

**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, 2012**

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 whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) 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.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

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 29, 2012, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant was approximately \$2.6 billion (this amount represents approximately 116.7 million shares of The NASDAQ OMX Group, Inc.'s common stock based on the last reported sales price of \$22.67 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 8, 2013</u>
Common Stock, \$.01 par value per share	165,678,013 shares

**DOCUMENTS INCORPORATED BY REFERENCE**

<u>Document</u>	<u>Parts Into Which Incorporated</u>
Certain portions of the Definitive Proxy Statement for the 2013 Annual Meeting of Stockholders	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.
- "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.
- "Nasdaq" refers to The Nasdaq Stock Market, Inc., as that entity operated prior to the business combination with OMX AB.
- "OMX" refers to OMX AB (publ) subsequent to the business combination with Nasdaq.
- "NASDAQ OMX Nordic" refers to collectively, NASDAQ OMX Stockholm, NASDAQ OMX Copenhagen, NASDAQ OMX Helsinki and NASDAQ OMX Iceland.
- "NASDAQ OMX Nordic Clearing" refers to collectively, the clearing operations conducted through NASDAQ OMX Nordic and NASDAQ OMX Commodities.
- "NASDAQ OMX Baltic" refers to collectively, NASDAQ OMX Tallinn, NASDAQ OMX Riga and NASDAQ OMX Vilnius.
- "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 LLC (formerly NASDAQ OMX PHLX, Inc.) subsequent to its acquisition by NASDAQ OMX.
- "SEK" or "Swedish Krona" refers to the lawful currency of Sweden.

\* \* \* \* \*

Aces<sup>®</sup>, BX Venture Market<sup>®</sup>, Directors Desk<sup>®</sup>, Dream It. Do It<sup>®</sup>, EVI<sup>®</sup>, GlobeNewswire<sup>®</sup>, INET<sup>®</sup>, ITCH<sup>®</sup>, Market Intelligence Desk<sup>®</sup>, Market Mechanics<sup>®</sup>, MarketSite<sup>®</sup>, NASDAQ<sup>®</sup>, NASDAQ Biotechnology<sup>®</sup>, NASDAQ Biotechnology Index<sup>®</sup>, NASDAQ Capital Market<sup>®</sup>, NASDAQ Competitive VWAP<sup>®</sup>, NASDAQ Composite<sup>®</sup>, NASDAQ Composite Index<sup>®</sup>, NASDAQ Computer Index<sup>®</sup>, NASDAQ-Financial Index<sup>®</sup>, NASDAQ Financial-100 Index<sup>®</sup>, NASDAQ Global Market<sup>®</sup>, NASDAQ Global Select Market<sup>®</sup>, NASDAQ Industrial Index<sup>®</sup>, NASDAQ Interact<sup>®</sup>, NASDAQ Internet Index<sup>®</sup>, NASDAQ Is There When the Bell Stops Ringing<sup>®</sup>, NASDAQ Market Analytix<sup>®</sup>, NASDAQ Market Center<sup>®</sup>, NASDAQ Market Forces<sup>®</sup>, NASDAQ Market Velocity<sup>®</sup>, NASDAQ MarketSite<sup>®</sup>, NASDAQ MAX<sup>®</sup>, NASDAQ Market Analytix<sup>®</sup>, NASDAQ National Market<sup>®</sup>, NASDAQ OMX<sup>®</sup>, NASDAQ OMX Advantage<sup>®</sup>, NASDAQ OMX Alpha Indexes<sup>®</sup>, NASDAQ OMX BX<sup>®</sup>, NASDAQ OMX Event Technologies<sup>®</sup>, NASDAQ OMX Express<sup>®</sup>, NASDAQ OMX Futures Exchange<sup>®</sup>, NASDAQ OMX Green Economy Index<sup>®</sup>, The NASDAQ OMX Group<sup>®</sup>, NASDAQ OMX Nordic<sup>®</sup>, NASDAQ OMX Social Stream<sup>®</sup>, NASDAQ Q-50 Index<sup>®</sup>, NASDAQ Report Source<sup>®</sup>, NASDAQ Social Stream<sup>®</sup>, NASDAQ Telecommunications Index<sup>®</sup>, NASDAQ TotalView<sup>®</sup>, NASDAQ Trade Up<sup>®</sup>, NASDAQTrader<sup>®</sup>, NASDAQ Transportation<sup>®</sup>, NASDAQ US ALL Market<sup>®</sup>, NASDAQ Volatility Guard<sup>®</sup>, NASDAQ Workstation<sup>®</sup>, NASDAQ Workstation II<sup>®</sup>, NASDAQ-100<sup>®</sup>, NASDAQ-100 European<sup>®</sup>, NASDAQ-100 Index<sup>®</sup>, NASDAQ-100 Index Tracking Stock<sup>®</sup>, NDX<sup>®</sup>, NFX World Currency<sup>®</sup>; NFX XL<sup>®</sup>, NLX<sup>®</sup>, NOMX<sup>®</sup>, PHLX<sup>®</sup>, PORTAL Alliance<sup>®</sup>, QQQ<sup>®</sup>, QView<sup>®</sup>, Shareholder.com<sup>®</sup>, SuperCab<sup>®</sup>, The NASDAQ Stock Market<sup>®</sup>, The Stock Market for the Next 100 Years<sup>®</sup>, Trade Up<sup>®</sup>, and UltraFeed<sup>®</sup> are registered trademarks of The NASDAQ OMX Group, Inc.

"FINRA<sup>®</sup>" and "Trade Reporting Facility<sup>®</sup>" are registered trademarks of the Financial Industry Regulatory Authority, or FINRA.

All other trademarks and servicemarks used herein are the property of their respective owners.

\* \* \* \* \*

This Annual Report on 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 Annual Report on Form 10-K for initial public offerings, or IPOs, is based on data generated internally by us, which includes best efforts underwritings and closed-end funds;

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therefore, the data may not be comparable to other publicly-available IPO data. Data in this Annual Report on 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, issuers that switched from other listing venues, closed-end funds and exchange traded funds, or ETFs. Data in this Annual Report on Form 10-K for IPOs and new listings of equities securities on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic also is based on data generated internally by us. IPOs 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 Annual Report on 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 expectations as to industry and regulatory developments or business initiatives and strategies, future operating results or financial performance identify forward-looking statements. These include, among others, statements relating to:

- our 2013 outlook;
- the scope, nature or impact of acquisitions, divestitures, investments or other transactional activities;
- the integration of acquired businesses, including accounting decisions relating thereto;
- the effective dates for, and expected benefits of, ongoing initiatives, including strategic and capital return initiatives;
- the impact of pricing changes;
- tax matters;
- costs and savings associated with restructuring activities;
- the cost and availability of liquidity; 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;
- loss of significant trading and clearing volume, market share or listed companies;
- economic, political and market conditions and fluctuations, including interest rate and foreign currency risk, inherent in U.S. and international operations;
- government and industry regulation;
- our ability to successfully integrate 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;
- covenants in our credit facilities, indentures and other agreements governing our indebtedness which may restrict the operation of our business; 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 Annual Report on 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 Annual Report on 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 update any forward-looking statement, release publicly any revisions to any forward-looking statements or 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, clearing, exchange technology, regulatory, securities listing, and public company services across six continents. Our global offerings are diverse and include trading and clearing 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 single cash equities securities market in the U.S. in terms of listed companies and in the world in terms of share value traded. As of December 31, 2012, The NASDAQ Stock Market was home to 2,577 listed companies with a combined market capitalization of approximately \$5.2 trillion. In addition, in the U.S. we operate two additional cash equities trading markets, three options markets and a futures market. We also engage in riskless principal trading and clearing of over-the-counter, or OTC, power and gas contracts.

