age 62, over
  - (b) such Participant's Grandfathered Pension Plan Accrued Benefit, reduced by the same percentage amount, if any, by which such Participant's accrued benefit under the Pension Plan is in fact reduced on account of the commencement (or payment, as the case may be) of such Participant's Pension Plan accrued benefit prior to such Participant's Normal Retirement Date.
- 6.5 Form of Payment. The normal form of payment of the Participant's benefit determined under this Article VI shall be the form in which his or her accrued benefit is payable under the Pension Plan. Benefits determined under this Article VI that are paid (other than as a single life annuity) shall be the Actuarial Equivalent of the Participant's benefit otherwise determined under Section 6.3 or Section 6.4, as the case may be.

- 6.6 Optional Forms of Payment. As soon as practicable following the designation of an employee as a Participant in accordance with Section 4.2 hereof, the SERP Committee shall provide to each such Participant a form pursuant to which he or she may elect to receive his or her benefit otherwise determined under this Article VI in one of the optional forms of payment permitted under the Pension Plan. Each Participant shall file his or her election, if any, with the SERP Committee as soon as practicable thereafter. Each Participant shall be permitted to revoke such election and make a new election on a form, prescribed by the SERP Committee at any time and from time to time; provided, however, that the last such election on file with the SERP Committee, or its designee, shall become irrevocable no later than one (1) year prior to such Participant's Pension Plan Benefit Commencement Date. Benefits determined under this Article VI that are paid in such other form shall be the Actuarial Equivalent of the Participant's benefit otherwise determined under Section 6.3 or Section 6.4, as the case may be. Any election by a Participant of an optional form of payment pursuant to the provisions of Section 4.7 of the Plan as previously in effect shall be deemed to be an election made under this Section 6.6.
- 6.7 Rehiring Terminated Participants. Notwithstanding anything in this Article VI to the contrary, in the event that a Participant has a Termination of Employment, and then again becomes a Participant pursuant to Article VI, such individual shall be credited with the amount of Service he or she had earned as of the date of his or her Termination of Employment under the rules applicable to the Pension Plan. Notwithstanding the preceding sentence, a retired Participant shall not be credited with such prior Service except to the extent that the Employer provides for such credit in a designation made pursuant to Section 4.3 hereof. In the event of the rehiring of a former Participant, if such Participant's "Retirement Benefits" (as defined under the terms of the Plan as previously in effect) are in pay status, such benefits shall be suspended in the manner described in Article 7 of the Pension Plan. In the event a former Participant who has previously received his or her "Retirement Benefit" in the form of a lump sum is rehired pursuant to this Section 6.7, any further benefits to be paid to such Participant following his or her next Termination of Employment pursuant to this Article VI shall be offset by the Actuarial Equivalent of the lump sum benefit, previously paid to such Participant.

ARTICLE VII

**SUPPLEMENTAL RETIREMENT BENEFITS —  
NON-GRANDFATHERED ACCRUED BENEFITS**

- 7.1 Eligibility for Retirement Benefits. Each Participant whose benefit under the Plan has vested, pursuant to Section 5.1 hereof, shall be eligible for a benefit under the Plan with respect to his or her Non-Grandfathered Accrued Benefit, determined in accordance with this Article VII.
- 7.2 Time of Payment. The payment of a Participant's benefit under this Article VII shall commence (or be paid, as the case may be) within the ninety day period beginning on the Participant's SERP Benefit Commencement Date. The determination of when, during such ninety day period, such benefit shall actually commence to be paid shall be determined by the SERP Committee in its sole and absolute discretion; provided, however, that if such Participant is a member of the SERP Committee, such Participant shall in no event have any involvement in such determination.
- 7.3 Normal Retirement Benefit. If a Participant's SERP Benefit Commencement Date is in any month following the month in which such Participant attains his or her Normal Retirement Age, the amount of the benefit payable to such Participant under this Article VII, expressed as a single life annuity (payable monthly) shall be an amount equal to the excess of:
- (a) such person's Non-Grandfathered Accrued Benefit, over
  - (b) such person's Non-Grandfathered Pension Plan Accrued Benefit.
- 7.4 Early Retirement. If a Participant's SERP Benefit Commencement Date is in any month prior to the earliest possible month described in the foregoing Section 7.3, the amount of the benefit payable to such Participant under this Article VII, expressed as a single life annuity (payable monthly) shall be an amount equal to the excess of:
- (a) such Participant's Non-Grandfathered Accrued Benefit, reduced by 1/4 of 1% for each month by which such Participant's SERP Benefit Commencement Date precedes the first day of the first calendar month after the calendar month in which such Participant attains age 62, over
  - (b) such Participant's Non-Grandfathered Pension Plan Accrued Benefit, reduced by the same percentage amount, if any, by which such Participant's accrued benefit under the Pension Plan would in fact be reduced on account of the commencement (or payment, as the case may be) of such Participant's Pension Plan accrued benefit prior to such Participant's Normal Retirement Date if such Participant's accrued benefit under the Pension Plan had otherwise commenced to be paid (or had been paid, as the case may be) as of such Participant's SERP Benefit Commencement Date.

7.5 Form of Payment.

- (a) *Single Life Annuity.* In the absence of any election by a Participant of either a single lump sum payment or an annuity providing for a fixed number of payments in accordance with the provisions of Section 7.6, such Participant's benefit under this Article VII shall, except as otherwise provided in subsection (b) of this Section 7.5, be paid in the form of a single life annuity (payable monthly), regardless of the actual form of payment of such Participant's Pension Plan accrued benefit.
- (b) *Optional Annuity Form of Payment.* A Participant who is otherwise to receive a benefit under the Plan in the form of a single life annuity pursuant to the foregoing subsection (a) of this Section 7.5 may elect, at any time prior to such person's SERP Benefit Commencement Date, to instead receive such benefit in the form of any other type of life annuity otherwise provided under the Pension Plan (and determined without regard to any spousal consent requirements under the Pension Plan), including an annuity for the joint lives of such Participant and any other person (for purposes of this subsection (b), an "Optional Annuity"), so long as such Optional Annuity:
  - (i) is the Actuarial Equivalent of the single life annuity otherwise payable pursuant to the foregoing subsection (a) of this Section 7.5 and
  - (ii) commences to be paid at the same time that the single life annuity otherwise payable pursuant to the foregoing subsection (a) of this Section 7.5 would otherwise commence to be paid.

7.6 Optional Form of Payment.

- (a) *Initial Election Participants.* With respect to any person who is a Participant on December 31, 2008 and who, by such date has not yet received (nor started to receive, as the case may be) benefits under the Plan, such person may, at any time prior to the close of business on December 31, 2008, elect to instead receive such person's benefit under this Article VII in either a single lump sum payment or an annuity providing for a fixed number of payments, as specified by such Participant. Effective upon the close of business on December 31, 2008, any election of such an optional form of payment shall govern and, except as otherwise provided in subsection (b) of this Section 7.6, shall thereafter be irrevocable.
- (b) *Subsequent Change in Benefit Election/Initial Benefit Election.* A Participant described in the foregoing subsection (a) shall have the right to thereafter:
  - (i) if such Participant previously elected to receive his or her benefit under this Article VII in an optional form of payment pursuant to the foregoing subsection (a), revoke such election and instead elect to receive his or her benefit under this Article VII in either the form provided under Section 7.5 or in the other optional form of benefit otherwise permitted under the foregoing subsection (a), as specified by such Participant, or

- (ii) if such Participant had not previously elected to receive his or her benefit under this Article VII in an optional form of payment pursuant to the foregoing subsection (a), make an election to instead receive such benefit in such optional form of payment as shall be elected by such Participant.

Notwithstanding the foregoing, any such revocation and reelection (or initial election, as the case may be), shall be effective only if both of the following requirements are met:

- (i) such revocation and reelection (or initial election, as the case may be) is made at least twelve months prior to such Participant's SERP Benefit Commencement Date, and
- (ii) in connection with the making of such revocation and reelection (or initial election, as the case may be), such Participant elects a new SERP Benefit Commencement Date which is at least five years after what would otherwise have been such Participant's SERP Benefit Commencement Date, determined without regard to this subsection (b).

A Participant shall be permitted to make any number of subsequent changes in form of benefit payment pursuant to this subsection (b), so long as each such change complies with the requirements of the foregoing sentence.

- (c) *Actuarial Equivalent.* Benefits determined under this Article VII that are paid in an optional form of payment pursuant to this Section 7.6 shall be the Actuarial Equivalent of the Participant's benefit otherwise determined under Section 7.3 or Section 7.4, as the case may be.

**ARTICLE VIII**

**DEATH BENEFITS**

8.1 Preretirement Survivor's Benefit Linked to Grandfathered Accrued Benefit. If a Participant dies prior to his or her Pension Plan Benefit Commencement Date, the following provisions shall apply in lieu of Article VI.

(a) Executive Participants.

- (i) If an Executive Participant dies before his or her Pension Plan Benefit Commencement Date and such Participant (x) is employed by an Employer at the time of his or her death, or (y) his or her benefit under the Plan has vested in accordance with Section 5.1 hereof, then the Beneficiary of such Participant shall be entitled to a benefit equal to: (A) three (3) times such Participant's most recent annual Base Compensation as of the date of death, multiplied by (B) such Participant's Grandfathered Benefit Ratio, payable without interest in equal monthly installments over ten (10) years beginning with the month immediately following the death of such Participant. If the Beneficiary does not live to receive all 120 installments, then such installments shall continue to the Beneficiary's designated beneficiary (or to his or her estate if there is no designated beneficiary) until all 120 payments have been made.
- (ii) If a Participant who is employed by an Employer dies while so employed and before attaining three thousand six hundred and fifty (3,650) days of Service, the monthly benefit payable under paragraph (i) shall be reduced so that it bears the same relationship to the monthly benefit determined without regard to this paragraph (ii) as the Participant's number of days of Service bears to three thousand six hundred and fifty (3,650).

(b) Senior Participants.

- (i) If a Senior Participant dies before his or her Pension Plan Benefit Commencement Date and such Participant (x) is employed by an Employer at the time of his or her death, or (y) his or her benefit under the Plan has vested in accordance with Section 5.1 hereof, then the Beneficiary of such Participant shall be entitled to a benefit equal to: (A) fifty percent (50%) of such Participant's most recent annual Base Compensation as of the date of death, multiplied by (B) such Participant's Grandfathered Benefit Ratio, payable without interest in equal monthly installments over ten (10) years beginning with the month immediately following the death of such Participant. If the Beneficiary does not live to receive all 120 installments, then such installments shall continue to the Beneficiary's designated beneficiary (or to his or her estate if there is no designated beneficiary) until all 120 payments have been made.

- (ii) If a Participant who is employed by an Employer dies while so employed and before attaining five thousand four hundred and seventy-five (5,475) days of Service, the monthly benefit payable under paragraph (i) shall be reduced so that it bears the same relationship to the monthly benefit determined without regard to this paragraph (ii) as the Participant's number of days of Service bears to five thousand four hundred and seventy-five (5,475).

8.2 Preretirement Survivor's Benefit Linked to Non-Grandfathered Accrued Benefit. If a Participant dies prior to his or her SERP Benefit Commencement Date, the following provisions shall apply in lieu of Article VII.

(a) Executive Participants.

- (i) If an Executive Participant dies before his or her SERP Benefit Commencement Date and such Participant (x) is employed by an Employer at the time of his or her death, or (y) his or her benefit under the Plan has vested in accordance with Section 5.1 hereof, then the Beneficiary of such Participant shall be entitled to a benefit equal to: (A) three (3) times such Participant's most recent annual Base Compensation as of the date of death, multiplied by (B) such Participant's Non-Grandfathered Benefit Ratio, payable without interest in equal monthly installments over ten (10) years, beginning no later than the first day of such month following the death of the Participant as shall be determined by the SERP Committee; provided, however, that the day on which such first monthly installment is paid shall be within the ninety day period beginning on the date of the Participant's death. If the Beneficiary does not live to receive all 120 installments, then such installments shall continue to the Beneficiary's designated beneficiary (or to his or her estate if there is no designated beneficiary) until all 120 payments have been made.
- (ii) If a Participant who is employed by an Employer dies while so employed and before attaining three thousand six hundred and fifty (3,650) days of Service, the monthly benefit payable under paragraph (i) shall be reduced so that it bears the same relationship to the monthly benefit determined without regard to this paragraph (ii) as the Participant's number of days of Service bears to three thousand six hundred and fifty (3,650).

(b) Senior Participants.

- (i) If a Senior Participant dies before his or her SERP Benefit Commencement Date and such Participant (x) is employed by an

Employer at the time of his or her death, or (y) his or her benefit under the Plan has vested in accordance with Section 5.1 hereof, then the Beneficiary of such Participant shall be entitled to a benefit equal to: (A) fifty percent (50%) of such Participant's most recent annual Base Compensation as of the date of death, multiplied by (B) such Participant's Non-Grandfathered Benefit Ratio, payable without interest in equal monthly installments over ten (10) years, beginning no later than the first day of such month following the death of the Participant as shall be determined by the SERP Committee; provided, however, that the day on which such first monthly installment is paid shall be within the ninety day period beginning on the date of the Participant's death. If the Beneficiary does not live to receive all 120 installments, then such installments shall continue to the Beneficiary's designated beneficiary (or to his or her estate if there is no designated beneficiary) until all 120 payments have been made.

- (ii) If a Participant who is employed by an Employer dies while so employed and before attaining five thousand four hundred and seventy-five (5,475) days of Service, the monthly benefit payable under paragraph (i) shall be reduced so that it bears the same relationship to the monthly benefit determined without regard to this paragraph (ii) as the Participant's number of days of Service bears to five thousand four hundred and seventy-five (5,475).

### 8.3 Post-Retirement Survivor's Benefit.

- (a) Grandfathered Accrued Benefit. If a Participant dies on or after his or her Pension Plan Benefit Commencement Date, the form of benefit payment selected pursuant to Article VI shall determine the entitlement of a Beneficiary to any benefit payable to such Beneficiary with respect to such Participant's Grandfathered Accrued Benefit. The amount, if any, payable to such Beneficiary under such form of benefit will be determined under the terms and conditions of the Pension Plan.
- (b) Non-Grandfathered Accrued Benefit. If a Participant dies on or after his or her SERP Benefit Commencement Date, the form of benefit payment selected pursuant to Article VII shall determine the entitlement of a Beneficiary to any benefit payable to such Beneficiary with respect to such Participant's Non-Grandfathered Accrued Benefit. The amount, if any, payable to such Beneficiary under such form of benefit will be determined under the terms and conditions of the Pension Plan as in effect on December 31, 2008.

ARTICLE IX

**ADMINISTRATION**

9.1 Administration Generally. This Section 9.1 is subject in its entirety to the provisions of Section 9.2 hereof. The SERP Committee shall administer the Plan and shall keep a written record of its actions and proceedings regarding the Plan and all dates, records and documents relating to its administration of the Plan. The SERP Committee is authorized to interpret the Plan, to make, amend and rescind such rules as it deems necessary for the proper administration of the Plan, to make all other determinations, including finding facts necessary or advisable for the administration of the Plan, and to correct any defect or supply any omission or reconcile any inconsistency in the Plan in the manner and to the extent that the SERP Committee deems necessary and desirable to carry the Plan into effect. The powers and duties of the SERP Committee shall include, without limitation, the following

- (a) Determining the amount of benefits payable to Participants and authorizing and directing an Employer with respect to the payment of benefits under the Plan; provided, however, that no individual SERP Committee member may be in any way involved in such determination with respect to his or her benefits or rights, if any, under the Plan;
- (b) Construing and interpreting the Plan whenever necessary to carry out its intention and purpose and making and publishing such rules for the regulation of the Plan as are not inconsistent with the terms of the Plan; and
- (c) Compiling and maintaining all records it determines to be necessary, appropriate or convenient in connection with the administration of the Plan.

Any action taken or determination made by the SERP Committee must be taken by a majority of the SERP Committee members and shall be conclusive on all parties.

9.2 Limitation on the SERP Committee's Authority. No member of the SERP Committee shall vote on any matter relating specifically to such member of the SERP Committee. In the event that a majority of the members of the SERP Committee will be specifically affected by any action proposed to be taken (as opposed to being affected in the same manner as all other Participants in the Plan), such action shall be taken by the Management Compensation Committee. Notwithstanding anything in this Article IX to the contrary, the Management Compensation Committee maintains the full and complete authority and discretion to designate employees to become Participants in the Plan pursuant to Section 4.2 hereto and to review any matter in its sole and complete discretion which it determines may specifically affect the benefits or rights under the Plan of any member of the SERP Committee. The Management Compensation Committee maintains sole and complete authority to appoint and remove members of the SERP Committee for any reason.

- 9.3 Delegation. The SERP Committee is authorized to designate a person or person as the “Administrator” of the Plan, and to delegate to the Administrator such duties and responsibilities with respect to the Plan as may, in the discretion of the SERP Committee, be appropriate; provided, however, that the SERP Committee may not delegate any power or authority reserved for the Management Compensation Committee.
- 9.4 Fees. No fees or compensation shall be paid to any member of the SERP Committee for his or her service on the SERP Committee.

ARTICLE X

CLAIMS PROCEDURE

10.1 Provision of Benefits. It shall not be necessary for any Participant or Beneficiary entitled to receive a benefit under Articles VI and VII or a Death Benefit, as applicable, to file a claim under the Plan in order to receive such benefit; provided, however, that (i) a Participant who has not filed an election to receive his or her Grandfathered Accrued Benefit in an optional form in accordance with Section 6.6 hereof shall receive his or her Grandfathered Accrued Benefit in accordance with Section 6.5 hereof and (ii) a Participant who has not filed an election to receive his or her Non-Grandfathered Accrued Benefit in an optional form in accordance with Section 7.6 hereof shall receive his or her Non-Grandfathered Accrued Benefit in accordance with Section 7.5 hereof. Within sixty (60) days (or at such other time as the SERP Committee may determine) following a Participant's Termination of Employment, he or she shall receive a statement setting forth his other benefits and rights under the Plan, if any, and such other information as the SERP Committee deems reasonable and appropriate. Within sixty (60) days following the death of a Participant, his or her Beneficiary shall receive a notice of such Beneficiary's rights, if any, to a Death Benefit hereunder and such other information as the SERP Committee deems reasonable and appropriate.

10.2 Claims Review. The SERP Committee shall establish procedures for filing claims for benefits and for the appeal and review of claims for benefits which have been denied. If any person claiming benefits under the Plan is denied benefits by the SERP Committee, no later than 90 days after the receipt of his or her claim by the SERP Committee (or within 180 days if special circumstances require an extension of time for processing the claim and if written notice of such extension and circumstances is given to such person within the initial 90-day period), the claimant shall be furnished with written notification from the SERP Committee stating: (i) the specific reason(s) for the denial; (ii) specific references to pertinent Plan provisions on which the denial is based; (iii) a description of any additional material or information necessary for the claimant to perfect his or her claim and the reason why such material or information is necessary and (iv) the procedure for submitting his or her claim for review.

In the event a claimant's claim is denied, a claimant may request a review of his or her claim by the SERP Committee. Such request must be made by the claimant in writing within 90 days after receipt of notice that his or her claim has been rejected by the SERP Committee. Within 60 days after filing such request, the claimant, at the discretion of the SERP Committee, may be granted a hearing. The SERP Committee shall advise the claimant in writing of the disposition of his or her appeal within 60 days (or within 120 days if special circumstances require an extension of time for processing the request, such as an election by the SERP Committee to hold a hearing, and if written notice of such extension and circumstances are given to such person within the initial 60-day period after the request for a review of the claim is first received by the SERP Committee), and shall give specific reasons for its decision and specific references to the pertinent Plan provisions on which the decision is based.

Notwithstanding anything herein to the contrary, for all purposes of this Section 10.2, in the event the claimant is a member of the SERP Committee, the Management Compensation Committee shall serve as the committee reviewing such claim in accordance with the procedures provided in this Section 10.2 and the SERP Committee shall have no authority to review such claim.

- 10.3 Payment of Benefits. If, after a claimant utilizes the claims procedures described above, a final and binding determination is made that the claimant is entitled to any benefits under the Plan, (i) if such benefit is otherwise to be paid in a single lump sum payment, such benefit shall be paid in full to the claimant no later than the end of the first taxable year of the claimant in which such final and binding determination is made and (ii) if such benefit is otherwise to be paid in installments, all installment payments that are in arrears shall be paid in full to the claimant no later than the end of the first taxable year of the claimant in which such final and binding determination is made.

ARTICLE XI

**MISCELLANEOUS PROVISIONS**

11.1 Amendment.

- (a) The Company retains the right to amend the Plan in any respect (including retroactively) to the maximum extent permitted by Section 409A of the Code and other applicable laws, which right includes the right to terminate any Participant's participation in the Plan in any manner (including retroactively) to the maximum extent permitted by Section 409A of the Code and other applicable laws. Notwithstanding the foregoing, no such amendment may reduce a Participant's benefits otherwise determined under Sections 6.3 and 7.3 or a Beneficiary's Preretirement Survivor's Benefit below the amount to which the Participant or his or her Beneficiary would be entitled (if any) if, immediately before the amendment is adopted, such Participant had a Termination of Employment. For this purpose, the amount of a Participant's benefits otherwise determined under Sections 6.3 and 7.3 or of a Beneficiary's Preretirement Survivor's Benefit that may not be reduced by a plan amendment shall be determined as if, immediately before the amendment is adopted, the Participant had had a Termination of Employment for all purposes (including, for example and without limitation, determining such Participant's Career Average Compensation and Base Compensation and determining eligibility for a Preretirement Survivor's Benefit); provided, however, that such Participant's Pension Plan Accrued Benefit and Primary Social Security Benefit shall be determined without regard to such deemed Termination of Employment
- (b) Any amendment to the Plan described in subsection (a) shall be binding on all Employers, Participants, Beneficiaries, and other persons.

11.2 Termination.

- (a) The Company reserves the right to terminate the Plan at any time (including retroactively) to the maximum extent permitted by Section 409A of the Code and other applicable laws. Notwithstanding the foregoing, no termination shall, without the consent of the Participant, reduce a Participant's benefits otherwise determined under Sections 6.3 and 7.3 or a Beneficiary's Preretirement Survivor's Benefit below the amount to which the Participant or his or her Beneficiary would be entitled (if any) if, immediately before the amendment terminating the Plan is adopted, such Participant had a Termination of Employment. For this purpose, the amount of a Participant's benefits otherwise determined under Sections 6.3 and 7.3 or of a Beneficiary's Preretirement Survivor's Benefit that may not be reduced by a plan amendment shall be determined as if, immediately before the amendment terminating the Plan is adopted, the Participant had a Termination of Employment for all purposes (including, for example and without limitation,

determining such Participant's Career Average Compensation and Base Compensation and determining eligibility for a Preretirement Survivor's Benefit); provided, however, that such Participant's Pension Plan Accrued Benefit and Primary Social Security Benefit shall be determined without regard to such deemed Termination of Employment.