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. Collectively, 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 and clearing of resale and repurchase agreements. Through NASDAQ OMX First North, our Nordic and Baltic operations also offer alternative marketplaces for smaller companies. As of December 31, 2012, the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic, together with NASDAQ OMX First North, were home to 754 listed companies with a combined market capitalization of approximately \$1.0 trillion. We also operate NASDAQ OMX Armenia.

In addition, NASDAQ OMX Commodities operates the world's largest power derivatives exchange, one of Europe's largest carbon exchanges and together with Nord Pool Spot, N2EX, a marketplace for physical U.K. power contracts. We also operate NOS Clearing, a leading Norway-based clearinghouse primarily for OTC traded derivatives for the freight market and seafood derivatives market.

In some of the countries where we operate exchanges, we also provide clearing, settlement and depository services.

#### History and Structure

Nasdaq was founded in 1971 as a wholly-owned subsidiary of 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. 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 pursuant to an agreement with Borse Dubai Limited, a Dubai company, or Borse Dubai, and Nasdaq was renamed The NASDAQ OMX Group, Inc. This transformational combination resulted in the expansion of our business from a U.S.-based exchange operator to a global exchange company offering technology that powers our own exchanges and markets as well as more than 70 other exchanges, clearing organizations and central securities depositories in more than 50 countries. Our Genium INET and X-stream INET technology platforms, based on proven INET technology, provide technology to customers with the speed, scale and reliability required to meet the specific needs of their markets.

Also in 2008, we expanded our U.S. Market Services business through the acquisitions of the Philadelphia Stock Exchange, Inc., or PHLX, and the Boston Stock Exchange, Incorporated, or BSX. These acquisitions allowed us to extend our presence in the derivatives markets and we currently operate three separate options markets. In addition, we have used the licenses acquired in these acquisitions to launch two additional U.S. cash equities markets. In 2010, we also grew our Market Services offerings with the acquisition of FTEN, Inc., or FTEN, a leading provider of Real-Time Risk Management, or RTRM, solutions for the financial securities market.

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We also have expanded into the business of trading and clearing commodities products in recent years. In 2008, we acquired the clearing, international derivatives and consulting subsidiaries of Nord Pool ASA, or Nord Pool. As a result of this acquisition, we launched NASDAQ OMX Commodities, which offers energy and carbon derivatives products. In 2010, we acquired a derivatives trading market through the purchase of the remaining businesses of Nord Pool. Also in 2010, through our subsidiary NASDAQ OMX Commodities Clearing Company, or NOCC, we purchased the assets of North American Energy Credit and Clearing Corp., expanding our presence in the OTC energy commodity markets. Together with Nord Pool Spot, NASDAQ OMX Commodities launched N2EX, a marketplace for physical U.K. power contracts. In July 2012, we acquired NOS Clearing, a leading Norway-based clearinghouse primarily for OTC traded derivatives for the freight market and seafood derivatives market.

In August 2010, we acquired SMARTS Group Holdings Pty Ltd, or SMARTS, a leading technology provider of surveillance solutions to exchanges, regulators and brokers. This acquisition allowed our Market Technology business to enter the surveillance and compliance market.

In recent years, we have expanded our Corporate Solutions business, which provides customer support services, products and programs to companies including companies listed on our exchanges, through organic growth and numerous acquisitions. In May 2012, we acquired a 72% ownership interest in BWISE Beheer B.V. and its subsidiaries, or BWISE, a Netherlands-based service provider that offers enterprise governance, risk management and compliance software and services to help companies track, measure and manage key organizational risks. We have agreed to purchase the remaining 28% ownership interest in BWISE in two separate transactions, resulting in 100% ownership by the first half of 2015. Most recently, in December 2012, we entered into an agreement with Thomson Reuters to acquire its Investor Relations, Public Relations and Multimedia Solutions businesses. Upon closing, these complementary businesses will be integrated into our Corporate Solutions business. The proposed transaction is subject to customary regulatory approvals and is expected to close in the first half of 2013.

### **Competitive Strengths**

**Premier global exchange company.** We are a premier global exchange company that operates the largest cash equities market in terms of share value traded in the world. For the year ended December 31, 2012, our exchanges had an average daily trading volume of 6.6 million trades in cash equities, representing a value of approximately \$12.4 trillion. In addition, across our markets, we had 3,331 listings representing over 40 countries as of December 31, 2012, including many of the world's largest companies. 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 market, we pioneered electronic trading and have continued to innovate over the last 40 years. Our INET platform processes trades at sub-55 microsecond average transaction speeds with close to 100% system reliability. In addition, our platforms are highly scalable with current capacity at ten times the average daily volume allowing significantly higher transaction volume to be handled at low incremental cost. Furthermore, 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), Japan, Singapore, Australia and the U.S. Our Genium INET offering, based on proven INET technology, provides technology customers with the speed, scale and reliability required to meet the specific needs of their markets. 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. In addition, our recent acquisitions, investments and strategic initiatives have significantly diversified our product offerings, particularly in the derivatives trading and clearing, commodities, corporate solutions and surveillance technology businesses. Our business has continued to increase subscription-based and recurring revenue.

**Proven and disciplined management team.** We have a proven and disciplined management team led by Robert Greifeld, our Chief Executive Officer, that has substantial financial services industry experience and expertise in making and integrating strategic acquisitions. 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, we are subject to regulation in many jurisdictions worldwide. NASDAQ OMX is always committed to working with regulators, exchanges and market participants to ensure transparent trading and a fair and orderly market for the benefit of investors. In some instances, NASDAQ OMX has entered into agreements with independent third parties to provide regulatory oversight that is separate from our markets. In addition to operating real-time market surveillance programs relating to trading and compliance-monitoring, NASDAQ also maintains 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.

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### **Products and Services**

Prior to January 1, 2013, we operated in three segments: Market Services, Issuer Services and Market Technology. Of our 2012 revenues less transaction rebates, brokerage, clearance and exchange fees of \$1,663 million, 66.4% was from our Market Services segment, 22.5% was from our Issuer Services segment and 11.1% was from our Market Technology segment. Of our 2011 revenues less transaction rebates, brokerage, clearance and exchange fees of \$1,682 million, 67.6% was from our Market Services segment, 21.5% was from our Issuer Services segment and 10.9% was from our Market Technology segment. Of our 2010 revenues less transaction rebates, brokerage, clearance and exchange fees of \$1,516 million, 67.6% was from our Market Services segment, 22.3% was from our Issuer Services segment, 10.0% was from our Market Technology segment and 0.1% related to other revenues.

See Note 19, "Business Segments," to the consolidated financial statements for additional financial information about our segments and geographic data.

As announced in January 2013, we realigned our reportable segments as a result of changes to the organizational structure of our businesses. See Note 20, "Subsequent Event," to the consolidated financial statements for further discussion.

### **Market Services**

Our Market Services segment includes our U.S. and European Transaction Services businesses, which include Access Services, as well as our Market Data and Broker Services businesses. We offer trading on multiple exchanges and facilities across several asset classes, including cash equities, derivatives, debt, commodities, structured products and ETFs. In addition, in some of the countries where we operate exchanges, we also provide clearing, settlement and depository services.