- (b) Any termination of the Plan described in subsection (a) shall be binding on all Employers, Participants, Beneficiaries, and other persons.
- (c) The participation of an Employer in the Plan may, to the extent permitted under Section 409A of the Code, be terminated at any time by such Employer with respect to employees of such Employer. Notice of such termination shall be given to the affected Participants and the Company, and such termination of participation shall be deemed an amendment pursuant to Section 11.1 hereof. Upon any such termination, the Plan shall be deemed to be amended to reflect all necessary and appropriate changes to the Plan.

11.3 No Assignment. The Participant shall not have the power to pledge, transfer, assign, anticipate, mortgage, or otherwise encumber or dispose of in advance any interest in amounts payable hereunder or any of the payments provided for herein, nor shall any interest in amounts payable hereunder or in any payments be subject to seizure for payment of any debts, judgments, alimony, or separate maintenance, or be reached or transferred by operation of law in the event of bankruptcy, insolvency, or otherwise. This Section 11.3 shall prohibit the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant or Beneficiary pursuant to a domestic relations order, unless the order is one that would be a qualified domestic relations order within the meaning of Section 414(p) of the Code if Section 414(p) applied to the Plan ("deemed qualified domestic relations order"). Notwithstanding the foregoing, a payment under a deemed qualified domestic relations order may commence at any time set forth in the order, provided that such time is not later than the date on which the amount would otherwise be payable to the Participant under the Plan.

11.4 Incapacity. If any person to whom a benefit is payable under the Plan is an infant or if the SERP Committee determines that any person to whom such benefit is payable is incompetent by reason of physical or mental disability, the SERP Committee may cause the payments becoming due to such person to be made to another for his or her benefit. Payments made pursuant to this Section 11.4 shall, as to such payment, operate as a complete discharge of the Plan, each Employer, and the SERP Committee.

11.5 Successors and Assigns. The provisions of the Plan are binding upon and inure to the benefit of each Employer, its respective successors and assigns, and the Participant and his or her beneficiaries, heirs, legal representatives, and assigns.

11.6 Governing Law. The Plan shall be subject to and construed in accordance with the laws of the State of New York, to the extent not preempted by the provisions of ERISA.

- 11.7 **No Guarantee of Employment.** Nothing contained in the Plan shall be construed as a contract of employment or deemed to give any Participant the right to be retained in the employ of the Employer or to give any Participant any equity or other interest in the assets, business, or affairs of the Employer. No Participant hereunder shall have a security interest in assets of any Employer used to make contributions or pay benefits.
- 11.8 **Severability.** If any provision of the Plan shall be held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of the Plan, but the Plan shall be construed and enforced as if such illegal or invalid provision had never been included herein.
- 11.9 **Notification of Addresses.** Each Participant shall file with the Company, from time to time, in writing, the post office address of the Participant, the post office address of each Beneficiary, and each change of post office address. Any communication, statement, or notice addressed to the last post office address filed with the Company shall be binding on the Participant and each Beneficiary for all purposes of the Plan and neither the Company nor any Employer shall be obliged to search for or ascertain the whereabouts of any Participant or Beneficiary.
- 11.10 **Bonding.** The SERP Committee and all agents and advisors employed by it shall not be required to be bonded, except as otherwise required by ERISA.
- 11.11 **Headings.** The headings and subheadings in the Plan have been inserted for convenience of reference only and shall not be dispositive or controlling in construction of the provisions hereof.
- 11.12 **Adoption of Plan by Other Employers.** This Plan may be adopted by any entity through an adoption agreement signed by the Company and by such entity.
- 11.13 **Indemnity.** To the extent permitted by law, the Employers shall and do hereby jointly and severally indemnify and hold harmless any of their officers and employees, any member of their governing bodies, and each member of the SERP Committee from any and all claims, demands, suits, or proceedings, for liability, loss, damage, penalty, or tax (including payment of legal fees and expenses in connection with defense against same) brought by any Participant, Beneficiary, or any other person, corporation, governmental agency, or other entity arising, from any act or failure to act which constitutes or is alleged to constitute a breach of such individual's responsibilities under any law; provided, however, that such indemnification shall not apply to any willful misconduct, willful failure to act, or gross negligence. Reasonable expenses incurred in defending any such claim, demand, suit, or proceeding shall be paid by the Employers in advance of a final disposition of such claim, demand, suit, or proceeding, upon presentation therefore by a person who would be entitled to indemnification under the prior sentence. An Employer shall have the right to control any controversy where the Employer is required to indemnify any individual under the provisions of this Section. It is contemplated that the Employers may, if they so desire, purchase insurance to cover their potential liability hereunder.

11.14 Tax Withholding. To the extent required by law, the Employer shall withhold from payouts hereunder (or pursuant to any other arrangement with the Employer), any Federal, state, or local income or payroll taxes required to be withheld (including, but not limited to any taxes required to be withheld pursuant to the provisions of Section 409A of the Code) and shall furnish the recipient and the applicable government agency or agencies with such reports, statements, or information as 'may be legally required.

**ARTICLE XII**

**BENEFIT FREEZE**

- 12.1 Closing Plan to New Participants. Notwithstanding the foregoing provisions of the Plan to the contrary, no employee of any Employer shall become a Participant on or after May 1, 2007.
- 12.2 Benefit Freeze for Existing Participants. Notwithstanding the foregoing provisions of the Plan to the contrary, no Participant shall in any event earn any additional benefit under the Plan with respect to any periods on or after May 1, 2007. In connection therewith, and solely for purposes of determining the amount of each Participant's benefit otherwise payable under the Plan (and for no other purpose under the Plan), each Participant shall, notwithstanding any other provision of the Plan to the contrary, be deemed to have a Termination of Employment as of April 30, 2007 (or on such person's actual date of Termination of Employment, if earlier). For the avoidance of doubt, all other provisions of the Plan (including, but not limited to, (i) those governing the time and form of benefit payment and (ii) Section 5.1) shall otherwise remain in full force and effect.

THE NASDAQ OMX GROUP, INC.  
AMENDED AND RESTATED SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN  
AMENDMENT NO. 1 DATED AS OF DECEMBER 31, 2008

Section 7.2 of Article VII of the Supplemental Executive Retirement Plan of The NASDAQ OMX Group, Inc. is amended and restated as follows:

7.2 Time of Payment. The payment of a Participant's benefit under this Article VII shall commence (or be paid, as the case may be) within the ninety day period beginning on the Participant's SERP Benefit Commencement Date. The determination of when, during such ninety day period, such benefit shall actually commence to be paid shall be determined by the SERP Committee in its sole and absolute discretion; provided, however, that if such Participant is a member of the SERP Committee, such Participant shall in no event have any involvement in such determination. Notwithstanding the foregoing provisions of this Section 7.2, the date on which a Participant's benefit under this Article VII shall commence (or be paid, as the case may be) shall in all events be delayed until six months and one day following such Participant's Termination of Employment, if such delay is necessary to avoid the imposition of any tax, penalty or interest under Section 409A of the Code.

**THE NASDAQ OMX GROUP, INC.**  
**SUPPLEMENTAL EMPLOYER RETIREMENT**  
**CONTRIBUTION PLAN**  
**Amended and Restated as of December 17, 2008**

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## PREAMBLE

The NASDAQ OMX Group, Inc. (f/k/a The Nasdaq Stock Market, Inc.) (the "Company") established The Nasdaq Supplemental Employer Retirement Contribution Plan (the "Plan"), originally effective as of July 1, 2007.

The Plan is hereby renamed The NASDAQ OMX Group, Inc. Supplemental Employer Retirement Contribution Plan and is amended and restated, effective as of December 17, 2008, to reflect (i) the provisions of the final regulations issued under Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and (ii) the inclusion of the NASDAQ OMX PHLX, Inc. Employee Savings Plan (the "PHLX Savings Plan") as a tax-qualified plan within the Company's corporate group.

The sole purpose of the Plan is to provide for the payment to employees of that portion of the annual "Employer Retirement Contribution" (as that term is defined under both The NASDAQ OMX Group, Inc. 401(k) Savings Plan (f/k/a The Nasdaq Stock Market, Inc. 401(k) Savings Plan)(the "NASDAQ OMX Savings Plan") and the PHLX Savings Plan), if any, which cannot be provided to certain employees under the NASDAQ OMX Savings Plan or the PHLX Savings Plan on account of the restrictions and limitations imposed under Section 401(a)(17) and/or Section 415(c) of the Code (or at the discretion of the Company, on account of the restrictions and limitations imposed under Section 401(a)(4) and/or Section 410(b) of the Code).

The Plan does not provide for the payment to employees of that portion, if any, of any other types of employee or employer contributions (including, but not limited to, "Elective Contributions", "Participant Contributions" or "Matching Contributions" (as those terms are defined under the NASDAQ OMX Savings Plan and the PHLX Savings Plan)) which cannot be provided under the NASDAQ OMX Savings Plan or the PHLX Savings Plan, as the case may be, on account of the foregoing (or any other) limitations.

## 1. **DEFINITIONS**

To the extent not otherwise defined in the Preamble, the following terms shall have the following meanings:

1.1. "Account" shall, with respect to any given Participant, have the meaning provided under Section 2.1.

1.2. "Beneficiary" shall, with respect to any given Participant, mean the person, persons or trust or trusts designated by the Participant, by written notice to the Plan Administrator, to receive any payment provided for in the Plan in the event of the death of such Participant prior to the receipt thereof by such Participant. A Participant may also designate a contingent Beneficiary to receive benefits under the Plan in the event that the primary Beneficiary does not survive the Participant. In the case of a married Participant, (i) there is no requirement that such person's spouse must be such Participant's Beneficiary and (ii) the consent of such spouse is not required in order to name someone other than the spouse as the Beneficiary. There is also no requirement that a Participant's Beneficiary must be the same person the Participant has designated as his or her "Beneficiary" under the NASDAQ OMX Savings Plan or under the PHLX Savings Plan, as the case may be. If a Participant has made no such designation under the terms of this Plan, such Participant's Beneficiary shall be the same as such person's "Beneficiary" under the NASDAQ OMX Savings Plan or the PHLX Savings Plan, as the case may be.

1.3. "Effective Date" shall mean July 1, 2007.

1.4. "Employee" shall mean an individual who is either (i) an "Employee," as defined under the NASDAQ OMX Savings Plan or (ii) an "Employee," as defined under the PHLX Savings Plan, as the context shall require.

1.5. "Employer Retirement Contribution Shortfall" shall, with respect to any given Employee who has met the requirements of Section 3.01(a) of the NASDAQ OMX Savings Plan or 3.01(a) of the PHLX Savings Plan, as the case may be, for a Plan Year for which Employer Retirement Contributions are made under such respective savings plan, mean the sum of the following (a) plus (b):

(a) the excess, if any, of:

(i) the amount of the Employer Retirement Contribution which would have been made on behalf of such Employee under the NASDAQ OMX Savings Plan or the PHLX Savings Plan, as the case may be, for such Plan Year had Compensation for such Plan Year not been subject to the limitations of Section 401(a)(17) of the Code and had the Employer Retirement Contribution which could otherwise have been made to such respective savings plan on behalf of such person not been subject to the limitations of Section 415(c) of the Code (and in all events determined without regard to any limitations which might otherwise be imposed pursuant to the "nondiscrimination" and "coverage" provisions of Sections 401(a)(4) and 410(b), respectively, of the Code), over

(ii) the amount of the Employer Retirement Contribution actually made on behalf of such Employee under the NASDAQ OMX Savings Plan or the PHLX Savings Plan, as the case may be, determined after the application of the limitations of Sections 401(a)(17) and 415(c) of the Code, pursuant to the terms of the NASDAQ OMX Savings Plan or the PHLX Savings Plan, as the case may be (and before the application of the provisions of Section 4.05(f) of the NASDAQ OMX Savings Plan or Section 4.05(e) of the PHLX Savings Plan, as the case may be), and

(b) to the extent that the amount of the Employer Retirement Contribution which would have been made on behalf of such Employee under (i) the NASDAQ OMX Savings Plan for such Plan Year is reduced pursuant to the provisions of Section 4.05(f) of the NASDAQ OMX Saving Plan or (ii) the PHLX Savings Plan for such Plan Year is reduced pursuant to the provisions of Section 4.05(e) of the PHLX Savings Plan, as the case may be, such amount, if any, not in excess of such reduction, as is determined in the sole and absolute discretion of the Company.

The Company shall have the right to determine that an Employer Retirement Contribution Shortfall exists with respect to any given Employee pursuant to the foregoing clause (b) for any given Plan Year, regardless of whether an Employer Retirement Contribution Shortfall otherwise exists with respect to such person for such Plan Year pursuant to the foregoing clause (a) for such Plan Year.

1.6. "Participant" shall mean each Employee for whom an Account is then maintained.

1.7. "Plan" shall mean The NASDAQ OMX Group, Inc. Supplemental Employer Retirement Contribution Plan, as set forth herein and as amended from time to time.

1.8. "Plan Administrator" shall mean the person or persons who shall, from time to time, be serving as the members of the Committee.

1.9. "Separation from Service" shall mean, with respect to any given Participant, such person's termination of employment where it is reasonably anticipated that no further services would be performed after that date or that the level of bona fide services the Participant would perform after that date (whether as an employee or independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed over the immediately preceding thirty-six (36)-month period (or if less, the period of the Participant's employment).

All capitalized terms which are not otherwise defined in the Plan shall have the meaning provided under the NASDAQ OMX Savings Plan.

## **2. PLAN PARTICIPATION; CREDITS TO PARTICIPANT ACCOUNTS; NATURE OF ACCOUNTS**

2.1. Establishment of Accounts; Credits to Accounts. With respect to any given Employee, an Account shall first be established under the Plan for the first Plan Year for which such person has an Employer Retirement Contribution Shortfall, at which time such person shall become a Participant. Such Account shall, as provided in Section 2.2 be only a notational

account. The amount to be credited to any Employee's Account for any given Plan Year shall be the amount if any, of such person's Employer Retirement Contribution Shortfall for such Plan Year. An Employee's Employer Retirement Contribution Shortfall with respect to any given Plan Year shall, regardless of when the amount of such award is in fact determined, be deemed credited to such person's Account as of the date that the Employer Retirement Contributions for such Plan Year are paid to the trustee under the NASDAQ OMX Savings Plan or the PHLX Savings Plan, as the case may be.

2.2. Nature of Accounts; Claim to Assets. Notwithstanding any of the foregoing provisions of this Article II, or any other provision of the Plan to the contrary, no Participant (nor any Beneficiary of a Participant) shall at any time be considered the owner of (or otherwise have any legal interest in) the Account established and maintained with respect to such Participant. Rather, such Account is a notational account only, maintained solely to establish the amount otherwise payable by the Company to such Participant (or such Participant's Beneficiary) under the Plan. All benefits otherwise payable to any Participant, or Beneficiary, shall be payable solely from the general assets of the Company, and to that extent, each Participant and Beneficiary shall be a general creditor of the Company. In connection therewith,

(a) any investments, which are, or may be, made by the Company so as to provide a source for the future payment of benefits under the Plan, and

(b) all income attributable to such investments, if any, shall remain at all times solely the property and rights of the Company (without being restricted to the provision of benefits under the Plan), subject only to the claims of the Company's general creditors.

### 3. ADJUSTMENT TO ACCOUNTS

3.1. Earnings Adjustments. The Account established for any given Participant shall be increased so as to reflect a "deemed" interest adjustment, based upon a "deemed" interest rate equal to the interest rate on 10 year U.S. Treasury securities on the Effective Date, plus 100 basis points; provided, however, that such an adjustment with respect to the Employer Retirement Contribution Shortfall for any given Plan Year shall in no event be made with respect to any periods prior to the date as of which such Participant's Employer Retirement Contribution Shortfall with respect to such Plan Year was deemed credited to such Participant's account pursuant to Section 2.1. The Plan Administrator shall have the right, but not the obligation, in its sole and absolute discretion, to, from time to time change prospectively such "deemed" interest rate. Unless and until so changed, the "deemed" interest rate shall remain as set forth in this Section 3.1.

3.2. Account Statements. Each Participant shall, at least annually, receive a statement showing such person's Account balance. The amounts shown on each such statement (including, for the avoidance of doubt, all earnings adjustments reflected therein) shall be final and conclusive for all purposes of the Plan.

### 4. VESTING

4.1. Full Vesting. Each Participant shall at all times be 100% vested in the Account established for such person under the Plan.

**5. IN-SERVICE DISTRIBUTIONS AND LOANS**

5.1. No Distributions or Loans. Prior to Separation from Service, no Participant shall be permitted to receive any distribution with respect to such person's Account. No Participant shall, at any time, be permitted to receive a loan with respect to such person's Account.

**6. BENEFITS**

6.1. Form, Timing and Amount of Benefits. As soon as practicable following a Participant's Separation from Service, but in no event later than the last day of the second month following such Separation from Service, there shall be paid to such Participant (or, in the case of such Participant's death, to such Participant's Beneficiary) in a single lump sum, an amount equal to the amount then credited to such Participant's Account (determined after applying the provisions of Sections 2.1 and 3.1) as of the date as of which such distribution is processed. Notwithstanding the foregoing, if, when a Participant's Separation from Service occurs, the Participant is a "specified employee," as defined under Section 409A(a)(2)(B) of the Code, no payments may be made hereunder before the date which is six months after such Participant's Separation from Service or if earlier, such person's date of death. The lump sum payment which would have otherwise been required to be paid following such Separation from Service shall be paid as soon as administratively practicable after the date which is six months after the Participant's Separation from Service (or if earlier, as soon as administratively practicable after the Participant's death).

6.2. Withholding of Taxes. The Company may deduct or withhold from any payments to be made under the Plan any Federal, state, local income or employment taxes as required under applicable laws to be withheld (including under Section 409A of the Code), or may instead require the Participant or Beneficiary, as the case may be, to pay any such amount, or the balance of any such amount.

**7. NON-ASSIGNABILITY CLAUSE**

7.1. General Provision. Except as may be otherwise provided in Section 7.2, and except as otherwise permitted by applicable law, neither the Participant nor any other person shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights thereto are expressly declared to be unassignable and non-transferable, nor shall any unpaid benefits be subject to attachment, garnishment or execution for the payment of any debts, judgments, alimony or separate maintenance owed by the Participant or any other person or be transferable by operation of law in the event of bankruptcy or insolvency of the Participant or any other person.

7.2. Exception for Certain Court Orders. Notwithstanding the foregoing Section 7.1, payment shall be made in accordance with the provisions of any judgment, decree, or order which:

(a) creates for, or assigns to, a spouse, former spouse, child or other dependent of a Participant the right to receive all or a portion of the Participant's benefits under the Plan for the purpose of providing child support, alimony payments or marital property rights to that spouse, child or dependent,

(b) is made pursuant to a State domestic relations law,

(c) does not require the Plan to provide any type of benefit, or any option, not otherwise provided under the Plan, and

(d) meets the requirements, as established by the Plan Administrator, for a “qualified domestic relations order.”

All determinations as to whether a judgment, decree or order is a “qualified domestic relations order” shall be made solely by the Plan Administrator. Any payment pursuant to this Section 7.2 shall be reduced by all amounts which the Company maybe required to withhold under applicable Federal, state or local law.

## **8. ADMINISTRATION**

8.1. Plan Administrator. The Plan shall be administered by the Plan Administrator. All aspects of Plan administration shall be the responsibility of the Plan Administrator.

8.2. Administration Procedures. The Plan Administrator shall have discretionary authority based on a reasonable interpretation of the Plan to determine the eligibility for benefits and the amount of benefits payable under the Plan, and shall have discretionary authority to construe all terms of the Plan, including uncertain terms, to determine questions of fact and law arising under the Plan and to make such rules as may be necessary for the administration of the Plan. Any determination by the Plan Administrator (including, but not limited to, any determination made pursuant to Section 7.2 or Section 8.3) shall be given deference in the event it is subject to judicial review, and shall be overturned only if it is arbitrary and capricious or an abuse of discretion, and shall, in all events, be final, conclusive and binding, to the maximum extent permitted by law, on all Employees, Participants, Beneficiaries and all other persons who may claim entitlement to benefits under the Plan.

### 8.3. Claim Procedures.

(a) The Plan Administrator shall establish procedures for filing claims for benefits and for the appeal and review of claims for benefits which have been denied.

(b) If a Participant or Beneficiary (or any other person claiming an entitlement to benefits under the Plan (hereinafter referred to as “Claimant”) is denied any benefits under the Plan, either partially or in total, no later than 90 days after the receipt of such person’s claim by the Plan Administrator (or within 180 days, if special circumstances require an extension of time for processing the claim and if written notice of such extension and circumstances is given to such person within the initial 90-day period), the Plan Administrator shall advise the Claimant in writing of the method of computation of such person’s benefit and the specific reason for the denial. The Plan Administrator shall also furnish the Claimant at that time with:

(i) a specific reference to pertinent Plan provisions, if any,

(ii) a description of any additional material or information needed for the Claimant to perfect such person's claim and the reason why such additional material or information is necessary, and

(iii) an explanation of the Plan's claim review procedure.

(c) Within 90 days of receipt of the information stated in subsection (b) above, the Claimant shall, if such person desires further review, file a written request for reconsideration with the Plan Administrator.

(d) So long as the Claimant's request for review is pending (including the 90 day period in subsection (c) above), the Claimant or such person's duly authorized representative may review pertinent Plan documents and may submit issues and comments in writing to the Plan Administrator.

(e) A final and binding decision shall be made by the Plan Administrator within 60 days of the filing by the Claimant of such person's request for reconsideration; provided, however, that if the Plan Administrator, in its discretion, feels that a hearing with the Claimant (or such person's representative) present is necessary or desirable, this period shall be extended an additional 60 days, but only so long as written notice of such extension and the reason therefore is given to such person within the initial 60-day period.

(f) The Plan Administrator's decision on reconsideration shall be conveyed to the Claimant in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the Claimant, with specific references to the pertinent Plan provisions on which the decision is based.

8.4. Plan Expenses. All expenses related to the operation of the Plan shall be paid by the Company.

## **9. AMENDMENT OR TERMINATION OF PLAN**

9.1. Right to Amend. The provisions of the Plan may be amended at any time and from time to time by the Company (including, but not limited to, such amendments as the Company determines to be necessary or appropriate to further evidence required compliance with the requirements of Section 409A of the Code); provided, however, that no amendment shall affect the rights of a Participant or a Beneficiary to the receipt of benefits with respect to any amounts credited to such person's Account before the time of the amendment.