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

In the U.S., we offer trading in cash equity securities, derivatives and ETFs on our cash equities, options and futures markets and engage in riskless principal trading of OTC power and gas contracts through NASDAQ OMX Commodities Clearing, or NOCC. 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 equity securities, derivatives and ETFs. 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.

*Cash Equities Trading.* The NASDAQ Stock Market is the largest single pool of liquidity for trading U.S.-listed cash equities, matching an average of approximately 17.0% of all U.S. cash equities volume for 2012.

We also operate two additional U.S. cash equities markets, called NASDAQ OMX BX and NASDAQ OMX PSX. With these markets, we offer a second and third quote within the U.S. cash equities marketplace, providing our customers enhanced trading choices and price flexibility. All of our cash equities exchanges are run on our INET trading system, providing customers additional fast and efficient cash equity securities markets using familiar technology. In accessing these markets, our customers can leverage existing infrastructure, reducing incremental costs when connecting. In 2012, NASDAQ OMX BX matched an average of approximately 2.7% and NASDAQ OMX PSX matched an average of approximately 1.1% of all U.S. cash equities volume.

Our fully electronic U.S. transaction-based platforms provide members with the ability to access, process, display and integrate orders and quotes in cash equity securities. Market participants include market makers, broker-dealers, alternative trading systems, or ATSS, and registered securities exchanges. These services are offered for NASDAQ-listed and non-NASDAQ-listed securities. Specifically, our platforms:

- provide 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);
- provide 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 and IPO Cross; and
- provide 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 our cash equities exchanges are automatically reported under the appropriate transaction reporting plan. Currently, market participants are not charged for the reporting of most of these trades. Our cash equities exchanges, 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 securities listed on the New York Stock Exchange, or NYSE, NYSE MKT and other exchanges.

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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 results from orders that broker-dealers have matched internally and is submitted to the FINRA/NASDAQ TRF for reporting purposes only. The FINRA/NASDAQ TRF charges market participants for locked-in reporting of most trades, but it shares back most revenues earned from shared market information 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. Derivative Trading and Clearing.* In the U.S., we operate The NASDAQ Options Market, NASDAQ OMX PHLX and NASDAQ OMX BX Options for the trading of equity options, ETF options, index options and foreign currency options. As of December 31, 2012, NASDAQ OMX PHLX, which operates a hybrid electronic and floor-based market, was the largest equity options market in the U.S. During the year ended December 31, 2012, our options markets had an average combined market share of approximately 27.2% in the U.S. equity options market, consisting of approximately 21.3% at NASDAQ OMX PHLX, 5.5% at The NASDAQ Options Market and 0.4% at NASDAQ OMX BX Options. Together, the combined market share of 27.2% represented the largest share of the U.S. equity options market and ETF options market. Our options trading platforms provide trading opportunities to both retail investors, algorithmic trading firms and market makers, who tend to prefer electronic trading, and institutional investors, who typically pursue more complex trading strategies and often trade on the floor.

In the U.S., we also operate NFX, a designated contract market regulated by the U.S. Commodity Futures Trading Commission, or CFTC. NFX offers trading of futures contracts on spot gold, which clear at The Options Clearing Corporation, or OCC.

NASDAQ OMX also engages in riskless principal trading and clearing of OTC power and gas contracts through our subsidiary NOCC.

### **European Transaction Services**

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

Trading is offered in Nordic securities such as cash equities and depository receipts, warrants, convertibles, rights, fund units, ETFs, bonds and other interest-related products. NASDAQ OMX Stockholm also offers trading in derivatives, such as stock options and futures, index options and futures, fixed-income options and futures and stock loans. Settlement and registration of cash trading takes place in Sweden, Finland, Denmark and Iceland via the local central securities depositories.

NASDAQ OMX's trading offerings also include cash equities listed in Norway and Norwegian derivatives products. The offering is designed to provide lower trading costs and other benefits for customers seeking to trade all Nordic cash equity products on one platform.

Most of our cash equity trades on the exchanges that comprise NASDAQ OMX Nordic are centrally cleared by the European Multilateral Clearing Facility N.V., or EMCF, a leading European clearinghouse in which we own a 22% equity stake.

NASDAQ OMX Stockholm offers clearing services for fixed-income options and futures, stock options and futures and index options and futures by serving as the central counterparty, or CCP. NASDAQ OMX Stockholm also operates a clearing service for the resale and repurchase agreement market. As a result of an agreement between the Swedish Money Market Council and NASDAQ OMX, a large portion of the Swedish Interbank resale and repurchase agreement market is cleared through NASDAQ OMX Stockholm.

*Baltics.* NASDAQ OMX Baltic operations comprise the exchanges in Tallinn (Estonia), Riga (Latvia) and Vilnius (Lithuania). As of December 31, 2012, NASDAQ OMX owns NASDAQ OMX Tallinn and has a majority ownership in NASDAQ OMX Vilnius and NASDAQ OMX Riga. In addition, NASDAQ OMX Tallinn owns the central securities depository in Estonia, NASDAQ OMX Riga owns the central securities depository in Latvia, and NASDAQ OMX Helsinki and NASDAQ OMX Vilnius jointly own the central securities depository in Lithuania.

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The exchanges that comprise NASDAQ OMX Baltic 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 cash 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, NASDAQ OMX offers the maintenance of shareholder registers for listed companies. The Baltic central securities depositories offer a complete range of cross-border settlement services.

*TOM.* In December 2012, we announced an agreement to acquire a 25% stake in The Order Machine, or TOM, a Dutch cash equities and equity derivatives trading venue. The terms of the transaction also provide us an option to acquire an additional 25.1% of the remaining shares at a future date. This transaction delivers on our strategy to expand our derivatives presence across the European market. The acquisition is subject to regulatory approval.

*Commodities Trading and Clearing.* NASDAQ OMX Commodities offers trading and clearing of international power derivatives, carbon and other commodities products. NASDAQ OMX Commodities' offering includes the world's largest power derivatives exchange and one of Europe's largest carbon exchanges.

NASDAQ OMX Commodities has over 400 members 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, industrial, manufacturing and oil companies. NASDAQ OMX Commodities offers clearing services for energy derivative and carbon product contracts by serving as the CCP.

In addition, NASDAQ OMX Commodities, together with Nord Pool Spot, operates N2EX, a marketplace for physical U.K. power contracts.

In July 2012, we acquired NOS Clearing, a leading Norway-based clearinghouse primarily for OTC traded derivatives for the freight market and seafood derivatives market.

*U.K.* In June 2012, we announced the intention to launch a new London-based trading venue, NLX, offering a range of both short-term interest rate (STIRs) and long-term interest rate (LTIRs) euro—and sterling-based listed derivative products. NLX aims to enhance the competitive landscape by providing highly competitive execution and clearing fees and significant margin efficiencies. The platform is expected to launch in the second quarter of 2013, pending Financial Services Authority approval.

### **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 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, or CTCTI, a protocol that allows market participants to enter transactions directly from their computer systems to our computer systems. Firms also may use former INET protocols, such as OUCH and RASH, to access our single trading platform. We also earn revenues from connectivity to various market data feeds. As an alternative to a 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. Finally, we offer a variety of add-on compliance tools to help firms comply with regulatory requirements.

We provide co-location services to market participants whereby firms may lease space for equipment within our data center. These participants are charged monthly fees for cabinet space, connectivity and support. We also earn revenues from annual and monthly exchange membership and registration fees.