9.2. Right to Terminate. The Company may, in its sole discretion, and for any reason (or no reason whatsoever), terminate the Plan at any time, but only to the extent permitted under Section 409A of the Code; provided, however, that no termination shall (except as otherwise provided under Section 9.4, regarding acceleration of payment of benefits on Plan termination) affect the rights of a Participant or a Beneficiary to the receipt of benefits with respect to any amounts credited to such person's Account before the time of the termination.

9.3. Status of the Plan Under ERISA Automatic Termination. The Plan is:

(a) in part an “excess benefit plan,” within the meaning of Section 3(36) of ERISA, to the extent that the Plan provides benefits to any Participant in excess of the Employer Retirement Contribution which can be provided to such Participant (or such person’s Beneficiary) under the NASDAQ OMX Savings Plan or the PHLX Savings Plan, as the case may be, on account of the limitations of Section 415(c) of the Code; and

(b) in part a plan which provides benefits for “management or highly compensated” employees within the meaning of Sections 201, 301 and 401 of ERISA, and therefore to be exempt from the provisions of Parts 2, 3 and 4 of Title I of ERISA, to the extent that the Plan provides benefits to any Participant (or to such person’s Beneficiary) in excess of the Employer Retirement Contribution which can be provided to such Participant under the NASDAQ OMX Savings Plan or the PHLX Savings Plan, as the case may be, on account of the limitations of Section 401(a)(17) of the Code (or to the extent that the Plan provides benefits to any Participant (or to such person’s Beneficiary) to make up for all, or any portion, of the reduction in the amount of the Employer Retirement Contribution which is provided to such Participant under (i) the NASDAQ OMX Savings Plan on account of the provisions of Section 4.05(f) thereof or (ii) the PHLX Savings Plan on account of the provisions of Section 4.05(e) thereof, as the case may be), and, to the maximum extent permitted by law, and notwithstanding the incorporation of such two features in this single document, shall be treated as two separate and legally distinct plans. Accordingly, the portion of the Plan described in the foregoing clause (b) shall terminate, and no further benefit shall accrue hereunder with respect to such portion of the Plan, in the event it is determined by a court of competent jurisdiction or by an opinion of counsel to the Company that such portion of the Plan constitutes an employee pension benefit plan within the meaning of Section 3(2) of ERISA, which is not so exempt from the provisions of Parts 2, 3 and 4 of Title I of ERISA, but only to the extent such termination is permissible under Section 409A of the Code.

9.4. Effect of Termination. Notwithstanding any other provision herein to the contrary, other than prohibitions on impermissible distributions under Section 409A of the Code, upon termination of the Plan (or the portion of the Plan, as the case may be), pursuant to either Section 9.2 or Section 9.3, the Account balances of each Participant will automatically be distributed in a single lump sum as soon as administratively practicable after such distribution would be permitted under Section 409A of the Code.

**10. MISCELLANEOUS**

10.1. No Contract of Employment. Neither the establishment of the Plan, nor any modification thereof, nor the creation of any fund, or account, nor the payment of any benefits, shall be construed as giving any Participant or Employee, or any person whomsoever, the right to be retained in the service of the Company (or in the service of any other entity in the corporate controlled group of which the Company is a member) and all Participants and other Employees shall remain subject to discharge to the same extent as if the Plan had never been adopted.

10.2. No Impact on Terms and Conditions of Employment. Neither the establishment of the Plan, nor any modification thereof, shall in any way vary, or in any way have any impact on, the otherwise existing terms and conditions (including, but not limited to, such terms and conditions as may be set out in any employment contract) of any Participant's or Employee's employment with the Company (or with any other entity in the corporate controlled group of which the Company is a member).

10.3. Severability of Provisions. If any provision of the Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Plan shall be construed and enforced as if such provisions had not been included.

10.4. Relationship to Other Benefits. No benefits paid under the Plan to any Participant (or to any Participant's Beneficiary) shall be taken into account in determining any benefits to which any Participant (or such Participant's Beneficiary or any other person) may be entitled under any pension, retirement, savings, group insurance or any other benefit plan or program sponsored or maintained by the Company (or sponsored or maintained by any other entity within the corporate controlled group of which the Company is a member).

10.5. Heirs, Assigns and Personal Representatives. The Plan shall be binding upon the heirs, executors, administrators, successors and assigns of the parties, including each Participant and Beneficiary, present and future.

10.6. Headings and Captions. The headings and captions herein are provided for reference and convenience only, and shall not be considered part of the Plan, and shall not be employed in the construction of the Plan.

10.7. Gender and Number. Except where otherwise clearly indicated by context, the masculine and the neuter shall include the feminine and the neuter, the singular shall include the plural, and vice-versa.

10.8. Payments to Minors, etc. Any benefit payable to or for the benefit of a minor, an incompetent or other person incapable of receipting therefore shall be deemed paid when paid to such person's guardian or to the party providing or reasonably appearing to provide for the care of such person, and such payment shall fully discharge the Company with respect thereto.

10.9. Method of Payment of Benefits. All benefits under the Plan shall be paid in cash, check or money order only.

10.10. Limitation on Benefits. Benefits shall, on account of the establishment and continued maintenance of the Plan, be payable to any Participant, Beneficiary or any other person only in such amounts, and at such times, as is determined pursuant to the provisions of the Plan.

10.11. Payment of Benefits. All benefits due in accordance with the terms of the Plan to (or on account of) any Participant, shall except as provided in the following sentence, be paid solely from the general assets of the Company. Notwithstanding the foregoing sentence, to the extent that a Participant's employer, at the time an Employer Retirement Contribution Shortfall with respect to such Participant arose was an entity outside of the corporate controlled group of

which the Sponsor is a member, the portion of the benefit under the Plan which is attributable to such Employer Retirement Contribution Shortfall shall be paid solely from the general assets of such other employer.

10.12. Protection of the Plan Administrator. To the maximum extent permitted by law, the person or persons from time to time serving as the Plan Administrator shall have no personal liability for any actions taken, or failed to be taken, in connection with the administration or operation of the Plan. The person or persons from time to time serving as the Plan Administrator shall be indemnified by the Company against any and all claims, losses, damages, expenses and liabilities arising from any good faith action or failure to act under, or in connection with, the Plan, to the maximum extent permitted by law.

10.13. No Third Party Beneficiaries. No person, (other than (i) a Participant, (ii) a Beneficiary or (iii) any person entitled to the payment of any benefits in accordance with the provisions of Section 7.2) shall have any rights or interest whatsoever in, or in connection with, the Plan.

10.14. Governing Law. This Plan shall, to the extent not preempted by ERISA or other Federal law, be construed according to the internal laws of the state of New York.

10.15. Nonqualified Deferred Compensation Plan Omnibus Provision. It is intended that all benefits provided pursuant to this Plan shall be provided and paid in a manner, and at such time and in such form, as complies with the applicable requirements of Section 409A of the Code to avoid the unfavorable tax consequences provided therein for non-compliance. Notwithstanding the foregoing, neither the Company, any other entity within the same corporate group of which the Company is a member, the Plan Administrator nor any of their officers, employees or directors shall be liable to any Employee, Participant, or Beneficiary for any failure of the Plan to comply with Section 409A of the Code.

**AMENDMENT TO  
EMPLOYMENT AGREEMENT**

THIS AMENDMENT (the "*Amendment*") is entered as of December 31, 2008, by and between The NASDAQ OMX Group, Inc. (the "*Company*") and Robert Greifeld (the "*Executive*").

WHEREAS, the Executive and the Company (f/k/a/ The Nasdaq Stock Market, Inc.) entered into an employment agreement, dated as of May 12, 2003 and subsequently amended and restated that employment agreement effective as of January 1, 2007 (the "*2007 Agreement*"); and

WHEREAS, the Executive and the Company now desire to amend and the 2007 Agreement so as to reflect the provisions of Section 409A of the Internal Revenue Code and the final regulations issued thereunder, which amendment is to be effective as of January 1, 2007.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein and for other good and valuable consideration, the parties hereby amend the provisions of the 2007 Agreement, as set out below. Except to the extent so amended, all of the provisions of the 2007 Agreement shall remain in full force and effect in accordance with their terms.

The 2007 Agreement is hereby amended, as follows:

1. The second sentence of Section 3 thereof is amended and restated, as follows:

The Base Salary shall be payable in regular payroll installments in accordance with the Company's payroll practices as in effect from time to time (but no less frequently than monthly).

2. Section 6(b) is amended, as follows:

(b) *SERP Participation and Provisions*. The Executive shall continue to participate in The NASDAQ OMX Group, Inc. Supplemental Executive Retirement Plan, as amended and restated effective as of December 31, 2008 (formerly, the Nasdaq Stock Market, Inc. Supplemental Executive Retirement Plan, the "*SERP*"). The Company reserves the right to modify or terminate the SERP at any time. Notwithstanding any term or condition contained in the SERP to the contrary, and subject to the Company's right to modify or terminate the SERP at any time:

(i) Section 5.1 of the SERP shall be applied as if the age and service requirements stated therein were age 49 and four years of service rather than age 55 and ten years of service. Accordingly, the Executive shall be 100% vested in his accrued SERP benefit upon the later of his attainment of age 49 while employed and his completion of four years of service.

(ii) Section 5.1 of the SERP shall be applied as if the age and service requirements stated therein were satisfied upon the Executive's termination of employment by the Company without Cause or by the Executive for Good Reason

pursuant to Section 8(b) below. Accordingly, under such circumstances, the Executive shall be 100% vested in his SERP benefit even if his employment terminates prior to his attaining age 49 and having completed four years of service with the Company.

(iii) The death benefit provided in Sections 8.1 and 8.2 of the SERP shall become payable if the Executive dies before his SERP benefit commences, but after having satisfied the requirements of Section 5.1 of the SERP prior to modification by Section 6(b) (i) above (and, if the foregoing conditions are satisfied, such death benefit will be payable even if the Executive's death occurs after he has left employment *with* vested rights under the SERP, but before payment of the SERP benefit commences).

(iv) Sections 6.4 and 7.4 of the SERP (relating to early retirement) shall apply only if the Executive has at least five years of service; *provided* that this special rule shall not permit the Executive's SERP benefit to start earlier than age 55.

(v) The provisions of this Section 6(b) shall not accelerate the rate at which the SERP benefit accrues so that the amount of the accrued SERP benefit shall be determined with reference to an accrual over a period of 3,650 days as provided in the SERP definition of "Accrued Benefit."

3. Section 7(a) is amended, by the adding the following two sentences to the end there, as follows:

All such reimbursements shall be made no later than the last day of the calendar year following the calendar year in which the Executive incurs the reimbursable expense. Additionally, the amount of expenses eligible for reimbursement during one calendar year may not affect the expenses eligible for reimbursement or any in-kind benefits to be provided in any other calendar year and the right to reimbursement is not subject to liquidation or exchange for another benefit.

4. The final sentence of Section 7(b) is deleted and replaced, as follows:

The Company shall conduct a security audit of up to two of the Executive's personal residences and reimburse the Executive during calendar year 2010 for up to \$50,000 of the cost of upgrading or installing the Executive's home security systems, regardless of whether such expenses were incurred in 2010 or in 2009; provided, however, that, to the extent elected by the Executive in writing no later than December 31, 2008, the Company shall instead reimburse the Executive during calendar year 2009 for up to \$50,000 of the cost incurred in 2009 of upgrading or installing the Executive's home security systems.

5. Section 7(c) is deleted.

6. Clause (i) of the first sentence of Section 8(a) is amended and restated, as follows:

(i) any unpaid Base Salary through the Date of Termination, to be paid in accordance with the Company's payroll practices as described in Section 3 above,

7. Section 8(b)(i)(A) is amended and restated, as follows:

*Severance Payment.* The Company shall pay the Executive an amount (the “*Severance Payment*”) equal to the sum of (I) the Base Salary paid to the Executive with respect to the calendar year immediately preceding the Executive’s Date of Termination and (II) the Annual Bonus for the calendar year immediately preceding the Executive’s Date of Termination, payable in substantially equal monthly installments for the twelve month period following the Executive’s Date of Termination, with the first installment to be paid in the month following the month in which the Date of Termination occurs (the “*Severance Period*”), or, if required to avoid the imposition of tax, interest or penalties under Section 409A of the Internal Revenue Code of 1986, as amended (“*Section 409A*”) beginning on the date that is six months and one day after the date of the Executive’s “separation from service” within the meaning of Section 409A, in which case the first payment shall include all amounts that would have been paid on earlier payroll dates but for such delay.

8. The first sentence of the first paragraph of Section 8(b)(i)(C) is amended and restated, as follows:

The Company shall provide the Executive with continued health care coverage with such cost of coverage to be provided, directly or indirectly, on at least a monthly basis for the lesser of (I) the period of twelve months beginning with the Termination Date or (II) the period beginning with the Termination Date and ending on the date that the Executive is eligible for coverage under the health care plans of a subsequent employer, such coverage to be conditioned upon the Executive (X) being covered by the Company’s health care plans immediately prior to the Date of Termination and (Y) paying his share of the applicable health care premiums, deductibles and co-payments for such period of coverage.

9. Section 8(c)(ii) is amended and restated, as follows:

For purposes of this Agreement, “*Permanent Disability*” means either (i) the inability of the Executive to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months or (ii) the Executive is, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the Company. The Executive shall be deemed Permanently Disabled if he is determined to be (i) totally disabled by the Social Security Administration or (ii) disabled in accordance with a disability insurance program, provided such definition of

disabled under the program complies with the definition of Permanent Disability hereunder. Otherwise, such Permanent Disability shall be certified by a physician chosen by the Company and reasonably acceptable to the Executive (if he is then able to exercise sound judgment).

10. Section 8(g)(i)(C) is amended and restated, as follows:

*Health and Welfare Benefits.* The Company shall provide the Executive with continued health care coverage for the lesser of (I) twenty-four months beginning with the Termination Date or (II) the period beginning with the Termination Date and ending on the date that the Executive is eligible for coverage under the health care plans of a subsequent employer, such coverage to be conditioned upon the Executive (X) being covered by the Company's health care plans immediately prior to the Date of Termination and (Y) paying his share of the applicable health care premiums, deductibles and co-payments for such period of coverage. The foregoing health care benefits are not intended to limit or otherwise reduce any entitlements that Executive may have under COBRA. In addition, the Company shall continue to provide the Executive with the same level of accident (AD&D) and life insurance benefits upon substantially the same terms and conditions (including contributions required by the Executive for such benefits) as existed immediately prior to the Executive's Date of Termination (or, if more favorable to the Executive, as such benefits and terms and conditions existed immediately prior to the Change in Control) for the same period for which the Company shall provide the Executive with continued health care coverage.

11. Clause (B) of the definition of "Change in Control" in Section 8(g) is amended and restated, as follows:

(B) the date on which, within any twelve (12)-month period (beginning on or after the Effective Date), a majority of the directors then serving on the Board are replaced by directors is not endorsed by at least two-thirds ( $\frac{2}{3}$ ) of the members of the Board before the date of appointment or election;

12. Clause (D) of the definition of "Change in Control" in Section 8(g) is amended and restated, as follows:

(D) the consummation of an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets (or any transaction having a similar effect), provided that such agreement or transaction of similar effect shall in all events require the disposition, within any twelve (12)-month period, of at least 40% of the gross fair market value of all of the Company's then assets; other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity, at least 50% of the combined voting power of the voting securities of which are owned directly or indirectly by stockholders of the Company in substantially the same proportions as their ownership of the Company immediately prior to such sale.

13. The paragraph immediately following clause (D) of the definition of “Change in Control” in Section 8(g) is amended and restated, as follows:

Notwithstanding the foregoing, in no event shall a Change in Control be deemed to occur hereunder unless such event constitutes a change in ownership of the Company, a change in effective control of the Company or a change in ownership of a substantial portion of the Company’s assets within the meaning of Section 409A of the Code. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur as a result of any transaction or event which causes the reduction in the Voting Securities held by the NASD below 50% which would not otherwise constitute a Change in Control pursuant to clauses (A) through (D) above.

14. Section 13(i) is amended and restated, as follows:

*Section 409A.* Notwithstanding any other provision of this Agreement, any payment, settlement or benefit triggered by termination of the Executive’s employment with the Company shall not be made until six months and one day following Date of Termination if such delay is necessary to avoid the imposition of any tax, penalty or interest under Section 409A(a). For purposes of this Agreement, termination or severance of employment will be read to mean a “separation from service” within the meaning of Section 409A of the Code where it is reasonably anticipated that no further services would be performed after that date or that the level of services the Executive would perform after that date (whether as an employee or independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed over the immediately preceding thirty-six (36)-month period. The Company, after consulting with the Executive, may amend this Agreement or the terms of any award provided for herein in any manner that the Company considers necessary or advisable to ensure that cash compensation, equity awards or other benefits provided for herein are not subject to United States federal income tax, state or local income tax or any equivalent taxes in territories outside the United States prior to payment, exercise, vesting or settlement, as applicable, or any tax, interest or penalties pursuant to Section 409A. Any such amendments shall be made in a manner that preserves to the maximum extent possible the intended benefits to the Executive. This paragraph 13(i) does not create an obligation on the part of the Company to modify this Agreement and does not guarantee that the amounts or benefits owed under the Agreement will not be subject to interest and penalties under Section 409A. For purposes of this Agreement, all rights to payments and benefits hereunder shall be treated as rights to receive a series of separate payments and benefits to the fullest extent allowed by Section 409A.

15. The second sentence of the second paragraph of section (a) of Exhibit D is amended and restated, as follows:

The reduction of the amounts payable hereunder, if applicable, shall be made by reducing first the payments under Section 8(g)(i)(A), then the payments in 8(g)(i)(B) and 8(g)(i)(C) in that order.

16. The first sentence of the second paragraph of section (b) of Exhibit D is amended and restated, as follows:  
The Reimbursement Payment under this Exhibit D with respect to any Payments shall be made no later than thirty (30) days following such Payment, but no later than the end of the calendar year following the calendar year in which the applicable Excise Tax is remitted to the Federal government.
17. The second sentence of the third paragraph of section (b) of Exhibit D is amended and restated, as follows:  
In the event the amount of the Reimbursement Payment is less than the amount necessary to reimburse Executive for the Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment (together with interest at the rate provided in Section 1274(b)(2)(B) of the Code) shall be promptly paid by the Company to or for the benefit of Executive, but no later than the end of the calendar year following the calendar year in which the applicable Excise Tax is remitted to the Federal government.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the day and year first above written.

/s/ Robert Greifeld

Robert Greifeld

THE NASDAQ OMX GROUP, INC

By: /s/ H. Furlong Baldwin

H. Furlong Baldwin

Chairman, Board of Directors of  
The NASDAQ OMX Group, Inc.

December 31, 2008

[Executive Name]

[Address]

Re: Amended and Restated Letter Agreement

Dear [Name]:

Your letter agreement dated \_\_\_\_\_ has been amended and restated as set forth below to reflect a corporate name change and to comply with regulations pursuant to Section 409A of the Internal Revenue Code of 1986, as amended, effective as of December 31, 2008.

As you may be aware, the Management Compensation Committee of the Board of Directors of The Nasdaq Stock Market, Inc. (renamed The NASDAQ OMX Group, Inc. ("NASDAQ OMX")) approved a policy to provide enhanced severance payments and benefits to certain NASDAQ OMX officers in the event of certain terminations of employment connected with a change in control of NASDAQ OMX. This letter agreement sets forth your rights under this policy.

Payments and benefits provided by this letter agreement are in lieu of any payments or benefits to which you may be entitled under any other NASDAQ OMX severance program. Furthermore, this is not a contract of employment and nothing contained herein shall confer on you any right to be retained, in any position, as an employee, consultant or officer of NASDAQ OMX or any of its affiliates (the "Companies"), and you shall remain an employee-at-will.

1. **Definitions. As used in this letter agreement, the following terms shall have the meanings set forth below:**

- (a) "Board" means the Board of Directors of NASDAQ OMX.
- (b) "Cause" means your (i) conviction of, or pleading *nolo contendere* to, a felony; (ii) conviction of, or pleading *nolo contendere* to any misdemeanor involving the purchase or sale of any security, mail or wire fraud, theft, embezzlement, moral turpitude or property of the Companies; (iii) material neglect of, willful misconduct in connection with, or breach of, your duties

to the Companies as an employee, including, without limitation, your obligations to protect the confidentiality of material non public information that you have obtained in the course of your employment, as well as your obligations under The NASDAQ OMX Code of Conduct, as may be amended from time to time.

- (c) “Change in Control” means the first to occur of any one of the following events:
- (i) any “Person,” as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) (other than (A) NASDAQ OMX, (B) any Person who becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of NASDAQ OMX’s then outstanding securities eligible to vote in the election of the Board (“Voting Securities”) as a result of a reduction in the number of Voting Securities outstanding due to the repurchase of Voting Securities by NASDAQ OMX unless and until such Person, after becoming aware that such Person has become the beneficial owner of more than 50% of the then outstanding Voting Securities, acquires beneficial ownership of additional Voting Securities representing 1% or more of the Voting Securities then outstanding, (C) any trustee or other fiduciary holding securities under an employee benefit plan of NASDAQ OMX, (D) any entity owned, directly or indirectly, by the stockholders of NASDAQ OMX in substantially the same proportions as their ownership of Voting Securities, and (E) the Financial Industry Regulatory Authority (“FINRA”) formerly National Association of Securities Dealers, Inc. or its affiliates or subsidiaries, is or becomes the beneficial owner, directly or indirectly, of more than 50% of the Voting Securities (not including any securities acquired directly (or through an underwriter) from NASDAQ OMX or the Companies);
  - (ii) the date on which, within any twelve (12) month period, a majority of the directors then serving on the Board are replaced by directors not endorsed by at least two-thirds ( $\frac{2}{3}$ ) of the members of the Board before the date of appointment or election;
  - (iii) there is consummated a merger or consolidation of NASDAQ OMX with any other corporation or entity or NASDAQ OMX issues Voting Securities in connection with a merger or consolidation of any direct or indirect subsidiary of NASDAQ OMX with any other corporation, other than (A) a merger or consolidation that would result

in the Voting Securities outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into Voting Securities of the surviving or parent entity) more than 50% of NASDAQ OMX's then outstanding Voting Securities or more than 50% of the combined voting power of such surviving or parent entity outstanding immediately after such merger or consolidation or (B) a merger or consolidation effected to implement a recapitalization of NASDAQ OMX (or similar transaction) in which no Person, directly or indirectly, acquired more than 50% of NASDAQ OMX's then outstanding Voting Securities (not including any securities acquired directly (or through an underwriter) from NASDAQ OMX or the Companies); or

- (iv) the consummation of an agreement for the sale or disposition by NASDAQ OMX of all or substantially all of NASDAQ OMX's assets (or any transaction having a similar effect), provided that such agreement or transaction of similar effect shall in all events require the disposition, within any twelve (12) month period, of at least 40% of the gross fair market value of all of NASDAQ OMX's then assets; other than a sale or disposition by NASDAQ OMX of all or substantially all of NASDAQ OMX's assets to an entity, at least 50% of the combined voting power of the voting securities of which are owned directly or indirectly by stockholders of NASDAQ OMX in substantially the same proportions as their ownership of NASDAQ OMX immediately prior to such sale.

Notwithstanding the foregoing, in no event shall a Change in Control be deemed to occur hereunder unless such event constitutes a change in ownership of NASDAQ OMX, a change in effective control of NASDAQ OMX or a change in ownership of a substantial portion of NASDAQ OMX's assets within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"). Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (i) as a result of the redemption of Series D Preferred Stock of NASDAQ OMX held by FINRA (formerly "NASD") upon the Securities Exchange Commission's approval of NASDAQ OMX's application for registration as a national securities exchange pursuant to Section 19(a) of the Exchange Act or (ii) any other transaction or event which causes, or did cause, the reduction in the Voting Securities held by FINRA below 50% which would not otherwise constitute a Change in Control pursuant to clauses (i) through (iv) above.

- (d) “Disability” shall mean a disability that would qualify as such under NASDAQ OMX’s long term disability plan applicable to you at the time of your termination.
  - (e) “Good Reason” means, without your express consent, NASDAQ OMX’s material reduction of your position, duties or authority as they existed immediately prior to a Change in Control.
  - (f) “Qualifying Termination” means a termination of your employment (i) by NASDAQ OMX other than for Cause or (ii) by you for Good Reason. Termination of your employment on account of death, Disability or Retirement shall not be treated as a Qualifying Termination.
  - (g) “Retirement” means your voluntary termination of employment at a time when you would be eligible to begin receiving benefits under The NASDAQ OMX Group, Inc. Pension Plan (the “Retirement Plan”).
2. **Payments Upon Termination of Employment following a Change in Control.** If, within the period beginning on a Change in Control and ending one (1) year following such Change in Control, your employment with NASDAQ OMX terminates pursuant to a Qualifying Termination, you shall be entitled to the following payments and benefits; provided that the payments and benefits under Section 2(a), 2(b) and 2(c), and the continuation of the benefits under Sections 2(d) and 2(f), shall be contingent upon your execution and delivery to NASDAQ OMX, prior to the first day of the seventh (7<sup>th</sup>) month following your Qualifying Termination, of a release in favor of the Companies substantially in the form annexed hereto as Exhibit A.
- (a) Severance. On the first day of the seventh (7<sup>th</sup>) month following your Qualifying Termination, NASDAQ OMX shall pay you a lump sum cash payment equal to 50% of your annual salary at the rate in effect on the date of your Qualifying Termination. In addition, beginning on the first day of the seventh (7<sup>th</sup>) month following your Qualifying Termination, NASDAQ OMX shall begin making biweekly payments to you in accordance with NASDAQ OMX’s regular payroll practices at your rate of annual salary as in effect on the date of your Qualifying Termination and these payments shall continue for a period of eighteen (18) months thereafter.
  - (b) Incentive Compensation. Notwithstanding any provision of The NASDAQ OMX Group, Inc. Executive Corporate Incentive Plan (the “Incentive Plan”) to the contrary, NASDAQ OMX shall pay you on the first day of the seventh (7<sup>th</sup>) month following your Qualifying Termination a lump sum cash payment equal to the sum of (i) any unpaid “Award” (as that term is defined in the

Incentive Plan) which has been allocated or awarded to you for a completed “Plan Year” (as that term is defined in the Incentive Plan), and (ii) 100% of your “Individual Target Award” (as that term is defined in the Incentive Plan) for the Plan Year in which your Qualifying Termination occurs, or if such Individual Target Award has not yet been established for such Plan Year, 100% of your Individual Target Award for the Plan Year prior to the year in which the Qualifying Termination occurs.

- (c) Equity Compensation. As set forth in The NASDAQ OMX Group Inc., Equity Incentive Plan (“Equity Plan”), as may be amended, all of your outstanding options which have not vested as of the date of your Qualifying Termination shall become immediately vested and remain exercisable for the longer of the period provided in the applicable award agreement pursuant to which such options were granted or ninety (90) days, but in no event beyond the Expiration Date of such option. Similarly, all outstanding restricted stock awards shall become immediately vested and nonforfeitable. Other than as provided in this Section 2(c), options and restricted stock awards shall continue to be subject to the applicable terms of the Equity Plan and the agreements pursuant to which they were granted.
- (d) Health and Welfare Benefits.
- (i) Provided that you timely elect continuation coverage (as defined in the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”)) under NASDAQ OMX’s medical and dental plans as in effect at the time of your Qualifying Termination, NASDAQ OMX shall pay all COBRA premiums for you and your dependents under such plans (or any successor plans) until the earliest of (x) the termination of your COBRA continuation coverage period, (y) the end of the 24th month following the date of your Qualifying Termination, or (z) the date you secure subsequent employment with comparable medical and dental coverage.
- (ii) NASDAQ OMX shall continue to provide you, for 24 months following your Qualifying Termination, with the same level of accident (AD&D) and life insurance benefits upon substantially the same terms and conditions (including contributions required by you for such benefits) as existed immediately prior to the date of your Qualifying Termination (or, if more favorable to you, as such benefits and terms and conditions existed immediately prior to the Change in Control).

- (e) **Retirement Benefits.** Your vested accrued benefits under the Retirement Plan and The NASDAQ OMX Group, Inc. Supplemental Executive Retirement Plan (the “SERP”) shall be distributed in the time, form and manner as you elect pursuant to the applicable provisions of such plans.
  - (f) **Outplacement Services.** NASDAQ OMX shall provide you with outplacement services suitable to your position for a period of 12 months following your Qualifying Termination or, if earlier, until your first acceptance of an offer of employment; provided that if such outplacement services are provided by a third party, NASDAQ OMX shall pay the cost of such outplacement services to the third party no later than the last day of the third calendar year following the calendar year in which such Qualifying Termination occurs.
3. **Payments Upon Termination of Employment in Anticipation of a Change in Control.** If (i) your employment is terminated during the 180 day period immediately prior to a Change in Control under circumstances that would have constituted a Qualifying Termination if they had occurred following a Change in Control; (ii) you reasonably demonstrate that such termination (or Good Reason event) was at the request of a third party who had indicated an intention or taken steps reasonably calculated to effect a Change in Control; and (iii) a Change in Control involving such third party (or a party competing with such third party to effectuate a Change in Control) does occur (“Anticipatory Termination”), you shall be entitled to the payments and benefits set forth in this Section 3, provided that the payments and benefits under Sections 3(a) and 3(b), and continuation of the benefits under Sections 3(d) and 3(f), shall be contingent upon your execution and delivery to NASDAQ OMX, prior to the first day of the seventh (7th) month following your Qualifying Termination, of a release in favor of the Companies substantially in the form annexed hereto as Exhibit A.
- Notwithstanding the foregoing, if you are terminated by NASDAQ OMX without Cause, and such termination is not an Anticipatory Termination or does not occur within the 12 months following a Change in Control, then NASDAQ OMX’s regular severance policy (“Regular Severance Policy”), including health benefit continuation, shall apply in lieu of this Section 3. If any such termination is later deemed an Anticipatory Termination, and such determination is made prior to the first day of the seventh (7th) month following your Anticipatory Termination, the terms of this Section 3 shall apply, but the payments and benefits provided in this Section 3 shall be offset and reduced for any payments or benefits you have already received under the Regular Severance Policy; provided, however, that the benefits under Section 3(d)(ii) shall only be provided for the remainder of the period specified in Section 3(d)(ii), determined as if NASDAQ

OMX had commenced such benefits following the date of your Anticipatory Termination. If, notwithstanding “prompt and reasonable good faith efforts” (within the meaning of Section 409A of the Code) by you to receive payments and benefits provided in this Section 3, any such termination is not deemed to be an Anticipatory Termination until after the first day of the seventh (7th) month following your Anticipatory Termination, and subject to offset and reduction for any payments or benefits you have already received under the Regular Severance Policy, (i) benefits under Sections 3(a) and Section 3(b) that are otherwise to be paid in single lump sum payments shall be paid to you in full no later than the end of your first taxable year in which such determination is made, (ii) with respect to any benefit under Section 3(a) that is otherwise to be paid in biweekly payments in accordance with NASDAQ OMX’s regular payroll practices, all biweekly payments that are in arrears shall be paid in full to you no later than the end of your first taxable year in which such determination is made, and (iii) benefits under Sections 3(d)(i), 3(d)(ii) and 3(f) shall be provided for the remainder of the period specified in Sections 3(d)(i), 3(d)(ii) and 3(f), as applicable, determined as if NASDAQ OMX had commenced such benefits following the date of your Anticipatory Termination.

- (a) Severance. On the first day of the seventh (7th) month following your Anticipatory Termination, NASDAQ OMX shall pay you a lump sum cash payment equal to 50% of your annual salary at the rate in effect on the date of your Anticipatory Termination. In addition, beginning on the first day of the seventh (7th) month following your Anticipatory Termination, NASDAQ OMX shall begin making biweekly payments to you in accordance with NASDAQ OMX’s regular payroll practices at your rate of annual salary as in effect on the date of your Anticipatory Termination and these payments shall continue for a period of eighteen (18) months thereafter.
- (b) Incentive Compensation. Notwithstanding any provision of the Incentive Plan to the contrary, NASDAQ OMX shall pay you on the first day of the seventh (7th) month following your Anticipatory Termination a lump sum cash payment equal to the sum of (i) any unpaid Award which has been allocated or awarded to you for a completed Plan Year and (ii) 100% of your Individual Target Award for the Plan Year in which your Anticipatory Termination occurs, or if such Individual Target Award has not yet been established for such Plan Year, 100% of your Individual Target Award for the Plan Year prior to the year in which the Anticipatory Termination occurs.
- (c) Equity Compensation. Your stock options and restricted stock awards under the Equity Plan shall be governed by the Equity Plan and the applicable terms of the agreements pursuant to which they were granted.

- (d) **Health and Welfare Benefits.**
- (i) Provided that you timely elect COBRA continuation coverage under NASDAQ OMX's medical and dental plans as in effect at the time of your Anticipatory Termination, NASDAQ OMX shall pay all COBRA premiums for you and your dependents under such plans (or any successor plans) until the earliest of (x) the termination of your COBRA continuation coverage period, (y) the end of the 24th month following the date of your Anticipatory Termination, or (z) the date you secure subsequent employment with comparable medical and dental coverage.
  - (ii) NASDAQ OMX shall continue to provide you, for 24 months following your Anticipatory Termination, with the same level of accident (AD&D) and life insurance benefits upon substantially the same terms and conditions (including contributions required by you for such benefits) as existed immediately prior to the date of your Anticipatory Termination (or, if more favorable to you, as such benefits and terms and conditions existed immediately prior to the Change in Control).
- (e) **Retirement Benefits.** Your accrued vested benefits under the Retirement Plan and the SERP shall be distributed in the time, form and manner as you elect pursuant to the applicable provisions of such plans.
- (f) **Outplacement Services.** NASDAQ OMX shall provide you with outplacement services suitable to your position for a period of 12 months following your Anticipatory Termination or, if earlier, until your first acceptance of an offer of employment; provided that if such outplacement services are provided by a third party, NASDAQ OMX shall pay the cost of such outplacement services to the third party no later than the last day of the third calendar year following the calendar year in which such Anticipatory Termination occurs.
4. **Withholding Taxes.** NASDAQ OMX may withhold from all payments or benefits due to you hereunder or under any other plan or arrangement of the Companies all taxes which, by applicable federal, state, local or other law, NASDAQ OMX determines it is required to withhold therefrom.

5. **Parachute Payment Taxes.** It is the intention of both you and of the Companies that no payments by NASDAQ OMX to or for the benefit of you under this letter agreement or any other agreement or plan, if any, pursuant to which you are entitled to receive payments or benefits shall be nondeductible to NASDAQ OMX by reason of the operation of Section 280G of the Internal Revenue Code of 1986, as amended (the "Code") relating to parachute payments or be subject to an excise tax by reason of Section 4999 of the Code. Accordingly, and notwithstanding any other provision of this letter agreement or any such agreement or plan, if by reason of the operation of said Section 280G, any such payments or benefits exceed the amount which can be deducted by NASDAQ OMX, such payments or benefits, to the extent otherwise immediately taxable to you, shall be reduced to the maximum amount which can be deducted by NASDAQ OMX. To the extent that there is more than one method of reducing the payments or benefits to bring them within the limitations of said Section 280G, NASDAQ OMX shall determine which method shall be followed.
6. **Covenants.** As a condition precedent to and in consideration of your receipt of the payments and benefits set forth above:
- (a) You agree to return all property of the Companies to your manager. This includes (i) all documents, data, materials, details, and copies thereof in any form (electronic or hard copy) that are the property of the Companies or were created using the Companies resources or during any hours worked for the Companies including, without limitation, any data referred to in Section 6(e) and (ii) all other property of the Companies including, without limitation, all computer equipment, and associated passwords, property passes, keys, hardware keys, credit cards, and identification badges.
  - (b) You agree that you shall not directly recruit or solicit any current employee of the Companies to leave the employ of the Companies for one year following the date of your Qualifying Termination or Anticipatory Termination, as applicable. The term "directly" as used in this Section 6(b) shall mean that you shall not initiate such discussions with a current employee of the Companies.
  - (c) You agree to cooperate with the Companies and to provide all information that the Companies may hereafter reasonably request with respect to any matter involving your present or former relationship with the Companies, the work you have performed, or present or former employees of the Companies so long as such requests do not unreasonably interfere with any other job or important personal activity in which you are engaged. NASDAQ OMX agrees to reimburse you for all reasonable out-of-pocket costs you incur in connection therewith.

- (d) You agree that, with regard to all confidential technical, business, tax, financial or proprietary knowledge and information you have obtained while employed by any of the Companies (“Proprietary Information”), you will not at any time disclose any such Proprietary Information to any person, firm, corporation, association, governmental agency, employee, or entity or use any such Proprietary Information for your own benefit or for the benefit of any other person, firm, corporation or other entity, except the Companies and except as may be required by court order or subpoena. You agree to notify the NASDAQ OMX Office of General Counsel at the address noted above as soon as practicable after your receipt of such a court order or subpoena. For purposes of this letter agreement, the term “Proprietary Information” does not include information that is in the public domain. For purposes of this letter agreement, the term “Proprietary Information” shall include, but not be limited to, non-public aspects of all information about or relating to the Companies which:
- (i) relates to specific matters such as trade secrets, pricing and advertising techniques or strategies, research and development activities, software development, market development, exchange registration, the Companies’ costs, expenses, human resources or other employment issues, matters relating to pending litigation, any matters pertaining to pending, past or future mergers, studies, market penetration plans, listing retention plans and strategies, marketing plans and strategies, financial information, communication and/or public relations products, plans, programs, and strategies, financial formulas and methods relating to the Companies’ business, computer software programs, accounting policies and practices, tax information, information from and about tax returns, tax strategies, policies and methods, and all strategic plans or other matters, strategies, and financial or operating information pertaining to clients, lenders, customers, counsel, or transactions as they may exist from time to time which you may have acquired or obtained directly or indirectly by virtue of your employment with any of the Companies; and/or,
  - (ii) is known to you from your confidential employment relationship with the Companies.

The information described above shall be presumed to constitute "Proprietary Information," except to the extent that the same information: (i) was known to you prior to your employment with the Companies as evidenced by written records in your possession prior to such disclosure; (ii) was lawfully disclosed to you following the end of your employment with the Companies by a third party under no obligation of confidentiality; and (iii) is generally known and available to all persons in the securities industry.

- (e) You agree that you shall not issue, circulate, publish or utter any false or disparaging, statement, remarks, opinions or rumors about NASDAQ OMX or its shareholders or any of the Companies unless giving truthful testimony under subpoena or court order. Notwithstanding the preceding or any other provision of this letter agreement to the contrary, you may provide truthful information to any governmental agency or self-regulatory organization with or without subpoena or court order. With the exception of communications made in a private corporate communication as an employee or consultant with regard to a listing decision of your employer or your consulting client, you agree that public communications regarding a preference for listing a security on a market other than NASDAQ OMX, that the quality of NASDAQ OMX as a securities market is in any way inferior to any other securities market or exchange, and/or that the regulatory efforts and programs of NASDAQ OMX or the NASD are or have been lax in any way, are specifically defined as disparaging and will constitute a material breach of this letter agreement by you. Notwithstanding the foregoing, nothing in this Section 6(e) shall prevent you from making good faith, factual and truthful statements related to listing on NASDAQ OMX as long as your statements are not based on Proprietary Information.
- (f) You agree that for one year following the date of your Qualifying Termination or Anticipatory Termination, as applicable, you will not, directly or indirectly, (i) engage in any "Competitive Business" (as defined below) for your own account, (ii) enter the employ of, or render any services to, any person engaged in a Competitive Business, (iii) acquire a financial interest in, or otherwise become actively involved with, any person engaged in a Competitive Business, directly or indirectly, as an individual, partner, shareholder, officer, director, principal, agent, trustee or consultant, or (iv) interfere with business relationships (whether formed before or after the date of this letter agreement) between NASDAQ OMX and customers or suppliers of NASDAQ OMX. For purposes of this letter agreement, "Competitive Business" shall mean (x) any national securities

exchange registered with the Securities and Exchange Commission, (y) any electronic communications network or (z) any other entity that engages in substantially the same business as NASDAQ OMX, in each case in North America or in any other location in which NASDAQ OMX operates.

- 7 **Breach of Agreement.** If you materially breach or threaten to materially breach this letter agreement, including but not limited to your obligations in Section 6, above and/or commence a suit or action or complaint in contravention of the release attached as Exhibit A, you acknowledge that the Companies' obligation to make the payments and/or provide the benefits referred to above shall immediately cease, and that the Companies shall have, in addition to all other rights or remedies provided in law or in equity by reason of your material breach, the right to seek the return of all payments and benefits paid pursuant to this letter agreement unless prohibited by applicable law or regulation. You specifically agree and acknowledge that the Companies, after affording you reasonable, written notice of the material breach or threatened material breach of this letter agreement and of the reasonable opportunity to cure, has the right to cease performing their obligations under this letter agreement in advance of any determination of material breach by a court of competent jurisdiction. If the Companies cease performing their obligations due to such material breach or threatened material breach and a court of competent jurisdiction later determines that such action was without right, the Companies agree to pay you all monies thus withheld plus simple interest at the prime rate in effect at the time the payments ceased and your reasonable costs and expenses incurred in such action (including attorney fees), and you agree to accept this as your exclusive remedy therefore, as follows: (A) any benefit under Sections 2(a) and 2(b) or Sections 3(a) and 3(b), as applicable, that are otherwise to be paid in a single lump sum payment, shall, to the extent not otherwise previously paid to you, be paid to you in full (together with applicable interest) no later than the end of your first taxable year in which such determination is made and (ii) any benefit under Section 2(a) or Section 3(a), as applicable, that is otherwise to be paid in biweekly payments in accordance with NASDAQ OMX's regular payroll practices and which have not previously been paid to you in accordance with Section 2(a) or 3(a), as applicable, shall be paid to you in full (together with applicable interest) in a single lump payment no later than the end of your first taxable year in which such determination is made. Any reimbursement to you of the reasonable costs and expenses incurred in such action shall be made no later than March 15 following the end of the calendar year in which the final decision relating to such action is rendered. If the Companies cease performing their obligations due to such material breach or threatened material breach and a court of competent jurisdiction later determines

that a breach occurred and that such action was thus appropriate and permitted under this letter agreement, you agree to pay, in addition to such other costs as the court may direct, all of the Companies' reasonable costs and expenses, including attorney's fees, unless prohibited by applicable law or regulation.

- 8 **Binding Agreement; Successors.** This letter agreement shall not be terminated by any Change in Control. In the event of any Change in Control, the provisions of this letter agreement shall be binding upon the surviving corporation, and such surviving corporation shall be treated as NASDAQ OMX hereunder. This letter agreement shall inure to the benefit of and be enforceable by your personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If you die while any amounts would be payable to you hereunder had you continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this letter agreement to such person or persons appointed in writing by you to receive such amounts or, if no person is so appointed, to your estate.
- 9 **Governing Law and Miscellaneous.** The law of the State of New York shall govern this letter agreement without giving effect to its conflict of law principles. Should a court of competent jurisdiction find that any provision of this letter agreement is void, voidable, illegal, or unenforceable, no other provision shall be affected thereby and the balance shall be interpreted in a manner that gives effect to the intent of the parties. The parties agree that the normal rule of construction that holds that all ambiguities are construed against the drafting party will not apply to the interpretation of this letter agreement. You and NASDAQ OMX acknowledge that this, along with the release attached as Exhibit A, and any award agreements you entered into under the Equity Plan, is our entire agreement. We further acknowledge that the headings in this letter agreement are for convenience only and have no bearing on the meaning of this letter agreement

This letter, effective as of December 31, 2008, supercedes all prior agreements between the parties with respect to the subject matter contained herein. Please sign and date this letter agreement and return the signed copy to: Office of General Counsel, 9600 Blackwell Road, Rockville, MD 20850.

Sincerely,

Robert Greifeld  
Chief Executive Officer

Agreed and Acknowledged:

\_\_\_\_\_  
[Executive]

\_\_\_\_\_  
Date

## GENERAL EXECUTIVE RELEASE AND WAIVER

Reference is made to that certain Change in Control Severance Agreement (the "CIC Agreement") entered into as of December 31, 2008, by and between The NASDAQ OMX Group, Inc. ("NASDAQ OMX") and you. Capitalized terms not defined herein shall have the meaning ascribed to such terms in the CIC Agreement.