Access Services revenues also include revenues from FTEN, a leading provider of RTRM solutions for the financial securities market. As a market leader in RTRM, FTEN provides broker-dealers and their clients the ability to manage risk more effectively in real-time, which leads to better utilization of capital as well as improved regulatory compliance.

In 2012, we announced the launch of FinQloud, a platform for financial services applications that provides efficient management and storage of financial data.

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### **Market Data**

We earn Market Data revenues from U.S. tape plans and U.S. and European proprietary 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, NASDAQ OMX BX and NASDAQ OMX PSX are participants in the UTP Plan and share 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, who then provide the information to subscribers. After deducting costs associated with our role as an exclusive Securities Information Processor, as permitted under the revenue sharing provision of the UTP Plan, we distribute the tape revenues to the respective UTP Plan participants, including The NASDAQ Stock Market, NASDAQ OMX BX and NASDAQ OMX PSX, 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 MKT-listed securities are reported and disseminated in real time, and as such, we share in the tape revenues for information on NYSE- and NYSE MKT-listed securities.

*U.S. Market Data Products.* Our market data products enhance transparency and provide critical information to professional and non-professional investors. We collect, process and create information and earn revenues as a distributor of our own, as well as select, third-party content. We provide varying levels of quote and trade information to market participants and to data distributors, who in turn provide subscriptions for this information. Our systems enable distributors to gain direct access to our market depth, index values, mutual fund valuation, order imbalances, market sentiment and other analytical data. Revenues from U.S. market data products are subscription-based and are generated 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. We also offer TotalView products for our NASDAQ OMX BX and NASDAQ OMX PSX markets. 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 TotalView enterprise licenses to facilitate broad based distribution of this data. In addition, we charge the distributor a monthly distributor fee.

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

- NASDAQ Basic, which offers a flexible and affordable way to provide customers with essential trading data of best bid and offer and last sale information;
- NASDAQ Last Sale, which provides broad based and universal access to real-time last sale information via Internet portals;
- NASDAQ Market Replay, a powerful replay and analysis tool that allows users to view order book and trade data for NASDAQ, NYSE- and NYSE MKT-listed securities at any point in time;
- NASDAQ OMX DataStore, which is designed to transform the market data industry through use of plug-and-play technology to deliver new proprietary information content;
- Mutual Fund Quotation Service, a service for over 29,000 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, which is 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;
- Global Index Dissemination Service, which is a real-time data feed that carries the values for a number of broad-based and sector indexes and ETFs;
- Top Of PHLX Options, which is a top-price-level data feed directly from the NASDAQ OMX PHLX options market;
- MatchView, a direct data feed that provides a view of the prevailing best bid offer of other exchanges;

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- Global Index Watch, which provides index weights and components, including advanced notification of corporate actions, as well as real-time, daily and historical index values for NASDAQ OMX indexes;
- NASDAQ Data-On-Demand, a service that gives customers instant access to historical Level 1 information;
- Global Access, a service that uses NASDAQ OMX expertise to perform services for clients, such as client on-site reviews;
- Event Driven Analytics, a machine readable news service delivering key economic indicators directly from the source; and
- NASDAQ OMX Ultrafeed, an efficient aggregated and normalized data feed including all North American equity, options, futures, indexes and fund market data.

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

European market data products and services are based on the trading information from the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic, as well as NASDAQ OMX Commodities, for the following classes of assets: cash equities, bonds, derivatives and commodities. We provide varying levels of quote and trade information to market participants and to data distributors, who in turn provide subscriptions for this information. Revenues from European market data products are subscription-based and 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, which provides full market insight into the order book, news and analysis data for all Nordic cash equities. The product also includes index values and weights and liquidity measure indicators;
- Nordic Derivative TotalView ITCH, the low latency source for Nordic derivatives, which displays all bid/ask prices in the order book, real time listing details and trading information; and
- Nordic Fixed Income Level 2, which 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.

### **Broker Services**

Our Broker Services operations offer technology and customized securities administration solutions to financial participants in the Nordic market. Broker Services provides services through a registered securities company that is regulated by the Swedish Financial Supervisory Authority, or SFS. Services primarily consist of flexible back-office systems, which 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. 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 Global Index Group businesses. We offer capital raising solutions to over 3,300 companies around the globe representing approximately \$6.2 trillion in total market value as of December 31, 2012.

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. We offer a consolidated global listing application to companies to enable them to apply for listing on The NASDAQ Stock Market and the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic, as well as NASDAQ Dubai. In addition, through our Corporate Solutions business, we offer companies access to innovative products and software solutions and services that ease transparency, mitigate risk, maximize board efficiency and facilitate better corporate governance.

## Global Listing Services

Our Global Listing Services business includes our U.S. Listings, European Listings and Corporate Solutions businesses.

*U.S. Listings.* Companies listed on The NASDAQ Stock Market represent a diverse array of industries including health care, consumer products, telecommunication services, information technology, financial services, 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).

As of December 31, 2012, a total of 2,577 companies listed securities on The NASDAQ Stock Market, with 1,446 listings on The NASDAQ Global Select Market, 634 on The NASDAQ Global Market and 497 on The NASDAQ Capital Market.

We aggressively pursue new listings from companies, including those undergoing IPOs as well as companies seeking to switch from alternative exchanges. In 2012, The NASDAQ Stock Market attracted 158 new listings. Included in these listings were 72 IPOs, almost 48% of the total U.S. IPOs in 2012. The new listings were comprised of the following:

Total New Listings on The NASDAQ Stock Market	158
Switches from NYSE/NYSE MKT	16
IPOs	72
Upgrades from OTC	36
ETFs, Structured Products and Other Listings	34

In 2012, a total of 16 NYSE- or NYSE MKT-listed companies switched to The NASDAQ Stock Market, representing approximately \$135 billion in market capitalization, including Kraft Foods, Texas Instruments, Goodyear Tire & Rubber and Analog Devices.

*European Listings.* We also offer listings on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic. For smaller companies and growth companies, we offer access to the financial markets through the NASDAQ OMX First North alternative marketplaces. As of December 31, 2012, a total of 754 companies listed securities on our Nordic and Baltic exchanges and NASDAQ OMX First North.

Our European listing customers are organizations such as companies, funds or governments. Customers issue securities in the form of cash equities, depository receipts, warrants, ETFs, convertibles, rights, options, bonds or fixed-income related products. In 2012, a total of 18 new companies were listed on our Nordic and Baltic exchanges and NASDAQ OMX First North.

*Corporate Solutions.* Our Corporate Solutions business provides customer support services, products and programs to customers, including companies listed on our exchanges. Through our Corporate Solutions offerings, companies gain access to innovative products and software solutions and services that ease transparency, mitigate risk, maximize board efficiency and facilitate better corporate governance. We provide corporate solutions in the following 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.
- *Board Practice.* We offer 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.
- *Webcasting.* We offer webcasting and investor relations communication services for companies in the Nordic region through our subsidiary ZVM, a leading provider of webcasting services in Northern Europe.
- *Corporate Communications and Reputation Management.* Through our subsidiary, Glide Technologies, we offer corporate communications and reputation management solutions to investor relations and public relations professionals.

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In May 2012, we acquired a 72% ownership interest in BWISE, a Netherlands-based service provider that offers enterprise governance, risk management and compliance software and services to help companies track, measure and manage key organizational risks. We have agreed to purchase the remaining 28% ownership interest in BWISE in two separate transactions, resulting in 100% ownership by the first half of 2015.