**FOR GOOD AND VALUABLE CONSIDERATION**, as set forth in the CIC Agreement (which is incorporated herein by reference as if set forth fully herein and made a part hereof), the receipt, sufficiency and adequacy of which is hereby acknowledged by your signature below, you agree as follows:

1. **Acknowledgment and Release.** You hereby accept the separation package provided under the CIC Agreement and hereby release, discharge, and agree to hold harmless the Companies, their predecessors, successors, their boards of directors and their members, employees, officers, parent, shareholders, employee benefit plans and their Plan Administrators, trusts, trustees, heirs, successors, and assigns (hereinafter referred to in this Release collectively as the "Releasees"), from all claims, liabilities, demands, and causes of action at law or equity, known or unknown, fixed or contingent, which you have, may have, will have, or claim to have against the Releasees as a result of your employment and/or this separation and the conclusion of your employment with the Releasees at any time up to and including the date of the execution of this letter agreement, excluding all claims that arise out of an asserted breach of the CIC Agreement. Your agreement pursuant to this General Executive Release and Waiver is hereinafter referred to as the "Release". This includes, but is not limited to, claims arising under federal, state, or local laws prohibiting employment discrimination, including Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, as amended (including the Older Workers Benefit Protection Act), the Employment Retirement Income Security Act of 1974, as amended, the Equal Pay Act, the Fair Labor Standards Act, as amended, the District of Columbia Human Rights Act, as amended, the Maryland Human Relations Act, the New York Executive Law, as amended, the New York City Administrative Code, as amended, the New York Labor Law, as amended, the District of Columbia Wage Payment and Wage Collection Law, as amended, the Maryland Wage Payment and Collection Act, as amended, claims growing out of any legal restrictions on an employer's right to terminate its employees in any jurisdiction, such as claims for wrongful or constructive discharge, breach of any express or implied contract, and/or any claims on any

basis whatsoever regarding your status, pay, position, or title while employed by the Releasees. Excluded from this Release are claims which cannot be lawfully waived, including the right to file an administrative charge of discrimination with federal or state agencies. You are, however, waiving all rights to monetary recovery in connection with any such charge.

You specifically promise not to sue the Releasees in any forum for any of the above-mentioned claims, except that you may bring a lawsuit to challenge the validity of this letter agreement under the Age Discrimination in Employment Act ("ADEA"). If you violate this covenant, you will be required to pay the Releasees' defense costs, including its reasonable fees; alternatively, at NASDAQ OMX's option, NASDAQ OMX's remaining obligations to pay severance money and/or benefits under the CIC Agreement shall cease, and you will be required to repay to NASDAQ OMX upon demand all but \$100.00 (one hundred dollars) of the payments and other benefits you received under the CIC Agreement. The above payment/repayment provisions do not apply in the event you sue the Releasees under the ADEA.

- 10 **Governing Law.** The law of the State of New York shall govern this Release without giving effect to its conflict of law principles. Should a court of competent jurisdiction find that any provision of this Release is void, voidable, illegal, or unenforceable, no other provision shall be affected thereby and the balance shall be interpreted in a manner that gives effect to the intent of the parties. The parties agree that the normal rule of construction that holds that all ambiguities are construed against the drafting party will not apply to the interpretation of this Release.

The parties acknowledge that this, along with the CIC Agreement, and any award agreements you entered into under the Equity Plan, is our entire agreement. We further acknowledge that the headings in this Release are for convenience only and have no bearing on the meaning of this Release.

- 11 **Time to Consider.** You acknowledge that you have been advised that you have twenty-one (21) days from the date of receipt of this Release to consider all the provisions of the Release and do hereby knowingly and voluntarily waive said given twenty-one day period. YOU FURTHER ACKNOWLEDGE THAT YOU HAVE READ THE RELEASE CAREFULLY, HAVE BEEN ADVISED BY NASDAQ OMX TO, AND HAVE IN FACT, CONSULTED AN ATTORNEY, AND FULLY UNDERSTAND THAT BY SIGNING BELOW YOU ARE GIVING UP CERTAIN RIGHTS WHICH YOU MAY HAVE TO SUE OR ASSERT A CLAIM AGAINST THE RELEASEES AS DESCRIBED HEREIN. YOU ACKNOWLEDGE THAT YOU HAVE NOT BEEN FORCED OR PRESSURED IN ANY MANNER WHATSOEVER TO SIGN THIS RELEASE AND AGREE TO ALL OF ITS TERMS VOLUNTARILY.

12 **Revocation.** You shall have seven (7) days from the date of your execution of the Release to revoke the Release, with respect to all claims referred to herein (including, without limitation, any and all claims arising under ADEA). If you revoke the Release, NASDAQ OMX will not be obligated to honor its obligations under the CIC Agreement.

13 **No Admission.** This Release does not constitute an admission of liability or wrongdoing of any kind by you or the Releasees.

If you agree to the foregoing, please sign the enclosed copy of this Release in the space provided below and return it to me.

Very truly yours,

The NASDAQ OMX Group, Inc.

By: \_\_\_\_\_

By signing below, I, \_\_\_\_\_, certify that I have read, carefully reviewed, fully understand, and agree to all the provisions of this Release, which, along with the CIC Agreement, any award agreements I entered into under the Equity Plan sets forth the entire agreement and understanding between NASDAQ OMX and me. I acknowledge that I have not relied upon any representation or statement, written or oral, not set forth in such documents.

\_\_\_\_\_ Date: \_\_\_\_\_

cc: Human Resources  
Office of General Counsel

AMENDMENT NO. 2 TO  
EMPLOYMENT AGREEMENT

THIS AMENDMENT (the "*Amendment*") is entered as of December 31, 2008, by and between The NASDAQ OMX Group, Inc. (the "*Company*") and Edward Knight (the "*Executive*").

WHEREAS, the Executive and the Company (f/k/a/ The Nasdaq Stock Market, Inc.) entered into an employment agreement, dated as of December 29, 2000, as subsequently amended by Amendment Number One, effective as of February 1, 2002 (the "*Agreement*"); and

WHEREAS, the Executive and the Company now desire to amend the Agreement so as to reflect the provisions of Section 409A of the Internal Revenue Code and the final regulations issued thereunder, which amendment is to be effective as of December 31, 2008.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein and for other good and valuable consideration, the parties hereby amend the provisions of the Agreement, as set out below. Except to the extent so amended, all of the provisions of the Agreement shall remain in full force and effect in accordance with their terms.

The Agreement is hereby amended, as follows:

1. The second sentence of Section 3 thereof is amended and restated, as follows:

Base Salary shall be payable in regular installments in accordance with the Company's usual payroll practices as in effect from time to time (but no less frequently than monthly).

2. The last sentence of Section 4 is amended and restated, as follows:

Incentive Compensation for each calendar year shall be paid in the following calendar year, at the same time as the Company pays Incentive Compensation awards to other executives, but in no event later than the March 1<sup>st</sup> following the calendar year with respect to which the Incentive Compensation relates.

3. Section 5(b) is amended and restated, as follows:

(b) SERP Enhancements. The Executive shall be entitled to continue to participate in The NASDAQ OMX Group, Inc. Supplemental Executive Retirement Plan, as amended and restated effective as of December 31, 2008 (formerly, the Nasdaq Stock Market, Inc. Supplemental Executive Retirement Plan, the "SERP"). Notwithstanding any term or condition contained in the SERP to the contrary:

(i) Section 5.1 of the SERP shall be applied as if the age and service requirements stated therein were age 55 and five (5) years of service rather than age 55 and ten (10) years of service. Accordingly, the Executive shall be 100% vested in his accrued SERP benefit upon the later of his attainment of age 55 while employed and his completion of five (5) years of service.

(ii) Section 5.1 of the SERP shall be applied as if the age and service requirements stated therein were satisfied upon the Executive's termination of employment prior to the end of the Employment Term (x) on account of his death or Disability (as defined in Section 9(b) hereof), (y) by the Company without Cause pursuant to Section 9(c) hereof, or (z) by the Executive for Good Reason pursuant to Section 9(c) hereof. Accordingly, under such circumstances the Executive shall be 100% vested in his SERP benefit even if his employment terminates prior to his attaining age 55 and having completed five (5) years of service with the Company.

(iii) The death benefit provided in Sections 8.1 and 8.2 of the SERP shall become payable if the Executive dies before his SERP benefit commences, but after having satisfied the requirements of Section 5.1 of the SERP as modified by Section 5(b)(i) or (ii) (and if the foregoing conditions are satisfied, such death benefit will be payable even if the Executive's death occurs after he has left employment with the Company with vested SERP rights, but before the SERP benefit commences).

(iv) Sections 6.4 and 7.4 of the SERP (relating to early retirement) shall apply only if the Executive has at least five (5) years of service; provided, that this special rule shall not permit the Executive's SERP benefit to start earlier than age 55.

(v) The special provisions of this Section 5(b) shall not accelerate the rate at which the SERP benefit accrues so that the amount of the accrued SERP benefit shall be determined with reference to an accrual over a period of 3,650 days as provided in the SERP definition of "Accrued Benefit."

4. Section 7 is amended, by the adding a new paragraph (d) to the end thereof, as follows:

(d) Time of Reimbursements/In-Kind Benefits

Any reimbursements provided for under this Section 7 shall be made no later than the last day of the calendar year following the calendar year in which the Executive incurs the reimbursable expense. Additionally, the amount of expenses eligible for reimbursement, or the in-kind benefits to be provided, during one calendar year may not affect the expenses eligible for reimbursement, or the in-kind benefits to be provided, in any other calendar year and the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

5. The third sentence of Section 9(a) is amended and restated, as follows:

If the Executive is terminated for Cause, he shall be entitled to receive his unpaid Base Salary through the date of termination, to be paid in accordance with the Company's usual payroll practices as described in Section 3 above.

6. The second paragraph of Section 9(b) is hereby amended by adding immediately after the first sentence thereof, the following new sentence:  
Such amount shall be paid in a lump sum within thirty (30) days following the termination date.
7. The third to last sentence of Section 9(c) is amended and restated, as follows:  
All amounts described in the two preceding sentences shall be paid in a lump sum within thirty (30) days following the termination date.
8. The second to last sentence of Section 9(c) is amended and restated, as follows:  
The Company shall provide the Executive with continued health care coverage with such cost of coverage to be provided, directly or indirectly, by the Company on at least a monthly basis for the Severance Period.
9. The second sentence of Section 9(d) is amended and restated, as follows:  
Upon a termination by the Executive pursuant to this Section 9(d), the Executive shall be entitled to receive his unpaid Base Salary through the date of termination, to be paid in accordance with the Company's usual payroll practices as described in Section 3 above.
10. The first sentence of Section 9(f)(ii)(B) is amended and restated, as follows:  
If a Gross-Up Payment is determined to be payable, it shall be paid to the Executive within twenty (20) days after the Determination (and all accompanying calculations and other material supporting the Determination) is delivered to the Company by the Accounting Firm, but in no event later than the end of the calendar year following the calendar year in which the applicable Excise Tax is remitted to the Federal government.
11. The last sentence of Section 9(f)(ii)(C) is amended and restated, as follows:  
In the case of an Underpayment, the amount of such Underpayment (together with any interest and penalties payable to the Executive as a result of such Underpayment) shall be promptly paid by the Company to or for the benefit of Executive, but in no event later than the end of the calendar year following the calendar year in which the applicable Excise Tax is remitted to the Federal government.

12. Section 13 is amended by adding a new paragraph (j) to read as follows:

(j) Section 409A. Notwithstanding any other provision of this Agreement, any payment, settlement or benefit triggered by termination of the Executive's employment with the Company shall not be made until six months and one day following the date of termination if such delay is necessary to avoid the imposition of any tax, penalty or interest under Section 409A of the Code. For purposes of this Agreement, termination or severance of employment will be read to mean a "separation from service" within the meaning of Section 409A of the Code where it is reasonably anticipated that no further services would be performed after that date or that the level of services the Executive would perform after that date (whether as an employee or independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed over the immediately preceding thirty-six (36)-month period. The Company, after consulting with the Executive, may amend this Agreement or the terms of any award provided for herein in any manner that the Company considers necessary or advisable to ensure that cash compensation, equity awards or other benefits provided for herein are not subject to any additional tax, interest or penalties pursuant to Section 409A. Any such amendments shall be made in a manner that preserves to the maximum extent possible the intended benefits to the Executive. This paragraph 13(j) does not create an obligation on the part of the Company to modify this Agreement and does not guarantee that the amounts or benefits owed under the Agreement will not be subject to taxation, interest or penalties under Section 409A. For purposes of this Agreement, all rights to payments and benefits hereunder shall be treated as rights to receive a series of separate payments and benefits to the fullest extent allowed by Section 409A.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the day and year first above written.

By: /s/ Edward Knight  
Edward S. Knight

THE NASDAQ OMX GROUP, INC

By: /s/ H. Furlong Baldwin  
H. Furlong Baldwin  
Chairman, Board of Directors of  
The NASDAQ OMX Group, Inc.

**SHARE PURCHASE AGREEMENT**

**Dated 21 February 2008**

**Between**

**Nord Pool ASA**

(as Seller)

**And**

**OMX AB (publ)**

(as Buyer)

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8.1	Interim Cooperation Agreement

**PURCHASE AGREEMENT**

This agreement (the "**Agreement**") is entered into the 21 day of February 2008 between:

- (1) **Nord Pool ASA**, a public limited company incorporated and existing under the laws of Norway with company registration no. 965 662 952, (the "**Seller**") and
- (2) **OMX AB (publ)**, a public limited company incorporated and existing under the laws of Sweden with company registration no. 556243-8001 (the "**Buyer**").

**WHEREAS:**

- (A) The Seller and certain of its subsidiaries are engaged in the trading and clearing of derivatives;
- (B) The Seller is the owner of the entire issued share capital of Nord Pool International AS, a limited liability company to be organised under the laws of Norway that is to acquire the International Business from the Seller prior to Closing.
- (C) The International Business consists of (a) the International Exchange Business, (b) 100 per cent of the shares in Nord Pool Clearing ASA, company registration no. 980 247 899, a public limited liability company duly incorporated and organised under the laws of Norway, and (c) 100 per cent of the shares in Nord Pool Consulting AS, company registration no. 880 321 862, a limited liability company duly incorporated and organised under the laws of Norway.

Nord Pool International AS, Nord Pool Clearing ASA and Nord Pool Consulting AS are hereinafter referred to as the "Subsidiaries".

The International Exchange Business and the Business Assets are defined in Appendix A hereto;

- (D) On 19 December 2007, the Seller and the Buyer entered into a certain Frame Agreement setting out the main terms and conditions for the sale and purchase of all shares in Nord Pool International AS and certain transaction related thereto;
- (E) On the terms and subject to the conditions set forth herein, the Seller desires to sell and the Buyer desires to purchase the outstanding shares of Nord Pool International AS.

**IT IS AGREED AS FOLLOWS:****1 DEFINITIONS**

In this Agreement, the following definitions shall have the following meanings:

- a) **2006 Accounts** means in respect of the Seller and each Subsidiary, its audited annual accounts (*årsregnskap*), consisting of the profit and loss account, balance sheet, statement of cash flow and the notes thereto, the consolidated profit and loss account, the consolidated balance sheet, statement of cash flow and the notes thereto, for the financial year ended on 31 December 2006;
- b) **2007 Accounts** means in respect of the Seller and each Subsidiary, its audited annual accounts (*årsregnskap*), consisting of the profit and loss account, balance sheet, statement of cash flow and the notes thereto, the consolidated profit and loss account, the consolidated balance sheet, statement of cash flow and the notes thereto, for the financial year ended on 31 December 2007;
- c) **2007 Balance Sheet** means the pro forma consolidated balance sheet of Nord Pool International AS, derived from the 2007 Accounts;
- d) **Accounting Principles** means Norwegian generally accepted accounting principles as defined by Norwegian law and regulations and accounting standards issued by the Norwegian Accounting Standards Board (Nw: *Norsk Regnskapsstiftelse/NRS*), applied on a consistent basis;
- e) **Additional Purchase Price** has the meaning set out in Clause 4;
- f) **Affiliate** of any person means, as of any time, (i) any other person directly or indirectly controlled by or under the direct or indirect common control of that first-mentioned person or (ii) any other legal person(s) directly or indirectly controlling or jointly controlling such first-mentioned person (whereby “control” and “controlling” means the possession, directly or indirectly, of the power to direct or influence the direction of the management or policies of a person, whether through ownership, by contract or otherwise);
- g) **Agreement** means this Agreement including the appendices attached hereto;
- h) **Business Assets** shall have the meaning set out in Appendix A;
- i) **Business Day** means a day on which banks are open for general banking business in Norway and Sweden;
- j) **Buyer** shall have the meaning ascribed to such term in the preamble to this Agreement;

- k) **Closing** shall have the meaning ascribed to such term in Clause 5.1 below;
- l) **Closing Date** means the date when Closing actually takes place according to Clause 5.1 below;
- m) **Companies Act** means the Norwegian Limited Liability Companies Act of 1997;
- n) **Encumbrance** means any mortgage, charge, pledge, lien, option or other security interest or restriction of any kind;
- o) **FMSA Addendum** means the addendum agreement enclosed as Appendix E, setting procedures for amendment of the Facility Management Service Agreement between Nord Pool, Nord Pool Clearing ASA and OMX Technology AB.
- p) **Group, or Nord Pool International Group** means Nord Pool International AS and its subsidiaries;
- q) **Initial Purchase Price** shall have the meaning ascribed to such term in Clause 3.2;
- r) **Intellectual Property** shall have the meaning ascribed to such term in Clause 7.11;
- s) **International Exchange Business** means the derivatives business of the Seller that does not relate to the Nordic Financial Energy Market, as defined in Appendix A;
- t) **Losses** shall have the meaning ascribed to such term in Clause 10;
- u) **Material Agreement** shall have the meaning ascribed to such term in Clause 7.13;
- v) **Net Equity** means the pro forma consolidated net book equity of Nord Pool International as it appears in the Reference Balance Sheet and the 2007 Balance Sheet, as the case may be;
- w) **Parties** means the Seller and the Buyer, collectively;
- x) **Party** means the Seller or the Buyer;
- y) **Provisional Purchase Price** shall have the meaning ascribed to such term in Clause 3.1 below;
- z) **Purchase Price** shall have the meaning ascribed to such term in Clause 3 below;
- aa) **Reference Balance Sheets** shall have the meaning ascribed to such term in Clause 3.1;

- bb) **Seller** shall have the meaning ascribed to such term in the preamble to this Agreement;
- cc) **Service Agreements** means the Exchange Service Agreement, the Support Service Agreement between the Seller and Nord Pool International AS, and the Clearing Service Agreement between the Seller and Nord Pool Clearing ASA, included as Appendices B-D.
- dd) **Shares** shall mean all shares in Nord Pool International AS;
- ee) **Taxes** means all taxes (including VAT and similar taxes), however denominated, including interest, penalties and other additions to tax that may become payable or imposed by any applicable statute, rule or regulation or any governmental agency, including all taxes, withholdings and other charges in respect of income, profits, gains, payroll, social security or other social benefit taxes, sales, use, excise, real or personal property, stamps, transfers and workers' compensation, which the Group is required to pay, withhold or collect;
- ff) **Vendor Note** means the vendor note in the form of Appendix F, to be delivered by the Buyer to the Seller at Closing; and
- gg) **Warranties** means the warranties set out in Clause 7.

## 2 SALE OF SHARES AND ASSETS

### 2.1 Sale of Shares in Nord Pool International

Upon the terms and subject to the conditions set out in this Agreement, the Seller agrees to sell and the Buyer agrees to purchase all Shares in Nord Pool International AS, together with all rights attached to them.

The Shares shall be transferred to the Buyer on the Closing Date, free and clear from any Encumbrances.

### 2.2 Establishment of Nord Pool International

On the terms and subject to the conditions set out in this Agreement, the Seller shall prior to Closing transfer the International Exchange Business and all the shares in Nord Pool Clearing ASA and Nord Pool Consulting AS to Nord Pool International AS. Such transfer shall be carried out by ways of a share subscription in Nord Pool International AS against consideration in kind (where the International Exchange Business and all the shares in Nord Pool Clearing ASA and Nord Pool Consulting AS constitute the consideration).

### 2.3 FMSA Addendum

The Parties have in connection with this Agreement agreed to make the changes to the Facility Management and Services Agreement (FMSA) entered into between the Seller, Nord Pool Clearing ASA and OMX Technology AB set out in Appendix E.

### 3 PURCHASE PRICE AND PAYMENT

#### 3.1 Provisional Purchase Price

In consideration for the Shares, the Buyer shall pay the amount of NOK 2,150 million, (the "**Provisional Purchase Price**") an amount which is based upon the projected reference balance sheets of the subsidiaries as of 31.12.2007 attached to the Frame Agreement (the "**Reference Balance Sheets**"). The Provisional Purchase Price shall be adjusted pursuant to Clause 3.2 below.

#### 3.2 Price adjustment

The Provisional Purchase Price of NOK 2,150 million shall be adjusted for any deviation between Nord Pool International pro forma consolidated Net Equity based on the Reference Balance Sheets, TNOK 276.998, and at 31 December 2007 shall lead to an adjustment of the Provisional Purchase Price upwards (if the Group's Net Equity at 31 December 2007 is higher) or downwards (in case the Group's Net Equity at 31 December 2007 is lower), with the same amount on a NOK for NOK basis (the "**Adjustment Amount**"), such adjustment to be allocated to the Cash Portion of the Purchase Price.

The sum of the Provisional Purchase Price and the adjustments above shall be referred to as the "**Initial Purchase Price**".

#### 3.3 Procedure for determination of the Adjustment Amount

##### 3.3.1 Proposal - disagreement

As promptly as practicable, but not later than 15 Business Days after the date hereof, the Seller shall deliver to the Buyer (i) the audited 2007 Accounts, (ii) draft 2007 Balance Sheet, (iii) its calculation of the Net Equity and (iv) the Adjustment Amount.

If the Buyer disagrees with the Seller's calculation of the Adjustment Amount the Buyer shall, within 30 calendar days after the Seller's delivery thereof, deliver a notice to the Seller explaining in reasonable detail the basis for such disagreement. The Notice shall also include the Buyer's calculation of the disputed amounts. For the purpose of determining its view on the proposed Adjustment Amount the Buyer shall, to the extent permitted by applicable law, give the Seller or its duly authorised representatives reasonable access to the accounts, documents and records of the Seller and the Subsidiaries which are relevant in order to deliver the above mentioned (i), (ii), (iii) and (iv) and which are relevant to such determination.

If a notice of disagreement has been duly delivered by the Buyer, the Parties shall in good faith use all reasonable efforts to reach agreement on the disputed items or amounts in order to determine and mutually agree upon the sum of the Adjustment Amount.

##### 3.3.2 Independent Expert

If the Parties have not reached agreement on the sum of the Adjustment Amount within 10 Business Days after the date of the Buyer's notice of disagreement, the matters in dispute shall be submitted for final resolution to an authorised auditor (the "**Expert**") mutually appointed by the Parties within an additional 5 Business Days. The Expert shall determine the sum of the Adjustment Amount. The Stockholm Chamber of Commerce shall on request of either Party, appoint the Expert, if the Parties cannot agree on such joint appointment within 10 Business Days after expiry of the 15 Business Day negotiation period.

Each Party shall be entitled to present its case in writing to the Expert within 10 Business Days following the appointment. The Expert shall only consider the items and amounts in dispute, applying the Accounting Principles.

The Expert shall submit its final determination, including its reasoning, to the Parties as soon as practicably possible (within 30 Business Days of the appointment is considered a reasonable period), and its determination shall be final and binding upon the Parties and shall preclude judicial or arbitral review.

The costs of the Expert shall be borne equally by the Parties regardless of the outcome of the Expert's evaluation, but the Parties shall otherwise bear their respective own expenses, including auditors and lawyer's fees and expenses, incurred in connection with any such dispute resolution procedure.

### 3.4 Payment of Consideration

Of the Initial Purchase Price, NOK 1,700 million shall be paid by the Buyer to the Seller in cash upon Closing (the "Cash Portion"), and NOK 450 million shall be paid in the form of a Vendor Note on the terms set out in Appendix E.

The Cash Portion will carry an annualized interest rate of 3 months NIBOR for the period from 1 August 2008 until Closing, to be paid at the time of Closing.

The Vendor Note will carry an annualized interest rate of 3 months NIBOR, to be paid at the time of settlement. Interest will start accruing on the earliest of the Closing Date and 1 August 2008. Earned interest is to be added to the face amount on the note annually.

## 4 EARN OUT

In addition to the Initial Purchase Price, the Buyer shall pay to the Seller an amount in cash (the "Additional Purchase Price") calculated as follows:

- (i) An earn-out of up to NOK 250 million, to be settled before the end of January 2010, provided the following earn-out criteria are met (and where the left column refers to the clearing volumes of Nord Pool Clearing in 2009 relating to Nord Pool International power products excluding Carbon Products (as defined below):

<u>Clearing volumes:</u>	<u>Earn-out payment</u>
300-600 TWh	Maximum NOK 75 million
600-900 TWh	Maximum NOK 75 million in addition
900-1500 TWh	Maximum NOK 100 million in addition

- (ii) An earn-out of up to NOK 250 million, to be settled before the end of January 2011, provided the following earn-out criteria are met (and where the left column refers to the cleared volumes of Nord Pool Clearing in 2010 relating to Nord Pool International power business but excluding Carbon Products:

<u>Clearing Volumes:</u>	<u>Earn-out payment</u>
350-650 TWh	Maximum NOK 75 million
650-950 TWh	Maximum NOK 75 mill in addition
950-1550 TWh	Maximum NOK 100 million in addition

The earn-outs in Item (i) and (ii) shall be calculated on a linear basis. (Example: 750 TWh means an earn-out of 100 MNOK in item (ii).

- (iii) An earn-out of up to NOK 300 million provided the following earn-out criteria are met (where the earn-outs are calculated on a linear basis):
- a. NOK 20 million payable in January 2009 provided Carbon Volumes (as defined below) of minimum 350 million tons in 2008.
  - b. An earn-out of up to NOK 40 million payable in January 2010 calculated on a linear basis for Carbon Volumes in 2009 exceeding 350 million tons, where Carbon Volumes of 700 million tons trigger a total maximum earn-out of NOK 40 million.
  - c. An earn-out of up to NOK 60 million payable in January 2011 calculated on a linear basis for Carbon Volumes in January 2010 exceeding 350 million tons, where Carbon Volumes of 1.250 million tons trigger maximum earn-out of NOK 60 million.
  - d. An earn-out of up to NOK 80 million payable in January 2012 calculated on a linear basis for Carbon Volumes in 2011 exceeding 350 million tons, where Carbon Volumes of 2.000 million tons triggers maximum earn-out of NOK 80 million.
  - e. An earn-out of up to NOK 100 million payable in January 2013 calculated on a linear basis for Carbon Volumes in 2012 exceeding 350 million tons, where a Carbon Volume of 3.450 million tons triggers maximum earn-out of NOK 100 million.

The clearing volumes relating to Nord Pool International shall for the purposes of item (i) and (ii) above include all volumes on power related commodity derivatives cleared within the Nord Pool International Group including (but not limited to) electricity certificates, non-Nordic power derivatives products (including CfDs involving Nordic power reference prices) and any new power related commodity derivatives not included in Nord Pool Nordic.

Carbon Products shall for the purpose of this Clause 4 include all volumes on EUA's, CERs, CDMs and similar products cleared within the Nord Pool International Group, and Carbon Volumes shall refer to the clearing volumes of Nord Pool Clearing in Carbon Products.

For the sake of clarity; references to clearing volumes of Nord Pool International Group and Nord Pool Clearing shall include the clearing volumes in OMX in respect of the relevant products in the event that clearing business is transferred from Nord Pool Clearing to OMX.

OMX shall develop the business of Nord Pool International in line with the intentions set out in this Agreement and shall not make any decisions with regard to the business of the Nord Pool International Group or the business of OMX for the purpose of negatively affecting the earn-out interests of Nord Pool.

If the OMX Group (or, if applicable, the NASDAQ Group) should acquire or establish an entity that is involved in the business covered by the earn-out provisions and this business uses the technology, platform or know-how of the Nord Pool International Group, then the growth of such entity in cleared volumes relating to such derivatives as is covered by the earn-out, shall be allocated to the Nord Pool International Group for the purposes of calculating the earn-out.

## **5 CLOSING**

### **5.1 Time and place**

Subject to the satisfaction or waiver of the conditions set out in Clause 6, Closing shall take place at the offices of Wiersholm Mellbye & Bech in Oslo, at 10.00 hours (Oslo time) within five Business Days after the fulfilment or waiver of the conditions set forth in Clause 6, or such other place, time and date as the Parties may otherwise agree in writing. By closing means the completion of the transactions contemplated by this Agreement (“**Closing**”). At Closing all closing matters shall be deemed to take place simultaneously.

### **5.2 The Seller’s closing obligations**

At Closing the Seller shall:

- a) Deliver to the Buyer a copy of the minutes of the meeting of the board of directors of the Seller authorising the execution of, and the consummation of the transaction completed by this Agreement;
- b) in exchange for the payment of the Purchase Price, transfer the Shares and deliver to the Buyer the share register of Nord Pool International AS with the Buyer duly registered as the owner of the Shares as well as the related notices according to Section 4-7 and 4-10 of the Norwegian Companies Act;
- c) Deliver to the Buyer documentation that the International Exchange Business and all the shares in Nord Pool Clearing ASA and Nord Pool Consulting AS have been transferred to Nord Pool International in accordance with Clause 2.2;
- d) ensure that all the directors on the boards of the Subsidiaries shall resign from their respective offices (to the extent requested by the Buyer), each such director acknowledging in writing that he/she has resigned as a director of the relevant Subsidiary, and that he/she has no claims outstanding against the Buyer or the relevant Subsidiary for compensation or otherwise;
- e) deliver to the Buyer a copy of the minutes of the meeting of the board of directors of the Subsidiaries revoking all banking signature authorities with effect from the Closing Date and, with effect from the same date, replace such authorities according to instructions provided by Buyer (such instructions to be provided at the latest two Business Days prior to the Closing Date), and
- f) Deliver to the Buyer a copy of the Service Agreements signed by the relevant parties.

### 5.3 The Buyer's closing obligations

At Closing, the Buyer shall:

- a) pay the Initial Purchase Price to the Seller's bank account number: 6003.05.56103 at Nordea Bank Plc. in Oslo by wire transfer of immediate available funds; and
- b) Issue the Vendor's Note in favour of the Seller.

## 6 CLOSING CONDITIONS

### 6.1 Conditions to Buyer's Closing obligations

The obligations of the Buyer to purchase the Shares in Nord Pool International AS and to take the other actions required to be taken by it at the Closing are subject to the satisfaction of each of the following conditions (any of which may be waived in whole or in part) on or before the Closing Date:

- a) each of the conditions set out in Clause 9 (i) and (ii) of the Frame Agreement;
- b) consents having been received from Radian, Chicago Mercantile Exchange Inc and Vital Forsikring ASA under the agreements specified in Appendix 7 section 7.13 (the "**Change of Control Contracts**") to the acquisition by the Buyer of the Subsidiaries and (where relevant) the transfer of the business of Nord Pool Clearing ASA to OMX or a subsidiary of OMX provided, however, that such consents shall not be a condition to closing if the Seller has established alternative arrangements for the delivery of the services provided for in the Change of Control Contracts for the same duration and at the same cost;
- c) the Seller having demonstrated to the Buyer that the Subsidiaries have been fully and finally released from guarantees, indemnities or other obligations given or incurred by the Subsidiaries, as applicable, in favour of the Seller or any of its Affiliates save for the subordinated loan referred to in the Reference Balance Sheets and the obligations under the Service Agreements;
- d) there is no material breach of any of the Warranties of the Seller;
- e) in all respects material to the transactions contemplated hereby, the Seller shall have performed or complied with all of its obligations pursuant to this Agreement to be performed or complied with by the Seller at or prior to Closing Date and shall have delivered each document to be delivered by it pursuant to this Agreement; and
- f) the Nord Pool Spot Service Agreement Addendum in Appendix G having been signed by the relevant parties.

### 6.2 Conditions to Seller's Closing obligations

The obligations of the Seller to sell the Shares in Nord Pool International AS and to take the other actions required to be taken by it at the Closing are subject to the satisfaction of each of the following conditions (any of which may be waived in whole or in part) on or before the Closing Date:

- a) in all respects material to the transactions contemplate hereby, the Buyer has performed or complied with all of its obligations pursuant to this Agreement to be performed or complied with by the Buyer at or prior to Closing Date and shall have delivered each document to be delivered by it pursuant to this Agreement.

## **7 WARRANTIES OF THE SELLER**

The Seller makes the following warranties, all of which are made as at the date hereof and as at the Closing Date, unless otherwise expressly stated:

### **7.1 Corporate existence and power**

Each Subsidiary is duly incorporated and validly existing under the laws of Norway.

No Subsidiary has been declared insolvent, become the subject of a petition in bankruptcy, had a receiver appointed with respect to it, nor has it entered into any arrangement with, or made an assignment for the benefit of, its creditors nor ceased to function as a going concern.

### **7.2 Corporate authorisation and non-contravention**

This Agreement and each other document or instrument delivered or to be delivered in connection with this Agreement has been duly authorised by all necessary corporate action(s) of the Seller and constitutes or will, when executed, constitute valid and binding obligations of the Seller enforceable in accordance with its respective terms.

The execution by the Seller of this Agreement and each other document or instrument delivered or to be delivered in connection with it, and the performance by the Seller of its obligations under this Agreement and the consummation of the transactions provided for in this Agreement, do not and will not result in a breach of any provision of the articles of association of the Seller or a Subsidiary or of any applicable law, order, judgment or decree of any court or governmental agency or of any agreement to which the Seller or a Subsidiary is bound.

### **7.3 Capitalisation and title**

The Seller has full ownership to the Shares constituting the entire share capital of Nord Pool International AS. Nord Pool International AS has full ownership to all the shares in Nord Pool Clearing ASA and Nord Pool Consulting AS. The Shares and the shares of Nord Pool Clearing ASA and Nord Pool Consulting AS are fully authorised, validly issued, fully paid and free and clear from any Encumbrances.

There are no outstanding subscription, option or similar rights relating to the Shares or the shares of Nord Pool Clearing ASA and Nord Pool Consulting AS and no securities giving a right to conversion into, or any agreement or arrangement which grants to any person or entity the right to acquire shares in the Group Companies.

### **7.4 Records**

The Subsidiaries' articles of association and shareholders' registers are attached as Appendix 7.4, and such copies are true, accurate, up-to-date and complete.

### **7.5 The International Exchange Business**

Nord Pool International AS is the owner of or has a right to use the Business Assets and has good and valid title to or right to use the Business Assets.

### **7.6 Accounts**

The 2006 Accounts, attached as Appendix 7.6, have been prepared in accordance with the Accounting Principles and in accordance with the books and records of the Seller and the Subsidiaries and give a true and fair view of the financial position, assets and liabilities, cash flow and the result of the operations of the Seller and the relevant Subsidiaries as of and for the period ending on 31 December 2006.

The 2007 Accounts will be prepared in accordance with the Accounting Principles and in accordance with the books and records of the Seller and the Subsidiaries. The 2007 Accounts will give a true and fair view of the financial position, assets and liabilities, cash flow and the result of the operations of the Seller and the relevant Subsidiaries as of and for the period ending on 31 December 2007.

### **7.7 No undisclosed liabilities**

Except as set forth in Appendix 7.7, the Seller and the Subsidiaries have no liabilities except for liabilities reflected or reserved against in the Seller's and the Subsidiaries' balance sheets as of 31 December 2006 and current liabilities incurred in the ordinary course of business since 31 December 2006.

### **7.8 Assets**

The Subsidiaries have or, in the case of Nord Pool International AS, upon the acquisition of the International Exchange Business will have, unless otherwise provided for in the 2006 Accounts, full ownership free and clear of any Encumbrance of all assets, tangible and intangible, that are reflected in the 2006 Accounts or which are used in their respective business, including any assets, tangible and intangible, acquired since 31 December 2006, and less any assets, tangible and intangible, disposed of since 31 December 2006 in accordance with the provisions in Clause 7.12.

At the Closing Date, the Group will not be using assets in their respective business which such Subsidiary or the Seller neither owns nor has the right to use pursuant to written agreements with third parties, unless disclosing such matter to the Buyer.

After the transfer provided for in Clause 2.2, the balance sheet of Nord Pool International will contain the assets and liabilities set out in the Reference Balance Sheet of Nord Pool International AS (Appendix 3.1) adjusted for the results of the operations of Nord Pool International after 31 December 2007.

At the Closing Date, the assets of the Subsidiaries will - together with the services to be provided under the Service Agreements - comprise all the assets necessary for carrying on the business of the relevant company to the extent to which it is conducted at the date hereof and, in the case of Nord Pool International AS, will - together with the services to be provided under the Service Agreements - comprise all the assets necessary for carrying on the International Exchange Business.

The Group's assets, tangible and intangible, are in good operating condition, ordinary wear and tear excepted, and maintained and serviced on a timely basis.

#### **7.9 [intentionally left blank]**

#### **7.10 Leased premises**

A list of all premises leased by the Group is set out in Appendix 7.10. All premises are being leased by the Subsidiaries under valid and enforceable leases, subject only to such Encumbrances which may follow from law. There is no default or event which constitutes or after notice or lapse of time would constitute a default by any party under any lease agreement. There is no outstanding claim against a Subsidiary relating to breach or default under any lease agreement.

#### **7.11 Intellectual property**

All Intellectual Property (as defined below) owned or used by the Group or the International Exchange Business is listed in Appendix 7.11.

Unless disclosed in Appendix 7.11 the Group owns or, in the case of Nord Pool International AS, upon the acquisition of the International Business will own or has the necessary rights to use all Intellectual Property that is used in or is necessary for the conduct of their respective business, including, but not limited to, the rights set out in Appendix 7.11.

All Intellectual Property owned by the Group or, in the case of Nord Pool International AS, to be owned upon the acquisition of the International Business is, unless disclosed in Appendix 7.11, owned with full and unrestricted ownership and right of disposition, and is not subject to any Encumbrances.

No infringement of the Group's or the International Exchange Business' Intellectual Property is taking or has taken place and neither the Subsidiaries nor the Seller has received notification asserting such infringement, unless as disclosed in Appendix 7.11.

The Group and the International Exchange Business does not infringe, and has not infringed, any third party's Intellectual Property and no third party is claiming that such infringement is to the Seller's best knowledge taking or has taken place, unless disclosed in Appendix 7.11.

"**Intellectual Property**" means inventions, patents, know-how, trade secrets, designs, copyrights, neighbouring rights, database rights, trademarks, domain names, trade names and other rights of a similar kind, whether registered or not, including applications for the registration of such rights.

#### **7.12 Absence of certain changes or events**

Since 31 December 2006 until 31 December 2007 there has not occurred or arisen in respect of the Group or the International Exchange Business:

- a) Any change of accounting methods, principles or practices, accounting, invoicing and supplier practice or procedures;

- b) any acquisition or disposal of, or the entering into of agreement to acquire or dispose of, any material asset or other transaction, other than in the ordinary course of business (or disclosed in Appendix 7.12); or
- c) any increase in the rates of compensation (including bonuses) payable or becoming payable to any employee, officer, agent, independent contractor or consultant, other than such increase which is made in the ordinary course of business.

### 7.13 Agreements

All Material Agreements (as defined below) of the Group and the International Exchange Business are listed in Appendix 7.13, with the exemption for customer contracts (membership agreements/clearing client agreements). The Material Agreements are in full force and effect.

Neither the Seller nor a Subsidiary has received any notice that the Group or the International Exchange Business is in default under any provision of any Material Agreement, nor has it received or given notice of termination of any Material Agreement. To the Seller's knowledge, no party has the intention to terminate any Material Agreement.

Neither the Seller nor any Subsidiary is to the Seller's Best Knowledge in default under any provision of any Material Agreement, and no event has occurred which would constitute such a default.

The term "**Material Agreements**" means each agreement, contract and other undertaking by or to a Subsidiary or the International Exchange Business, which is of material importance to its business or the value of which, in respect of total turnover during one year, is not less than NOK 10 millions. In respect of customer agreements (membership agreements/clearing client agreements) the agreements with the 50 customers with the largest turn-over as of 14 February 2008 are regarded as Material Agreements.

### 7.14 Insurance

The Group has the insurance policies enclosed as Appendix 7.14. To the Seller's best knowledge no claims have been made, no claims are outstanding and no fact or circumstance exists which may give rise to a claim under the Group's insurance policies.

### 7.15 Environmental matters

To the Seller's Best Knowledge the Group and the International Exchange Business is not and has not been in breach of any applicable laws (whether civil, criminal or administrative), statutes, regulations, directives, codes, judgments, orders or any other measures imposed by any governmental, statutory or regulatory body with regard to the pollution or the protection of the environment or to the protection of human health or human safety, or any other living organisms supported by the environment.

The Group and the International Exchange Business holds and has previously held all requisite environmental permits, i.e. all or any permits, licences, consents, approvals, registrations and other authorisations required under any applicable laws for the operation of the business of or the occupation or use of the properties used by the Group, and the Group fully complies, and has fully complied, with these permits. All current permits, copies of which are kept with the relevant Subsidiary holding the permit, are in full force and effect and none of them will expire or be revoked

or suspended as a result of the transaction contemplated by this Agreement. Neither the Seller nor the Group has received any formal or informal notice or other communication indicating that permits held by the Group and the International Exchange Business may be revoked, modified, expire prematurely or not be renewed. There are no circumstances or facts that could result in such revocation, modification or premature expiry.

There is no current governmental investigation or disciplinary proceeding relating to any alleged breach of any law or permit by the Group and the International Exchange Business and none is pending, nor threatened.

The Group and the International Exchange Business has not, other than as permitted under applicable permits or applicable laws or regulations held from time to time, disposed of, discharged, released, placed, dumped or emitted any hazardous substances, such as pollutants, contaminants, hazardous or toxic materials, wastes or chemicals. Neither the Seller nor the Group has received any formal or informal notice or other communication from which it appears that the Group and the International Exchange Business may be or has been in violation of any laws or permits, nor is there any actual or contingent obligation on the Group and the International Exchange Business to pay money or carry out any work in order to keep or be granted an extension or renewal of any existing permit, nor are there any circumstances of facts that could result in such an obligation. The properties used by the Group and the International Exchange Business are to the Seller's best knowledge not made of or do not contain any form of asbestos or any other toxic substance which may cause damage to the health of the persons working or visiting the premises.

#### **7.16 IT and data protection**

The Group and the International Exchange Business has all the hardware and software licenses necessary to carry on its business as presently conducted. The Group and the International Exchange Business does not use software which is not properly licensed and does not use software in a manner that violates licence provisions.

The Group and the International Exchange Business has to the Seller's best knowledge at all times complied with applicable data protection legislation, and there has not been any communications with the Data Inspectorate ("Datatilsynet") regarding claimed non-compliance with data protection legislation or permits.

#### **7.17 Employment and pension agreements and labour controversies**

Appendix 7.17 lists all:

- a) Collective bargaining agreements of the Group and the International Exchange Business;
- b) the persons regarded as key employees of the Group and the International Exchange Business;
- c) executive compensation plans, bonus plans, profit-sharing plans, employee pension and retirement plans, group life insurance plans and other plans and liabilities providing for benefits to employees or former employees of the Group and the International Exchange Business; and

- d) loans to employees, guarantees for liabilities of employees and payments and liabilities to any present or former employee of the Group and the International Exchange Business.

None of the key employees have given or received notice of termination of his/her employment, and neither the Group nor the Seller has received any information indicating that such key employee has expressed any current intention of giving such notice. No employee of the Group and the International Exchange Business is entitled to golden parachutes, severance pay or similar termination compensation arrangements in excess of three months of salary, unless noted in Appendix 7.17.

Neither the Seller nor the Group has made any commitment or agreement to increase the compensation of any employee set forth in the list referred to in item b) above, or to modify the conditions of terms of employment of any employees other than in the ordinary course of business.

The execution or completion of the transactions contemplated by this Agreement does not trigger (i) any payments or other rights from the Group or to an employee of the Group or (ii) a right for an employee to terminate or shorten his/her employment.

There are no disputes between the Group or the International Exchange Business and any of the employees pending or threatened. No labour stoppages or labour walkouts have occurred at the Group and the International Exchange Business during the last two years.

No Subsidiary is liable to make any payment to any of the directors of the Board of a Subsidiary or any officer or employee or former director, officer or employee by way of damages or compensation for loss of office or employment or for redundancy or unfair or wrongful dismissal and to the Seller's knowledge, no Subsidiary has been presented with any such claim.

#### **7.18 Compliance with laws**

The Group and the International Exchange Business has at all times in all material aspects conducted its business in accordance with and has complied with any applicable laws in Norway and to the Seller's best knowledge in any other relevant countries relating to its operators and business.

There is save as provided for in Appendix 7.18 no controversy or investigation pending, or to the Seller's best knowledge threatened or expected with respect to the Group or the International Exchange Business by any governmental agency or authority or any other person or entity relating , *inter alia*, to any violation or possible violation of applicable laws and no injunctions by authorities have been directed towards the Group and the International Exchange Business and there are no outstanding orders, decrees or judgments in respect of the Group and the International Exchange Business.