In December 2012, we entered into an agreement with Thomson Reuters to acquire its Investor Relations, Public Relations and Multimedia Solutions businesses. Upon closing, these complementary businesses will be integrated into our Corporate Solutions business. The proposed transaction is subject to customary regulatory approvals and is expected to close in the first half of 2013.

### **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 Group 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 a percentage of underlying assets, dollar value of a product issuance, number of products or number of contracts traded. In addition to generating licensing revenues, these products, particularly mutual funds and ETFs, lead to increased investments in companies listed on our global exchanges, which enhances our ability to attract new listings. We also license cash-settled options, futures and options on futures on our indexes.

At the end of 2012, NASDAQ OMX indexes were the basis for over 7,000 structured products with nearly \$1.0 trillion of notional value. NASDAQ OMX indexes are now the basis for 97 exchange traded products with over \$55.0 billion in assets under management. Our flagship index, the NASDAQ-100 Index, includes the top 100 non-financial securities listed on The NASDAQ Stock Market.

During 2012, the Global Index Group launched the first phase of the NASDAQ Global Index Family, which includes approximately 4,000 indexes. The NASDAQ Global Index Family represents more than 98% of the global equity investable marketplace. The family consists of global securities broken down by market segment, region, country, size and sector. The NASDAQ Global Index Family covers 45 countries and 9,000 securities with a combined float-adjusted market capitalization of over \$32 trillion.

In December 2012, NASDAQ OMX acquired the index business of Mergent, Inc., including Indxis. Mergent is an established index provider and a renowned supplier of business and financial data on global publically listed companies. With this acquisition, NASDAQ OMX Global Indexes became one of the largest providers of dividend-themed indexes based on benchmarked assets and further enhanced its custom index offering capabilities and services.

### **Market Technology**

Powering more than 70 marketplaces in over 50 developed and emerging countries, we are the world's leading technology solutions provider and partner to exchanges, clearing organizations and central securities depositories. We also provide surveillance technology to 11 regulators and 71 brokers world-wide. Our technology business is also the sales channel for our complete global offering to other marketplaces.

*Technology Solutions.* The systems solutions we offer support trading, clearing, settlement, surveillance and information dissemination for markets with wide-ranging requirements, from the leading markets in the U.S., Europe and Asia to smaller African markets. Furthermore, the solutions we offer can handle all classes of assets, including cash equities, currencies, various interest-bearing securities, commodities, energy products and derivatives.

NASDAQ OMX's technology solutions are utilized by, among others, the Australian Securities Exchange, ICAP, Bolsa de Valores de Colombia, Egypt Stock Exchange, Hong Kong Exchanges and Clearing, SIX Swiss Exchange, Singapore Exchanges, Tokyo Commodity Exchange, Osaka Securities Exchange and SBI Japannext.

Our trading and market data solutions are utilized by exchanges, alternative-trading venues, banks and securities brokers with marketplace offerings of their own. 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.

*Systems Integration, Operation and Support.* A central part of many projects is facility management and systems integration. 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.

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*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 partnering with global marketplaces, 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.

*Broker Solutions.* SMARTS Broker is a managed service designed for brokers and other market participants to assist them in complying with market rules, regulations and internal market surveillance policies. Delivered via a browser based application, SMARTS Broker is fast to implement, requires no on-site installation or maintenance, and comes with little or no hardware costs. This service covers 50 markets world-wide.

*Core Technology.* Technology plays a key role in ensuring the growth and reliability of financial markets. At NASDAQ OMX, we are committed to innovation through technology to ensure our position as a driving force in the exchange industry and to provide the best possible trading experience for our customers and investors. Investment decisions are made based on customer needs and general market trends. In 2012, NASDAQ OMX established an enterprise-wide operational excellence program to strengthen the way we develop, deploy and maintain technology products in the marketplace.

We continuously improve our core technology with a focus on reducing latency and improving capacity and reliability. NASDAQ OMX's trading technology is capable of handling multi-million messages per second at an average speed of sub-55 microseconds, currently one of the fastest of any exchange or alternative trading system in the world.

The foundation for NASDAQ OMX's core technology is INET. The INET technology is used across NASDAQ OMX's U.S. and European markets. INET is also a key building block of our Market Technology offerings, Genium INET and X-stream INET. Genium INET and X-stream INET both combine innovative functionality with a modular approach to manage change and create new advantages for existing and new customers.

## **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 trade names of NASDAQ OMX Nordic and our operations in Europe. Many of these trademarks are registered in a number of countries. Examples of registered trademarks used in our European operations include: OMX, GENIUM, Genium INET, SECUR, CLICK XT and EXIGO.

To support our business objectives and benefit from our investments in research and development, we actively seek protection for our innovations by filing patent applications to protect inventions arising from investments in products, systems, software and services. We believe that our patents and patent applications are important for maintaining the competitive differentiation of our products, systems, software and services, enhancing our ability to access technology of third parties and maximizing our return on research and development investments.

Over time, we have accumulated a robust portfolio of issued patents in the U.S., Europe and in other parts of the world. We currently hold rights to patents relating to certain aspects of products, systems, software and services, but we primarily rely on the innovative skills, technical competence and marketing abilities of our personnel. Hence, no single patent is in itself essential to us as a whole or any of our principal business areas.

We also maintain copyright protection in our NASDAQ-branded materials.

## **Competition**

*Market Services.* The cash equity securities markets are intensely competitive. We compete in the U.S. against NYSE Euronext, BATS Global Markets, Direct Edge, regional exchanges and ATSS. In Europe, our major competitors include NYSE Euronext, Deutsche Börse, the London Stock Exchange Group plc, or LSE, the Spanish Exchanges, SIX Swiss Exchange, and multilateral trading facilities, or MTFs, such as Chi-X and BATS Europe, which are similar to U.S. ATSS. 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 EuroMTS Limited. For derivatives products, competition comes in the form of trading and clearing that takes place OTC, 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

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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 the direct cost of trade execution.

*Cash equity securities trading.* The U.S. marketplace continues to evolve as the number of exchanges increases and less heavily regulated broker-owned trading systems and ATs, known collectively as dark pools, expand in number and activity. While many of the new entrants may have limited liquidity, some may attract significant levels of cash equity order volume through aggressive pricing, through interconnections with other systems, and from volume originating with broker-dealer owners and investors. In 2012, broker-dealer owned systems continued the rapid growth that began in 2009. In addition, there remains interest in electronic trading systems specializing primarily in large block trades, such as LiquidNet and Investment Technology Group's POSIT platform. During 2010, three new exchange competitors to NASDAQ OMX appeared. No new U.S. exchanges were launched or received approval in 2011 or 2012. However, NASDAQ OMX continues to face fierce competition from all trading venues for market share.

Regulatory events also could result in significant changes in the competitive landscape. In June 2012, the SEC approved a plan for FINRA and the national securities exchanges to institute a limit up-limit down system designed to reduce short-term volatility in equity trading by preventing trades in individual exchange-listed stocks from occurring outside of a specified price band. The plan is expected to be implemented in 2013 with the intention of replacing the single stock trading pauses currently in place. These regulations stem from the 2010 SEC concept release on market structure issues as well as the events of the May 6, 2010 "flash crash." In July 2012, the SEC voted to require national securities exchanges and FINRA to establish a market-wide consolidated audit trail (CAT) to improve regulators' ability to monitor trading activity. We are currently working with FINRA and the other national securities exchanges to develop a plan to create a consolidated audit trail. Any potential rules concerning halting trading during volatile markets, market access, algorithmic (high-frequency) trading, alternative trading systems (such as dark pools), and other market structure issues could change the competitive landscape by helping or hurting NASDAQ OMX or its competitors' business models.

In December 2012, IntercontinentalExchange, or ICE, announced plans to acquire NYSE Euronext. The deal is expected to close in the second half of 2013, subject to regulatory and shareholder approvals. Should the proposed transaction be completed, ICE has indicated its intent to spin off Euronext via an IPO. This transaction has the potential to affect the competitive environment we face in both the U.S. and Europe.

The European landscape is continuing to adapt to the competitive forces released by MiFID in November 2007. Throughout Europe, new MTFs have been created with the most prominent MTFs (Chi-X, Turquoise, and BATS) based in the United Kingdom and attracting a significant share of electronically matched volume. In 2012, BATS completed its acquisition of Chi-X Europe and currently operates both platforms independently but under common ownership. MTFs continue to grow their business in shares listed on our Nordic exchanges. Trade reporting alternatives to incumbent exchanges, such as Markit BOAT, also continue to be active. Electronic trading systems interested in pursuing block business have long been active in Europe and are looking to grow their businesses. In the Nordics, the Burgundy MTF grew modestly in 2010 but contracted slightly in both 2011 and 2012 and was acquired by the Oslo Borse in 2012. These entrants pursue many of the same strategies to attract order flow as do ATs 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 will remain intense.

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, the International Securities Exchange, or ISE, NYSE ARCA, NYSE Amex, BATS Options, C2 Options Exchange and the BOX Options Exchange. Competition is focused on providing market participants with greater functionality, trading system stability, customer service, efficient pricing, and speed of execution. NASDAQ OMX operates three options exchanges with different market structures. NASDAQ OMX PHLX operates a customer priority, pro-rata hybrid electronic and floor based exchange and competes most directly with CBOE, ISE, NYSE Arca and NYSE Amex. The NASDAQ Options Market operates a price/time priority exchange and competes most directly with NYSE ARCA and BATS Options. On June 29, 2012, NASDAQ OMX launched NASDAQ OMX BX Options, its third options platform. NASDAQ OMX BX Options supports multiple allocation and priority models, including

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price/time priority and customer priority with pro rata execution allocation. Miami International Holdings, Inc. received approval to launch MIAX Options Exchange, a fully electronic options platform, and did so in December 2012. The further intensifying of competition for exchange traded options means that we must continuously review our technology and pricing.

MiFID does not address competition between derivatives markets to the extent that it addresses cash equities trading and consequently has been slower to affect competition in trading derivative securities. In 2012, NASDAQ OMX agreed to acquire a 25% stake in TOM, which competes with NYSE Euronext for trading single stock derivatives in the Netherlands. As of the end of 2012, TOM's market share was 15%. 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 Group, or EUREX, NYSE Liffe, EDX London Limited 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. In addition to exchange based competition in derivatives, we continue to face competition from OTC derivative markets.

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

*Clearing.* In both the U.S. and Europe, cash equity clearing has been organized along national lines. Typically, a single clearinghouse would serve essentially all cash equity trading involving securities listed on exchanges within a nation's borders. Some countries, such as Sweden, did not have a clearinghouse until 2009. In some countries, such as the U.S., the clearinghouse is part of the same organization as the central securities depository. In some, such as Germany, the clearinghouse and the stock exchange are part of the same corporate structure, and in others, such as the U.K., the clearinghouse, exchange, and central securities depository are separate. Furthermore, there is a much shorter history of using CCP services in European clearing than in the U.S.

At this time, competition in clearing in Europe remains limited with a few new non-national clearinghouses such as EMCF, X-Clear and EuroCCP serving non-national MTFs or offering alternative clearing facilities for trades executed on incumbent exchanges. However, competition is altering the clearing business in Europe in response to the European Code of Conduct in Clearing and Settlement.

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 reality in the U.S., it may have an impact on equity trading and on our business as clearing is a non-trivial cost of trade execution.

*Market data services.* The market data business in the U.S. includes both consolidated and proprietary data products. Consolidated data products are distributed by SEC-mandated consolidators (one for NASDAQ-listed stocks and another for NYSE and other-listed stocks) that share the revenue among the exchanges that contribute data. Proprietary data products are made up exclusively of data derived from each exchange's systems. In Europe, all market data products are proprietary as there is no official data consolidator.

Our revenues from the sale of consolidated 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 MKT-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 Stock Market. We continuously evaluate and refine both programs. To remain competitive, in July 2006 and in January 2008, we changed the terms of the program and established a new Nasdaq Data Revenue Sharing Program. In December 2010, we again changed the terms of the program which were effective January 2011. We may adjust either program in the future to respond to competitive pressures.

The sale of our proprietary data products in both the U.S. and Europe is under competitive threat from alternative exchanges and trading venues that offer similar products, sometimes 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 typically 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 rapidly changing information delivery technologies and constantly invest in

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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. The growth of the number of proprietary data feeds offered by NASDAQ OMX and other exchanges has also increased the reluctance of some data vendors to add new feeds to their product offerings which further complicates exchanges' efforts to expand their market data offerings.

*Listings.* Our primary competitor for larger company listings in the U.S. is NYSE. The NASDAQ Stock Market also competes with NYSE MKT for listing of smaller companies. In early 2012, BATS announced its first primary listings which are currently limited to ETFs. DirectEdge has announced its intention to compete for listings in the future. The NASDAQ Stock Market also competes with local and overseas markets for listings by companies that choose to list outside of their home country.

The listings business in Europe is characterized by the large number of exchanges competing for new or secondary listings. Each country has one or more national exchanges that are often the first choice of companies in the respective countries. For those considering an alternative, the European exchanges that attract the most overseas listings are LSE, NYSE Euronext, Deutsche Börse and the exchanges that comprise NASDAQ OMX Nordic. 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, or OTCBB. Other exchanges in Sweden include the Nordic Growth Market and Aktietorget, which primarily serve companies with small market capitalizations.

*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 indexes created by a large number of index providers. For example, there are a number of indexes that aim to track the technology sector and thereby compete with the NASDAQ-100 Index and the NASDAQ Composite Index. We face competition from investment banks, dedicated index providers, markets and other product developers in designing products that meet investor needs.

*Market Technology.* The traditional model, where each exchange or exchange-related business developed its own technology internally sometimes aided by consultants, is evolving as many operators recognize the enormous cost savings made possible by buying technology already developed. Two types of competitors are emerging: other exchanges providing solutions, including NYSE Euronext and LSE, and pure technology providers focused on the exchange industry. These organizations offer a range of off-the-shelf technology including trading, clearing, settlement, depository and information dissemination. They also offer customization and operation expertise. NASDAQ OMX provides technology to over 70 exchanges, clearing organizations and central securities depositories worldwide and provides compliance services through its subsidiary SMARTS.

## **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 the 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.

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. These rules and regulations are not focused on the protection of our stockholders, although we believe that regulation improves the quality of exchanges and, therefore, our company. U.S. federal securities laws and the rules that govern our operations are subject to frequent change.

*Regulation of U.S. Exchanges.* SROs in the securities industry are an essential component of the regulatory scheme of the Securities Exchange Act of 1934, or 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.