#### **7.19 Litigation**

There are no claims, actions, lawsuits, administrative, governmental, arbitration or other legal proceedings (including but not limited to proceedings related to Taxes) pending or to the Seller's Best Knowledge threatened against or involving the Group and the International Exchange Business, its business, properties or assets, and there are no such suits or proceedings pending or to the Seller's Best Knowledge threatened by the Group and the International Exchange Business against any other person or entity, except as set out in Appendix 7.19.

No investigation or enquiry is being or has been conducted by any administrative, governmental, fiscal or other body in respect of the affairs of the Group and the International Exchange Business other than disclosed in Appendix 7.19, and no such investigation is pending, or to the Seller's best knowledge threatened or expected.

#### **7.20 Taxes**

The Seller and the Subsidiaries have properly filed with the appropriate tax authorities all tax returns and reports required to be filed for all tax periods ending prior to the Closing Date and such filings are true, correct and complete and all information required for a correct assessment of Taxes has been provided.

The tax returns of the Seller and the Subsidiaries have been assessed and approved by the tax authorities through the Tax years up to and including the years for which such assessment and approval is required and the Group and the International Exchange Business is not subject to any dispute with any such authority.

All Taxes that have become due have been fully paid or fully provided for in the Accounts and the Subsidiaries will not be liable for any additional Tax pertaining to the period before 31 December 2007. All Taxes for the period after 31 December 2007 have been fully paid when due.

There are no tax audits, disputes or litigation threatened or currently pending with respect to the Group and the International Exchange Business, and there is no basis for assessment of any deficiency in any Taxes against the Subsidiaries which has not been provided for in the Accounts or which have not been paid.

#### **7.21 Relationship with the Seller**

Except as disclosed in Appendix 7.21, there are no written or oral agreements or arrangements of significance between a Subsidiary and the Seller, and no liabilities or obligations (contingent or otherwise) owed by a Subsidiary to the Seller.

#### **7.22 Information**

All documents provided to the Buyer by or on behalf of the Seller or a Subsidiary are to the Seller's best knowledge true and correct in all material aspects, and no document provided to the Buyer by or on behalf of the Seller or a Subsidiary, contains to the Seller's best knowledge any untrue statement of a relevant fact or omits to state a relevant fact necessary to make the statements contained in the document not misleading.

### **8 COVENANTS OF THE SELLER**

#### **8.1 Conduct of Business of the Group prior to Closing Date**

During the period from 1 January 2008 to the Closing Date the Seller shall comply with or cause the Subsidiaries to comply with the provisions of the agreement set out in Appendix 8.1.

#### **8.2 Restrictive covenants**

The Seller undertakes for a period of three years after the Closing Date not to, directly or indirectly, carry out any activities which compete with the business of the Subsidiaries and the International Exchange Business as carried out at the date hereof and/or the Closing Date.

The Seller undertakes that it will not from the date hereof and up to three years after the Closing Date directly or indirectly solicit or endeavour to entice away from, or discourage from being employed, any of the Subsidiaries' key employees.

### **8.3 Co-operation by Seller and Buyer**

The Seller and the Buyer will use its best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary to consummate and make effective as promptly as possible the transactions contemplated by this Agreement and to co-operate with the Buyer and others in connection with the foregoing. The Seller and the Buyer shall use its best efforts to obtain the authorisations, consents, orders and approvals of regulatory bodies and officials that may be or become necessary for the performance of its obligations pursuant to this Agreement and the completion of the transactions contemplated by it. The Seller shall co-operate with the Buyer, and the Buyer shall promptly seek to obtain such authorisations, consents, orders and approvals as may be necessary for the performance of the Parties' respective obligations pursuant to this Agreement.

### **8.4 Exchange memberships**

The Seller shall support and seek to facilitate exchange membership for the exchange members of the Buyer. The Buyer shall support and seek to facilitate exchange membership for the exchange members of the Seller.

## **9 TERMINATION**

### **9.1 Termination**

This Agreement may be terminated, and the transactions contemplated by this Agreement may be abandoned, at any time prior to Closing Date in accordance with the provisions of the Frame Agreement.

## **10 COMPENSATION**

### **10.1 Compensation**

The Seller agrees to indemnify and hold harmless the Buyer and will pay to Buyer the amount of, any direct loss, liability, claim, damage, expense (including costs of investigation and defence and reasonable attorneys' fees) or diminution of value, whether or not involving a third-party claim (collectively, "**Losses**"), arising from or in connection with (i) any breach of any representation or warranty made by a Seller in this Agreement, the Appendices annexed hereto, or any document delivered by a Seller pursuant to this Agreement; or (ii) any breach by a Seller of any covenant or obligation of such Seller in this Agreement. Any losses shall be calculated net of tax effects.

Any claim by the Buyer shall be made in writing to the Seller no later than 120 days after the Buyer's executive management at operational level became aware of the circumstances giving rise to the claim, indicating the nature of the Loss and, to the extent possible, the amount of the claim.

The limitations of liability contained in this Clause 10 shall not apply in case the breach is due to the Seller's gross negligence or wilful misconduct.

Interest will be added to the amount of such claims pursuant to the Norwegian Act relating to Interest on Overdue Payment, etc. of 1976.

## 10.2 Limitation of liability - time

Subject to the paragraphs below, the Seller's compensation obligations under this clause shall remain valid for a period of two years following the Closing Date.

The liability of the Seller with respect to breach of Warranties in relation to Taxes (Clause 7.20) shall remain valid until 30 days following the expiration of the statute of limitation on all assessments relating to events prior to the Closing Date, or, if later, 90 days after the final Taxes have been finally determined by the relevant authorities.

The limitations contained in this Clause 10.2 shall not apply to claims in respect of any breach of Warranties in relation to Clause 7.3 above (Capitalisation and title) or to the covenants made by the Seller under Clause 8 above (Covenants of the Seller) which may be made by the Buyer without limitation in time.

## 10.3 Limitation of liability - amount

Notwithstanding any of the foregoing, the compensation for breach of the warranties in Clause 7 shall be subject to the following limitations:

- a) The Seller shall have no liability with respect to any single Loss which does not exceed MNOK 4;
- b) The Seller shall have no liability unless all the Losses exceed MNOK 25, in which case also Losses below this threshold shall be payable; and
- c) The Seller's total liability for breach of the warranties in Clause 7 is in any event limited to MNOK 500.

The limitations contained in this Clause 10.3 shall not apply to claims in respect of any breach of the Warranties in Clause 7.3 and 7.20.

## 10.4 Indemnification procedures with respect to third party claims

If the Seller or the Buyer as the case may be (an "**Indemnified Party**") shall receive notice of any claim by a third party which is or may be subject to indemnification or compensation from the other party pursuant to this Agreement (a "**Third Party Claim**"), the Indemnified Party shall give the other party (the "**Indemnifying Party**") prompt written notice of such Third Party Claim and the Indemnifying Party shall, at the Indemnifying Party's option, have the right to participate in the defence thereof by counsel at the Indemnifying Party's own cost and expense. If the Indemnifying Party acknowledges within 30 days from such written notice in writing its obligation to indemnify the Indemnified Party against all Losses that may result from such Third Party Claim, the Indemnifying Party shall be entitled, at the Indemnifying Party's option, to assume and control the defence of such Third Party Claim at the Indemnifying Party's cost and expense and through counsel of the Indemnifying Party's choice. No such Third Party Claim may be settled by the Indemnifying Party without the written consent of the Indemnified Party, unless the settlement involves only the payment of money by the Indemnifying Party. No Third Party Claim that is being defended in good faith by the Indemnifying Party shall be settled by the Indemnified Party without the written consent of the Indemnifying Party. The Indemnifying Party shall have no obligation to indemnify the

Indemnified Party for any losses resulting from the settlement of Third Party Claims in violation of the provisions of this Clause 10.4.

## 11 NOTICES

All notices, requests, demands, approvals, waivers and other communications required or permitted under this Agreement must be in writing in the English language and shall be deemed to have been received by a party when:

- a) Delivered by post, unless actually received earlier, on the third Business Day after posting, if posted within Norway, or the fifth Business Day, if posted to or from a place outside Norway;
- b) delivered by hand, on the day of delivery;
- c) delivered by fax, on the day of dispatch if supported by a written confirmation from the sender's fax machine that the message has been properly transmitted.

All such notices and communications shall be addressed as set out below or to such other addresses as may be given by written notice in accordance with this clause.

If to the Seller: Nord Pool ASA  
Attention: Erik Thrane  
Postboks 373, 1326 Lysaker  
Fax No. + 47 67 52 81 02

With a copy to: Wiersholm, Mellbye & Bech  
Attention: Knut Bergo  
Postboks 1400 Vika, 0115 Oslo  
Fax No. + 47 210 210 01

If to the Buyer: OMX AB (publ)  
Attention: Henrik Paulsson  
105 78 Stockholm,  
Sweden  
Fax No. +46 8 405 6001

With a copy to: Thommessen Krefting Greve Lund AS  
Attention: Kim Dobrowen  
PO Box 1484 Vika 0116 Oslo  
Norway  
Fax No. +47 23 11 10 10

## 12 ASSIGNMENT

This Agreement may not be transferred, assigned or pledged by any party hereto without the express written consent of the other party hereto, other than by operation of law; provided, that Buyer may designate one or more Affiliates as the purchaser of the Shares in Nord Pool

International AS and shall provide to Seller the name(s) of the designee(s) at least five (5) Business Days prior to the Closing Date, provided, however, that if the Buyer designates any such Affiliate, such Affiliate shall be deemed to be included in the definition of the Buyer for the purposes of this Agreement; and provided, further that if any such Affiliate is designated, Buyer shall not be relieved of any of its obligations under this Agreement.

**13 CONFLICTS WITH FRAME AGREEMENT**

The Frame Agreement referred to in Recital D hereto shall continue in full force after the entry of this Agreement and the consummation of the transactions contemplated hereby. However, in case of conflict between the provisions of this Agreement and the provisions of the Frame Agreement (as they relate to the sale and purchase described in this Agreement), the provisions of this Agreement shall take preference.

**14 GOVERNING LAW AND ARBITRATION**

This Agreement shall be governed by and construed in accordance with Norwegian law.

The Parties shall seek to solve through negotiations any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof. If the Parties fail to solve such dispute, controversy or claim by a written agreement within 60 days after one of the Parties has requested such negotiations by notice to the other Party, such dispute, controversy or claim shall be finally settled by arbitration in accordance with the Norwegian Arbitration Act. The place of arbitration shall be Oslo. The arbitration proceedings shall be confidential. The language to be used in the arbitral proceedings shall be English.

Notwithstanding the above, either Party may bring an action in any court of competent jurisdiction (i) for provisional relief pending the outcome of arbitration, including, without limitation, provisional injunctive relief or pre-judgement attachment of assets, or (ii) to compel arbitration or enforce any arbitral award. For purposes of any proceeding authorised by this paragraph, each Party hereby consents to the non-exclusive jurisdiction of Oslo, Norway.

\* \* \*

This Agreement has been executed in two original copies, of which each party has retained one copy.

**Nord Pool ASA**

**OMX AB (publ)**

  
\_\_\_\_\_

  
\_\_\_\_\_

**AMENDMENT NO. 1  
TO CREDIT AGREEMENT AND COLLATERAL AGREEMENT**

Amendment No. 1, dated as of December 4, 2008, to (i) the Credit Agreement (as amended from time to time, the "Credit Agreement"), dated as of February 27, 2008, by and among The NASDAQ OMX GROUP, INC. (formerly known as THE NASDAQ STOCK MARKET, INC.) as borrower (the "Borrower"), BANK OF AMERICA, N.A. as Administrative Agent, Collateral Agent, Swingline Lender and Issuing Bank, JPMORGAN CHASE BANK, N.A. as Syndication Agent, BANC OF AMERICA SECURITIES LLC AND J.P. MORGAN SECURITIES INC. as Joint Lead Arrangers and Joint Bookrunners and WACHOVIA BANK, NATIONAL ASSOCIATION as Documentation Agent and the Lenders party thereto and (ii) the Guarantee and Collateral Agreement (the "Collateral Agreement"), dated as of February 27, 2008, by and among the Administrative Agent, the Borrower and the subsidiaries of the Borrower named therein. Capitalized terms not otherwise defined herein having the definitions provided therefor in the Credit Agreement.

WHEREAS, Section 9.02 of the Credit Agreement provides that the Credit Agreement may be amended by the Borrower and the Required Lenders and that the Collateral Agreement may be amended by the Administrative Agent and the Loan Parties with the consent of the Required Lenders; and

WHEREAS, the Borrower and the Required Lenders have agreed to amend certain provisions of the Credit Agreement as more fully set forth below;

NOW, THEREFORE, it is hereby agreed as follows:

SECTION 1. Amendments. The Credit Agreement and Collateral Agreement are hereby amended as follows:

1.1 The following definition is hereby inserted in alphabetical order in Section 1.01 of the Credit Agreement:

"IDCG" means International Derivatives Clearing Group LLC, a Delaware limited liability company and its Subsidiaries.

1.2 The definition of "Excluded Subsidiary" in the Credit Agreement is hereby amended by deleting the word "and" at the end of clause (vi) of the definition thereof, replacing it with "," and inserting the following phrase at the end of clause (vii) thereof "and (viii) IDCG for so long as it is not a Wholly-Owned Subsidiary."

1.3 The definition of "Material Subsidiary" in the Credit Agreement is hereby amended by (i) replacing each reference to "2.5%" contained therein with "5.0%" and (ii) adding a new sentence at the end of such definition as follows:

"For the avoidance of doubt, for purposes of determining whether any Subsidiary is a Material Subsidiary for purposes of Subsection 6.05(j) or clauses (f), (g), (h), (i), (j) or (k) of Article VII (each, a "Specified Exception"), all Subsidiaries as to which the Borrower has previously relied on a Specified Exception shall be aggregated (based on the calculation of the amounts set forth in clause (ii) of the preceding sentence as of the time such Specified Exception was relied on with respect to each such Subsidiary) for purposes of determining whether a Subsidiary is a Material

Subsidiary for purposes of such Specified Exception (e.g., if on March 1, 2008, the Borrower sells Equity Interests of a Subsidiary which accounted for 2% of the Borrower's consolidated assets as of December 31, 2007 and 2% of the Borrower's consolidated revenues for the year ended December 31, 2007 in reliance on Section 6.05(j), then for purposes of determining whether a second Subsidiary is a "Material Subsidiary" for purposes of Section 6.05(j) on March 1, 2009, if such second Subsidiary accounted for 2% of the Borrower's consolidated assets as of December 31, 2008 and 2% of the Borrower's consolidated revenues for the year ended December 31, 2008, such second Subsidiary would not be a "Material Subsidiary" for purposes of such clause but if such second Subsidiary accounted for 3.5% of the Borrower's consolidated assets as of December 31, 2008 and 3.5% of the Borrower's consolidated revenues for the year ended December 31, 2008, then such second Subsidiary would constitute a "Material Subsidiary" for purposes of such clause)."

1.4 The definition of "Net Proceeds" in the Credit Agreement is amended by deleting the word "and" before clause (b)(iii) of the first sentence thereof and inserting the following at the end of the first sentence thereof "and (iv) in the case of any sale or issuance of Equity Interests of IDCG, any proceeds from such sale received by IDCG (except to the extent such proceeds are promptly paid to the Borrower or any Subsidiary (other than IDCG) and any proceeds from such sale received by the Borrower or any Subsidiary (other than IDCG), in each case to the extent that such proceeds do not exceed the net amount of investments made by the Borrower and its Subsidiaries (other than IDCG) in IDCG"

1.5 Section 6.05 of the Credit Agreement is hereby amended by deleting from the parenthetical in the lead-in thereof the words "and Equity Interests issued to the Borrower or another Subsidiary in compliance with Section 6.04(e)";

1.6 Subsection 6.05(j) of the Credit Agreement is hereby amended by deleting the phrase "(other than Equity Interests in a Subsidiary unless all Equity Interests in such Subsidiary are sold)" and replacing it with "(other than Equity Interests in a Material Subsidiary unless all Equity Interests in such Subsidiary are sold)";

1.7 Subsection 6.05(m) of the Credit Agreement is hereby amended by deleting the word "and" at the end thereof and Subsection 6.05(n) of the Credit Agreement is hereby amended by inserting the word "and" at the end thereof;

1.8 Section 6.05 of the Credit Agreement is hereby amended by inserting a new subsection (o) as follows:

"(o) issuances of Equity Interests of IDCG and sales, transfers and other dispositions of Equity Interests of IDCG."

1.9 Section 6.05 of the Credit Agreement is hereby amended by deleting in the proviso thereof (i) all of the references to "clause (b)" and inserting in place of each such deletion the reference to "clause (c)", (ii) the reference to "(d) or (h)" and inserting in place thereof "(e) and (i)";

1.10 Section 6.08(a)(i) of the Credit Agreement is hereby amended by deleting the word "their" and replacing it with "the applicable class of their";

1.11 Section 6.08(a)(vi) of the Credit Agreement is hereby amended by deleting the phrase "(when aggregated with the amount expended pursuant to Section 6.08(b)(iv) below) not to exceed \$25,000,000" and replacing it with the phrase "not to exceed \$25,000,000 and, when aggregated

with the amount expended pursuant to Section 6.08(b)(iv) below, not to exceed \$50,000,000” and by deleting the word “and” at the end thereof;

1.12 Section 6.08(a) of the Credit Agreement is hereby amended by adding a new clause (viii) thereto as follows:

“(viii) the Borrower or any Subsidiary may redeem, repurchase or otherwise acquire Equity Interests of any Subsidiary that is not a Wholly-Owned Subsidiary from any holder of Equity Interests in such Subsidiary so long as, after giving effect thereto, (x) no Default has occurred and is continuing and (y) the Borrower shall be in compliance, on a Pro Forma Basis, with the covenants set forth in Section 6.12 and Section 6.13 as of and for the last day of the most recently ended fiscal quarter of the Borrower for which financial statements have been or were required to be delivered pursuant to paragraph (a) or (b) of Section 5.01”;

1.13 Section 6.08(b)(iv) of the Credit Agreement is hereby amended by deleting the number “\$25,000,000” and inserting in place thereof the number “\$50,000,000”;

1.14 Article VII of the Credit Agreement is hereby amended by (i) deleting each reference to “Subsidiary” in clauses (f), (h), (i), (j) and (k) thereof and replacing each such reference with “Material Subsidiary” and (ii) inserting the phrase “of the Borrower or any Material Subsidiary” after the words “Material Indebtedness” in each instance such term appears in clause (g) thereof;

1.15 The definition of “Excluded Equity Interests” in the Collateral Agreement is hereby amended by deleting the word “and” before clause (vii) of the first sentence of the definition thereof, replacing it with “,” and inserting the following at the end of the such sentence:

“and (viii) any Equity Interests of IDCG until such time as the Borrower has received confirmation from the Commodities Futures Trading Commission that such Equity Interests may be pledged hereunder; provided that (x) the Borrower hereby agrees to use commercially reasonable efforts to obtain such confirmation from the Commodities Futures Trading Commission and (y) the Collateral Agent and the other Secured Parties agree that for so long as IDCG is not a Wholly-Owned Subsidiary, any transfer of the Equity Interests of IDCG by the Collateral Agent following any exercise of remedies with respect to such Equity Interests hereunder shall be subject to the limitations set forth in the Organizational Documents of IDCG and in any shareholders agreement, joint venture agreement or similar agreement relating to such Equity Interests.”

SECTION 2. Conditions to Effectiveness. This Amendment shall become effective as of the of the date that each of the following conditions have been satisfied:

2.1 The Administrative Agent shall have received signed counterparts to this Agreement from the Borrower, each of the Subsidiary Loan Parties and Lenders constituting the Required Lenders;

2.2 The Administrative Agent shall have received on behalf of each Lender that has delivered an executed counterpart to this Amendment prior to 5:00 p.m., New York City time, on December 4, 2008, a fee equal to 0.15% of the sum of (i) the outstanding principal amount of Term Loans of such Lender and (ii) the amount of the Revolving Commitment of such Lender;

2.3 Borrower shall have paid, in each case to the extent invoiced prior to the effective date of this Amendment, all amounts owing pursuant to the Administrative Agent in

connection with this Amendment (including, without limitation, the reasonable fees and disbursements of Cahill Gordon & Reindel LLP, counsel for the Administrative Agent with respect thereto).

**SECTION 3. Representations and Warranties.** The Borrower hereby represents and warrants to the Administrative Agent and the Lenders as follows:

3.1 Each Loan Party has the corporate or other power and authority to execute, deliver and carry out the terms and provisions of this Amendment and the Borrower has taken, and will cause each of the Subsidiary Loan Parties to take, all necessary corporate action or other action to authorize or ratify the execution, delivery and performance of this Amendment; each Loan Party has duly executed and delivered this Amendment and this Amendment constitutes the legal, valid and binding obligation of each Loan Party, enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity.

3.2 Each of the representations and warranties in the Credit Agreement and each other Loan Document are true and correct in all material respects (except to the extent that any representation and warranty expressly relates to an earlier date, in which case such representation and warranty was true and correct in all material respects as of such earlier date) and (b) both before and after giving effect to this Amendment, no Default or Event of Default has occurred and is continuing.

**SECTION 4. No Other Amendments.** Except as hereby amended, the terms and provisions of the Credit Agreement and the other Loan Documents shall remain in full force and effect (including the security interest of the Collateral Agent under the Collateral Agreement). Except as expressly waived hereby, the provisions of the Credit Agreement and each other Loan Document are and shall remain in full force and effect. Nothing herein shall be deemed to entitle the parties hereto to a consent to, or a waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other Loan Document in similar or different circumstances.

**SECTION 5. GOVERNING LAW.** THIS AMENDMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

**SECTION 6. Counterparts.** This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same contract. Delivery of an executed counterpart of this Amendment by facsimile or other electronic means shall be equally effective as delivery of the original executed counterpart of this Amendment. Any party delivering an executed counterpart of this Amendment by facsimile or other electronic means shall also deliver an original executed counterpart of this Amendment but the failure to deliver an original executed counterpart shall not affect the validity, enforceability or binding effect of this Amendment.

**SECTION 7. Headings.** The headings of this Amendment are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**BORROWER:**

THE NASDAQ OMX GROUP, INC.

By:



Name: David Warren

Title: Executive Vice President and Chief Financial Officer

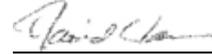
**SUBSIDIARY LOAN PARTIES**

THE NASDAQ STOCK MARKET LLC

and

THE NASDAQ OPTIONS MARKET LLC

By:



Name: David Warren

Title: Executive Vice President and Chief Financial Officer

BRUT INC. and

TOLL ASSOCIATES L.L.C.