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 PHLX and BSX, we acquired additional SRO

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licenses. As SROs, each entity has separate rules pertaining to its broker-dealer members and listed companies. Broker-dealers that choose to become members of The NASDAQ Stock Market, NASDAQ OMX PHLX, and/or NASDAQ OMX BX are subject to the rules of those exchanges. Broker-dealers may also choose other SRO memberships, including membership in FINRA.

All of our U.S. national securities exchanges are subject to SEC oversight, as prescribed by 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 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. We have been subject to a number of routine reviews and inspections by the SEC or external auditors in the ordinary course and because of settlements with 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.

Section 19 of the Exchange Act provides that our exchanges must submit to the SEC 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. 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 to change their pricing structure with the SEC.

NASDAQ OMX currently operates three cash equities and three 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; NASDAQ OMX BX and NASDAQ OMX BX Options pursuant to NASDAQ OMX BX's SRO license; and NASDAQ OMX PSX and the NASDAQ OMX PHLX options market pursuant to NASDAQ OMX PHLX's SRO license. In addition, NASDAQ OMX BX regulated the BOX Market, pursuant to a regulatory services agreement between a subsidiary of NASDAQ OMX BX and BOX. NASDAQ OMX did not have an ownership interest in BOX, and BOX compensated NASDAQ OMX BX based on the cost of the regulatory services provided to BOX. Under the terms of the regulatory services agreement, NASDAQ OMX BX's services for the BOX Market terminated for trades occurring after May 11, 2012. BOX became its own SRO on May 14, 2012. NASDAQ OMX BX will continue to provide regulatory services for trades occurring prior to the termination date until all regulatory matters related to these trades have been resolved.

FINRA provides regulatory services to the markets operated or regulated by The NASDAQ Stock Market, NASDAQ OMX PHLX and 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, certain options surveillance, rulemaking and some membership functions through our MarketWatch department. We refer suspicious trading behavior discovered by our regulatory staff and all other employees of the markets operated or regulated by The NASDAQ Stock Market, NASDAQ OMX PHLX and NASDAQ OMX BX to FINRA for further investigation.

*Regulatory Audit.* Prior to our acquisition of BSX, BSX was issued an administrative order by the SEC in September 2007. Pursuant to the order, BSX agreed to comply with certain undertakings, one of which was to retain a third-party auditor to conduct a comprehensive audit of BSX's surveillance, examination, investigation and disciplinary programs. BSX also undertook to include the audit opinion in its annual report. Since neither BSX nor its successor entity NASDAQ OMX BX prepares an annual report, the report of the regulatory auditor, Katten Muchin Rosenman LLP, which was dated January 7, 2013, is included below.

The Nasdaq OMX BX, Inc. ("Nasdaq" or the "Exchange") retained Katten Muchin Rosenman LLP ("Katten") as a third-party auditor to fulfill an undertaking with the Securities and Exchange Commission (the "Commission"), made pursuant to an administrative order (the "Order") originally issued against the Boston Stock Exchange ("BSE") in September 2007.<sup>(1)</sup> The Order required the third-party auditor to provide an audit opinion as to its assessment of the Exchange's surveillance, examination, investigation and disciplinary programs.<sup>(2)</sup> We are writing at this time to provide our audit opinion as required by the Order.

As noted above, the Order was originally issued against the BSE. The Order detailed violations of customer priority rules committed by specialist participant firms on the trading floor of the BSE between 1999 and 2004 involving the BEACON trading system. In 2008, Nasdaq acquired all of the outstanding membership interest in the BSE and its two subsidiaries, Boston Options Exchange Regulation, L.L.C. and the BSE Clearing Corporation. Although the activities detailed by the Order had no relation to Nasdaq (other than through Nasdaq's acquisition of BSE), Nasdaq proceeded with third-party audits of the Boston Options Exchange ("BOX") and the equities platform of Nasdaq OMX BX (which commenced operations in January 2009).

The Order required the third-party auditor to conduct an initial audit and a second audit two years after the date of the initial audit. The third-party auditor was to evaluate certain aspects of the Exchange including the surveillance, examination, investigation and disciplinary programs of the Exchange. As well, the Order required the third-party auditor to evaluate the Exchange's testing process of the Exchange's automated surveillance systems to analyze the effectiveness of such surveillance systems.<sup>(3)</sup>

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Katten completed the first round of audits in 2010 and issued confidential reports concerning the surveillance, examination, investigation and disciplinary programs of BOX on June 29, 2010 and the equities platform of Nasdaq OMX BX on July 30, 2010 (collectively, the "Audit Reports"). The field work for the audits was conducted between November 2009 through March 2010 ("Audit Period"). An additional report assessing the testing process and surveillance quality assurance for Nasdaq OMX BX for equities was issued in February 2012 by a technology consultant. While field work for the technology review of BOX began in February 2012, the work was terminated when BOX ceased to be a facility of the Exchange in April 2012.<sup>(4)</sup>

Based on the scope of our audit and our considerations of the assessments set forth in our confidential Audit Reports and other such matters as we have deemed appropriate, we have concluded that notwithstanding certain observations and weaknesses that we have identified, including those set forth in the Audit Reports, Nasdaq OMX BX's policies and procedures were reasonably designed and effective to detect and deter violations of the applicable federal securities laws and Exchange rules relating to trading on the Exchange during the Audit Period.

We recognize that no regulator can provide total assurance that violations of federal securities laws and Exchange rules relating to trading will be detected by surveillance systems and examinations. Also, the continued reasonableness of design and effectiveness of the Exchange's policies and procedures after the Audit Period is subject to the risk that the Exchange's policies and procedures may become inadequate or ineffective due to changes in business conditions or regulatory requirements or that the degree of compliance with such policies and procedures may decline.

The conclusion expressed in this letter is as of the date hereof. We assume no obligation to update, revise, or supplement this letter, nor to communicate further with or advise you with respect to any matter covered herein or any change, development, occurrence, circumstance, or condition in respect of any such matter. This letter is furnished solely to you in connection with the matters covered herein. This letter may not be used, relied upon, disclosed, circulated, published, communicated, made available, quoted, or referred to, by or to any other person, for any other purpose, or in connection with any other agreement, document, transaction or matter without the prior written consent of the undersigned.

- (1) Securities Exchange Act Release No. 34-56352 (Sept. 5, 2007).
- (2) The Order states that "[n]o later than 45 days after each audit is concluded, BSE shall require the auditor to submit an audit opinion as to its assessment of the BSE's surveillance, examination, investigation and disciplinary programs to the BSE's Board of Governors and to the following officers at the Commission ... : (i) the Director of OCIE; (ii) the Director of the Division of Market Regulation; and (iii) the Director of the Boston Regional Office." The Order at 9.
- (3) The Order required the auditor to "evaluate the BSE's live testing process, to be conducted during non-trading hours, of the BSE's automated surveillance systems using simulated trading data that includes data suggesting possibly abusive trading instances, including an analysis of the effectiveness of such surveillance systems when tested against the simulated trading patterns." Order at 8.
- (4) The BOX Options Exchange LLC received approval from the Commission as a national securities exchange on April 27, 2012. Securities Exchange Act Release No. 66871 (April 27, 2012).

*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 Stock Market, NASDAQ OMX BX and NASDAQ OMX PSX 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 OMX BX Options and NASDAQ OMX PHLX.

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, BATS-Y Exchange, BATS-Z Exchange, CBOE, Chicago Stock Exchange, EDGA Exchange, EDGX Exchange, FINRA, National Stock Exchange, NYSE, NYSE MKT and NYSE Arca.