By:



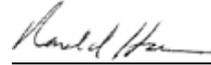
Name: David Warren

Title: Treasurer

*[Amendment]*

DIRECTORS DESK LLC, INET HOLDING COMPANY LLC,  
NASDAQ TECHNOLOGY SERVICES, LLC and NORWAY  
ACQUISITION LLC

By:

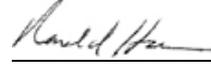


Name: Ronald Hassen

Title: Treasurer

BOSTON STOCK EXCHANGE, INCORPORATED, BSE  
SECURITY CORP., and BSX GROUP LLC

By:



Name: Ronald Hassen

Title: Treasurer

DIRECT REPORT CORPORATION, GLOBENEWSWIRE,  
INC., and SHAREHOLDER.COM, INC.

By:



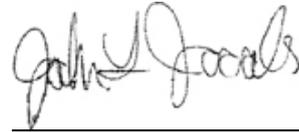
Name: Michael Caramico

Title: Treasurer

[Amendment]

NASDAQ INTERNATIONAL MARKET INITIATIVES

By:

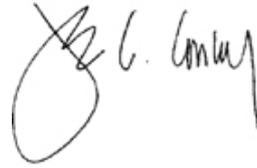


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Name: John Jacobs  
Title: President

NASDAQ OMX PHLX, INC.

By:

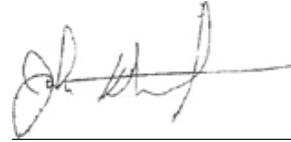


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Name: Joan C. Conley  
Title: Secretary

BOSTON OPTIONS EXCHANGE REGULATION, LLC

By:



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Name: John Katovich  
Title: Secretary

*[Amendment]*

NASDAQ OMX INFORMATION, LLC

By:



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Name: Peter Strandell  
Title: Treasurer

THE PHILADELPHIA BOARD OF TRADE, INC.

By:

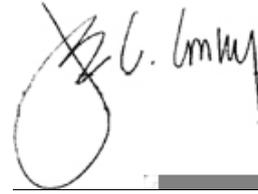


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Name: Joan C. Conley  
Title: Secretary

*[Amendment]*

By:

A handwritten signature in black ink, appearing to read "J.C. Conley". The signature is written over a horizontal line that extends across the page.

Name: Joan C. Conley

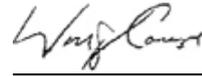
Title: Secretary

*[Amendment]*

BANK OF AMERICA, N.A.

as the Administrative Agent, Collateral Agent and a Lender

By:



---

Name: William J. Coupe

Title: SVP

JPMORGAN CHASE BANK, N.A.

as Syndication Agent and a Lender

By: Alexeev J. Taboas

Name: Alexeev J. Taboas

Title: Vice President  
JPMorgan Chase Bank, N.A.

**The NASDAQ OMX Group, Inc.**  
**Computation of Ratio of Earnings to Fixed Charges**  
**And Preferred Stock Dividends**  
**(Dollars in Thousands)**  
**Unaudited**

	Year Ended December 31,				
	2008 <sup>(1)</sup>	2007	2006	2005	2004
Pre-tax income from continuing operations	\$521,568 <sup>(2)</sup>	\$793,903 <sup>(4)</sup>	\$213,145 <sup>(5)</sup>	\$106,262 <sup>(6)</sup>	\$2,553 <sup>(7)</sup>
Add: fixed charges	100,626	72,863	91,097	20,338	11,789
Pre-tax income before fixed charges	622,194	866,766	304,242	126,600	14,342
Fixed charges:					
Interest expense <sup>(3)</sup>	100,626	72,863	91,097	20,338	11,484
Other	—	—	—	—	305
Total fixed charges	100,626	72,863	91,097	20,338	11,789
Preferred stock dividend requirements	—	—	359	3,220	8,354
Total combined fixed charges and preferred stock dividends	<u>\$100,626</u>	<u>\$72,863</u>	<u>\$91,456</u>	<u>\$23,558</u>	<u>\$20,143</u>
Ratio of earnings to fixed charges	6.18	11.90	3.34	6.22	1.22
Ratio of earnings to fixed charges and preferred stock dividends	6.18	11.90	3.33	5.37	0.71

(1) The results of OMX have been included in this calculation since February 27, 2008. PHLX is included beginning July 24, 2008, BSX is included beginning August 29, 2008, certain businesses of Nord Pool are included beginning October 21, 2008 and IDCG is included beginning December 19, 2008.

(2) 2008 pre-tax income from continuing operations is before equity in earnings of 50%-or-less-owned companies and minority interests.

(3) Consists of interest expense on all debt obligations (including amortization of deferred financing costs) and the portion of operating lease rental expense that is representative of the interest factor.

(4) Includes costs of \$4,100 associated with Nasdaq's 2007 cost reductions.

(5) Includes costs of \$40,900 associated with Nasdaq's 2006 cost reductions.

(6) Includes net costs of \$20,000 associated with Nasdaq's 2005 cost reductions.

(7) Includes costs of \$62,600 associated with Nasdaq's 2004 cost reductions.

**SUBSIDIARIES****Domestic Subsidiaries**

1. Boston Options Exchange Regulation, LLC (organized in Delaware)
2. Boston Stock Exchange Clearing Corporation (incorporated in Massachusetts)
3. Carpenter Moore Insurance Services, Inc. (incorporated in California)
4. Carpenter Moore (San Francisco) LLC (organized in California)
5. Direct Report Corporation (incorporated in Delaware)
6. Directors Desk, LLC (organized in Delaware)
7. GlobeNewswire, Inc. (incorporated in California)
8. Independent Research Network, LLC (60% owned by the Company) (organized in Delaware)
9. Inet Futures Exchange, LLC (organized in Delaware)
10. INET Technology Services, LLC (organized in Delaware)
11. International Derivatives Clearing Group, LLC (organized in Delaware)
12. International Derivatives Clearinghouse, LLC (organized in Delaware)
13. International Derivatives EBOT, LLC (organized in Delaware)
14. International Derivatives Exchange, LLC (organized in Delaware)
15. Nasdaq Execution Services, LLC (organized in Delaware)
16. NASDAQ Global, Inc. (incorporated in Delaware)
17. Nasdaq International Marketing Initiatives, Inc. (incorporated in Delaware)
18. NASDAQ OMX BX, Inc. (incorporated in Delaware)
19. NASDAQ OMX BX Equities LLC (organized in Delaware)
20. NASDAQ OMX Futures Exchange, Inc. (incorporated in Pennsylvania)
21. NASDAQ OMX Information, LLC (organized in Delaware)
22. NASDAQ OMX PHLX, Inc. (incorporated in Delaware)
23. NASDAQ Options Services, LLC (organized in Delaware)
24. Nasdaq Technology Services, LLC (organized in Delaware)
25. Norway Acquisition LLC (organized in Delaware)
26. OM Technology (US) Inc. (incorporated in Delaware)
27. OMX (US) Inc. (incorporated in Delaware)
28. The NASDAQ Options Market LLC (organized in Delaware)
29. The Nasdaq Stock Market Educational Foundation, Inc. (incorporated in Delaware) (non-profit)
30. The NASDAQ Stock Market LLC (organized in Delaware)
31. The Stock Clearing Corporation of Philadelphia (incorporated in Pennsylvania)
32. The Trade Reporting Facility, LLC (organized in Delaware)

**Foreign Subsidiaries\***

1. AB NASDAQ OMX Vilnius (93% owned by NASDAQ OMX Helsinki Ltd) (organized in Lithuania)
2. AS Arvelduskoda (organized in Estonia)
3. AS Eesti Väärtpaberikeskus (organized in Estonia)
4. AS Latvijas Centralais depozitāris (93% owned) (organized in Latvia)
5. AS OMX Registrikeskus (organized in Estonia)
6. Carpenter Moore Insurance Services Ltd. (organized in the United Kingdom)
7. “Central Depository of Armenia” Open Joint Stock Company (organized in Armenia)
8. Clearing Control CC AB (50% owned by NASDAQ OMX Stockholm)
9. eDesk Intressenter AB (organized in Sweden)
10. Eignarhaldsfelagid Verdbrefathing hf. (99.9% owned) (organized in Iceland)
11. Findata AB (organized in Sweden)
12. Helsingin Arvopaperiparkki Oy (organized in Finland)
13. Näringslivskredit NLK AB (organized in Sweden)
14. Nasdaq Canada Inc. (organized in Canada)
15. Nasdaq Global Funds (Ireland) Limited (organized in Ireland)
16. Nasdaq International Limited (organized in the United Kingdom)
17. “NASDAQ OMX Armenia” Open Joint Stock Company (organized in Armenia)
18. NASDAQ OMX Broker Services Iceland hf. (organized in Iceland)
19. NASDAQ OMX Commodities AS (organized in Norway)

20. NASDAQ OMX Copenhagen A/S (organized in Denmark)
21. NASDAQ OMX Europe Limited (organized in the United Kingdom)
22. NASDAQ OMX Helsinki Ltd (organized in Finland)
23. NASDAQ OMX Holding AB (organized in Sweden)
24. NASDAQ OMX Holding Luxembourg Sàrl (organized in Luxembourg)
25. NASDAQ OMX Iceland hf. (organized in Iceland)
26. NASDAQ OMX Nordic Ltd (organized in Finland)
27. NASDAQ OMX Riga, AS (93% owned by NASDAQ OMX Nordic Ltd) organized in Latvia)
28. NASDAQ OMX Stockholm AB (organized in Sweden)
29. NASDAQ OMX Tallinn AS (62% owned) (organized in Estonia)
30. Nightingale Acquisition Limited (organized in the United Kingdom)
31. Nord Pool Clearing ASA (organized in Norway)
32. Nord Pool Consulting AS (organized in Norway)
33. OM London Exchange Ltd (organized in the United Kingdom)
34. OM Technology Canada Inc. (organized in Canada)
35. OM Technology Consulting (Shanghai) Company Ltd. (organized in China)
36. OMX AB (organized in Sweden)
37. OMX Broker Services AB (organized in Sweden)
38. OMX Capital Insurance AG (organized in Switzerland)
39. OMX Derivatives A/S (organized in Denmark)
40. OMX Exchanges Holding Danmark A/S (organized in Denmark)
41. OMX Ltd. (organized in China)
42. OMX Germany GmbH (organized in Germany)
43. OMX Netherlands BV (organized in the Netherlands)
44. OMX Netherlands Holding BV (organized in the Netherlands)
45. OMX Nordic Exchange System Support Stockholm AB (organized in Sweden)
46. OMX Pte Ltd (organized in Singapore)
47. OMX Securities Financial Limited (100% owned OMX Securities Services UK LLP) (organized in the United Kingdom)
48. OMX Securities Holdings Ltd. (51% owned by OMX Technology Ltd) (organized in the United Kingdom)
49. OMX Securities Limited (100% owned OMX Securities Holdings Ltd) (organized in the United Kingdom)
50. OMX Securities Nominees Limited (100% owned by OMX Securities Services UK LLP) (organized in the United Kingdom)
51. OMX Securities Services Ltd (organized in Finland)
52. OMX Securities Services UK LLP (99% owned by OMX Securities Ltd, 1% owned by Secondco Ltd) (organized in the United Kingdom)
53. OMX Technology AB (organized in Sweden)
54. OMX Technology Australia Pty Limited (organized in Australia)
55. OMX Technology Energy Systems AS (organized in Norway)
56. OMX Technology (Ireland) Ltd (organized in Ireland)
57. OMX Technology Italy Srl (organized in Italy)
58. OMX Technology Ltd. (organized in the United Kingdom)
59. OMX Technology (UK) Ltd. (organized in the United Kingdom)
60. OMX Treasury AB (organized in Sweden)
61. OMX Treasury Euro AB (organized in Sweden)
62. OMX Treasury Euro Holding AB (organized in Sweden)
63. Power Clearing Systems AS (organized in Norway)
64. Secondco Limited (100% owned by OMX Securities Holdings Ltd) (organized in the United Kingdom)
65. Shareholder.com B.V. (organized in the Netherlands)
66. Stockholms Fondbörs AB (organized in Sweden)
67. Stockholmsbörsen IT Support AB (organized in Sweden)
68. Stockholmsbörsen IT Support KB (organized in Sweden)
69. UAB OMX Nordic Exchange Service Provider (organized in Lithuania)
70. Upplysingathing ehf. [unofficial name: ICEX info] (organized in Iceland)
71. Verdbrefaskraning Islands hf. [unofficial name: Icelandic Securities Depository] (organized in Iceland)

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\* The list of subsidiaries does not include foreign branches of particular subsidiaries.

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in this Annual Report (Form 10-K) of The NASDAQ OMX Group, Inc. of our report dated February 26, 2009, with respect to the consolidated financial statements of The NASDAQ OMX Group, Inc. included in the 2008 Annual Report to Stockholders of The NASDAQ OMX Group, Inc.

Our audits also included the financial statement schedule of The NASDAQ OMX Group, Inc. in Item 15. This schedule is the responsibility of The NASDAQ OMX Group, Inc.'s management. Our responsibility is to express an opinion based on our audits. In our opinion, as to which the date is February 26, 2009, the financial statement schedule referred to above, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statement (Form S-3 No. 333-157020) of The NASDAQ OMX Group, Inc.
- (2) Registration Statement (Form S-8 No. 333-110602) pertaining to The Nasdaq Stock Market, Inc. Equity Incentive Plan,
- (3) Registration Statement (Form S-8 No. 333-106945) pertaining to the Employment Agreement with Robert Greifeld of The Nasdaq Stock Market, Inc.,
- (4) Registration Statement (Form S-8 No. 333-76064) pertaining to The Nasdaq Stock Market, Inc. 2000 Employee Stock Purchase Plan
- (5) Registration Statement (Form S-8 No. 333-72852) pertaining to The Nasdaq Stock Market, Inc. 2000 Employee Stock Purchase Plan and
- (6) Registration Statement (Form S-8 No. 333-70992) pertaining to The Nasdaq Stock Market, Inc. Equity Incentive Plan,

of our report dated February 26, 2009, with respect to the consolidated financial statements of The NASDAQ OMX Group, Inc. incorporated herein by reference, our report dated February 26, 2009, with respect to the effectiveness of internal control over financial reporting of The NASDAQ OMX Group, Inc. included herein, and our report included in the preceding paragraph with respect to the financial statement schedule of The NASDAQ OMX Group, Inc. included in this Annual Report (Form 10-K) of The NASDAQ OMX Group, Inc. for the year ended December 31, 2008.

/s/ Ernst & Young LLP

New York, New York  
February 26, 2009

POWER OF ATTORNEY  
ANNUAL REPORT ON FORM 10-K  
THE NASDAQ OMX GROUP, INC.

Know all men by these presents, that the undersigned, a director of The NASDAQ OMX Group, Inc., a Delaware corporation, hereby constitutes and appoints Edward S. Knight and Joan C. Conley, and each of them acting individually, the undersigned's true and lawful attorneys-in-fact and agents, each with full power and substitution and resubstitution, for him and in his name, place, and stead, in any case and all capacities to:

(1) execute for and on behalf of the undersigned, an Annual Report on Form 10-K of The NASDAQ OMX Group, Inc. for the fiscal year ended December 31, 2008, including any and all amendments and additions thereto (collectively, the "Annual Report") in accordance with the Securities Exchange Act of 1934, as amended, and the rules thereunder;

(2) do and perform any and all acts for and on behalf of the undersigned which may be necessary or desirable to file, or cause to be filed, the Annual Report with all exhibits thereto (including this Power of Attorney), and other documents in connection therewith, with the United States Securities and Exchange Commission; and

(3) take any other action or any type whatsoever in connection with the foregoing which, in the opinion of such attorneys-in-fact, may be of benefit to, in the best interest of, or legally required by, the undersigned, it being understood that the documents executed by such attorneys-in-fact on behalf of the undersigned pursuant to this Power of Attorney shall be in such form and shall contain such terms and conditions as such attorneys-in-fact may approve in such attorneys-in-fact's discretion.

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IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of February 26, 2009.

/s/ Soud Ba'alawy

\_\_\_\_\_  
Signature

POWER OF ATTORNEY  
ANNUAL REPORT ON FORM 10-K  
THE NASDAQ OMX GROUP, INC.

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IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of February 25, 2009.

/s/ Urban Bäckström

\_\_\_\_\_  
Signature

POWER OF ATTORNEY  
ANNUAL REPORT ON FORM 10-K  
THE NASDAQ OMX GROUP, INC.

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IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of February 25, 2009.

/s/ H. Furlong Baldwin

\_\_\_\_\_  
Signature

POWER OF ATTORNEY  
ANNUAL REPORT ON FORM 10-K  
THE NASDAQ OMX GROUP, INC.

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IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of February 25, 2009.

/s/ Michael Casey

\_\_\_\_\_  
Signature

POWER OF ATTORNEY  
ANNUAL REPORT ON FORM 10-K  
THE NASDAQ OMX GROUP, INC.

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IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of February 25, 2009.

/s/ Lon Gorman

\_\_\_\_\_  
Signature

POWER OF ATTORNEY  
ANNUAL REPORT ON FORM 10-K  
THE NASDAQ OMX GROUP, INC.

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IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of February 25, 2009.

/s/ Glenn H. Hutchins

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Signature

POWER OF ATTORNEY  
ANNUAL REPORT ON FORM 10-K  
THE NASDAQ OMX GROUP, INC.

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IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of February 25, 2009.

/s/ Birgitta Kantola

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Signature

POWER OF ATTORNEY  
ANNUAL REPORT ON FORM 10-K  
THE NASDAQ OMX GROUP, INC.

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IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of February 25, 2009.

/s/ Essa Kazim

\_\_\_\_\_  
Signature

POWER OF ATTORNEY  
ANNUAL REPORT ON FORM 10-K  
THE NASDAQ OMX GROUP, INC.

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IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of February 25, 2009.

/s/ John D. Markese

\_\_\_\_\_  
Signature

POWER OF ATTORNEY  
ANNUAL REPORT ON FORM 10-K  
THE NASDAQ OMX GROUP, INC.

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IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of February 25, 2009.

/s/ Hans Munk Nielsen

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Signature

POWER OF ATTORNEY  
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IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of February 25, 2009.

/s/ Thomas F. O'Neill

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Signature

POWER OF ATTORNEY  
ANNUAL REPORT ON FORM 10-K  
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IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of February 25, 2009.

/s/ James S. Riepe

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Signature

POWER OF ATTORNEY  
ANNUAL REPORT ON FORM 10-K  
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IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of February 24, 2009.

/s/ Michael R. Splinter

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Signature

POWER OF ATTORNEY  
ANNUAL REPORT ON FORM 10-K  
THE NASDAQ OMX GROUP, INC.

Know all men by these presents, that the undersigned, a director of The NASDAQ OMX Group, Inc., a Delaware corporation, hereby constitutes and appoints Edward S. Knight and Joan C. Conley, and each of them acting individually, the undersigned's true and lawful attorneys-in-fact and agents, each with full power and substitution and resubstitution, for him and in his name, place, and stead, in any case and all capacities to:

(1) execute for and on behalf of the undersigned, an Annual Report on Form 10-K of The NASDAQ OMX Group, Inc. for the fiscal year ended December 31, 2008, including any and all amendments and additions thereto (collectively, the "Annual Report") in accordance with the Securities Exchange Act of 1934, as amended, and the rules thereunder;

(2) do and perform any and all acts for and on behalf of the undersigned which may be necessary or desirable to file, or cause to be filed, the Annual Report with all exhibits thereto (including this Power of Attorney), and other documents in connection therewith, with the United States Securities and Exchange Commission; and

(3) take any other action or any type whatsoever in connection with the foregoing which, in the opinion of such attorneys-in-fact, may be of benefit to, in the best interest of, or legally required by, the undersigned, it being understood that the documents executed by such attorneys-in-fact on behalf of the undersigned pursuant to this Power of Attorney shall be in such form and shall contain such terms and conditions as such attorneys-in-fact may approve in such attorneys-in-fact's discretion.

The undersigned hereby grants to each attorney-in-fact full power and authority to do and perform any and every act and thing whatsoever requisite, necessary or proper to be done in the exercise of any of the rights and powers herein granted, as fully to all intents and purposes as the undersigned might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that such shall lawfully do or cause to be done by virtue of this Power of Attorney and the rights and powers herein granted.

IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of February 25, 2009.

/s/ Lars Wedenborn

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Signature

POWER OF ATTORNEY  
ANNUAL REPORT ON FORM 10-K  
THE NASDAQ OMX GROUP, INC.

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(1) execute for and on behalf of the undersigned, an Annual Report on Form 10-K of The NASDAQ OMX Group, Inc. for the fiscal year ended December 31, 2008, including any and all amendments and additions thereto (collectively, the "Annual Report") in accordance with the Securities Exchange Act of 1934, as amended, and the rules thereunder;

(2) do and perform any and all acts for and on behalf of the undersigned which may be necessary or desirable to file, or cause to be filed, the Annual Report with all exhibits thereto (including this Power of Attorney), and other documents in connection therewith, with the United States Securities and Exchange Commission; and

(3) take any other action or any type whatsoever in connection with the foregoing which, in the opinion of such attorneys-in-fact, may be of benefit to, in the best interest of, or legally required by, the undersigned, it being understood that the documents executed by such attorneys-in-fact on behalf of the undersigned pursuant to this Power of Attorney shall be in such form and shall contain such terms and conditions as such attorneys-in-fact may approve in such attorneys-in-fact's discretion.

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IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of February 25, 2009.

/s/ Deborah L. Wince-Smith

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Signature

## CERTIFICATION

I, Robert Greifeld, certify that:

1. I have reviewed this Annual Report on Form 10-K of The NASDAQ OMX Group, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Robert Greifeld

Name: Robert Greifeld

Title: Chief Executive Officer

Date: February 26, 2009

## CERTIFICATION

I, David P. Warren, certify that:

1. I have reviewed this Annual Report on Form 10-K of The NASDAQ OMX Group, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ David P. Warren

Name: David P. Warren

Title: Executive Vice President and Chief Financial Officer

Date: February 26, 2009

**Certification of CEO and CFO Pursuant to  
18 U.S.C. Section 1350  
as Adopted Pursuant to  
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Annual Report on Form 10-K of The NASDAQ OMX Group, Inc. (the "Company") for the year ended December 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Robert Greifeld, as Chief Executive Officer of the Company and David P. Warren, as Executive Vice President and Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of the operations of the Company.

/s/ Robert Greifeld

Name: Robert Greifeld

Title: Chief Executive Officer

Date: February 26, 2009

/s/ David P. Warren

Name: David P. Warren

Title: Executive Vice President and Chief Financial Officer

Date: February 26, 2009

This certification accompanies the Report pursuant to § 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of § 18 of the Securities Exchange Act of 1934, as amended.