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, NASDAQ OMX BX Options, BATS-Z Exchange, BOX, CBOE, C2 Options Exchange, FINRA, ISE, NFA, Miami International Stock Exchange, NYSE MKT and NYSE Arca.

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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. FINRA is the current DEA for both Nasdaq Execution Services and NASDAQ Options Services.

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 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 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, 2012, NASDAQ Execution Services and NASDAQ Options Services were in compliance with all of the applicable capital requirements.

*Regulatory contractual relationships with FINRA.* The NASDAQ Stock Market, NASDAQ OMX PHLX, NASDAQ OMX PSX and NASDAQ OMX BX have signed a series of regulatory service agreements covering the services FINRA provides to the respective SROs. Under these agreements, FINRA personnel act as our agents in performing the regulatory functions outlined above, and FINRA bills us a fee for these services. 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 have entered into a joint agreement with the other options exchanges for conducting insider trading surveillance. 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 FINRA assumes regulatory responsibility for specifics covered by the agreement:

- agreements with FINRA covering the enforcement of common rules, the majority of which relate to the regulation of The NASDAQ Stock Market, NASDAQ OMX BX and the members of these exchanges;
- joint industry agreements with FINRA covering responsibility for enforcement of insider trading rules;
- joint industry agreement with FINRA covering enforcement of rules related to cash 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 cash equity or options order.

*CFTC Regulation.* With the acquisition of PHLX, we also acquired its subsidiary, NFX (formerly the Philadelphia Board of Trade), 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 futures contracts for spot gold. The National Futures Association, or NFA, and The Options Clearing Corporation provide certain regulatory services to NFX pursuant to regulatory services agreements.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, or Dodd-Frank Act, also has resulted in increased CFTC regulation of some of our subsidiaries outside the United States and their customers.

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*Energy Commodity Regulation.* Our subsidiary NOCC is regulated as a power marketer by the Federal Energy Regulatory Commission (for transactions in every state but Texas) and the Public Utility Commission of Texas (for transactions in Texas).

### **European Regulation**

Regulation of our markets in the European Union and EEA focuses on issues relating to financial services, listing and trading of securities and market abuse. At the end of 2012, new regulations relating to CCP services and OTC derivatives transactions were adopted that will affect our clearinghouses in Europe. As the regulatory environment continues to change and related opportunities arise, we intend to continue product development, and ensure that the exchanges and clearinghouses that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic maintain favorable liquidity and offer efficient trading.

Confidence in capital markets is paramount for trading to function properly. NASDAQ OMX Nordic carries out market regulation through an independent unit that is separate from the business operations. The surveillance work is organized into two functions: one for the listing of instruments and surveillance of companies (issuer surveillance) and one for surveillance of trading (trading surveillance). The real-time trading surveillance for the Finnish, Icelandic, Danish and Swedish markets has been centralized to Stockholm. 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 and at NASDAQ OMX Oslo ASA with respect to the trading of commodities derivatives. There are three surveillance committees at NASDAQ OMX Nordic, one at each NASDAQ OMX Nordic exchange in Sweden, Finland and Denmark. These committees have an advisory role in relation to surveillance matters. 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 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.

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 SFSA, while NASDAQ OMX Stockholm's role as CCP 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 (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.

In December 2012, the European Commission adopted nine implementing technical standards to complement the obligations defined under the European Markets Infrastructure Regulation (EMIR) which became effective in August 2012. As a consequence of EMIR, NASDAQ OMX Stockholm and all European CCPs will need to reauthorize their CCP operations.

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 that may arise in its operations, use secure technical systems and identify and handle the conflicts of interest that 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 and EMIR 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 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.

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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 Norway, Denmark and Finland, which looks to safeguard effective and comprehensive supervision of the exchanges comprising NASDAQ OMX Nordic and the systems operated by it, and to ensure a common supervisory approach.

### **Employees**

As of December 31, 2012, NASDAQ OMX had 2,506 employees, including staff employed at consolidated entities where we have a controlling financial interest. Of the total employees, 1,123 were based in the U.S. and 1,383 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 91 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 under "Financial Information" click on "SEC Filings."

We 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 Regulation FD.

### **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**

##### ***Our industry is highly competitive.***

We face intense competition from other exchanges and markets for market share of trading activity and listings. In addition, our market data, global index, corporate solutions and market technology businesses face significant competition from other market participants. This competition includes both product and price competition and has continued to increase as a result of the creation of new execution and listing venues in the United States and Europe. Increased competition may result in a decline in our share of trading activity, listings and the markets for the products we offer, thereby adversely affecting our operating results.

The liberalization and globalization of world markets has resulted in greater mobility of capital, greater international participation in local markets and more competition. As a result, 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, many marketplaces in both Europe and the U.S. have demutualized to provide greater flexibility for future growth. The securities industry also has experienced consolidation, creating a more intense competitive environment. Regulatory changes, such as MiFID, also have facilitated the entry of new participants in the EU that compete with our European exchanges. The regulatory environment, both in the U.S. and in Europe, is structured to maintain this environment of intense competition. In addition, a high proportion of business in the securities markets is becoming concentrated in a smaller number of institutions and our revenue may therefore become concentrated in a smaller number of customers.

We also compete globally with other regulated exchanges and markets, ATSS, MTFs and other traditional and non-traditional execution venues. Some of these competitors also are our customers. Our exchange competitors include NYSE Euronext, LSE, Deutsche Börse, the Tokyo Stock Exchange, and a number of other exchanges in the U.S. and around the world. These exchanges offer a range of services comparable to those offered by our exchanges and generally compete with us in providing trade executions, trade reporting, market data, listings, regulation, index, and technology services. Public ATSS in the U.S. and MTFs in Europe are broker-dealer operated systems that offer trade execution services, typically at very low cost. Our competitors include Burgundy MTF

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in the Nordics. In London, two MTFs operated by BATS (Chi-X and BATS) and the Turquoise MTF operated by the LSE offer pan-European execution services in competition with our Nordic exchanges. Other competing execution venues include broker-dealer owned systems such as dark-pools and internalization engines that may or may not be registered as ATs or MTFs. Like ATs and MTFs, these venues also compete with us by offering low cost executions and differ from public ATs and MTFs in the degree of transparency they offer and in restrictions on who may access these systems.

Competitors may develop market trading platforms that are more competitive than ours. Competitors may enter into strategic partnerships, mergers or acquisitions that could make their trading, listings, clearing or data businesses more competitive than ours. In December 2012, ICE announced plans to acquire NYSE Euronext. The deal is expected to close in the second half of 2013, subject to regulatory and shareholder approvals. Should the proposed transaction be completed, ICE has indicated intent to spin off Euronext via an IPO. This transaction has the potential to affect the competitive environment we face in both the U.S. and Europe. 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 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 could adversely impact operating results. We are also subject to potential price competition from new competitors and from new and existing regulated markets and MTFs. We also compete with respect to the pricing of market data and with respect to products for pre-trade book data and for post-trade last sale data. In the future, our competitors may offer rebates for quotes and trades on their systems. If we are unable to compete successfully in respect to the pricing of our services and products, our business, financial condition and operating results may be adversely affected.

### ***Economic conditions and market factors, which are beyond our control, may adversely affect our business and financial condition.***

Our business performance is impacted by a number of factors, including general economic conditions in both the U.S. and Europe, market volatility, and other factors that are generally beyond our control. Although access to credit markets has improved, a long-term continuation of challenging economic conditions, or a worsening situation in Europe, is likely to negatively impact our business. Adverse market conditions could reduce customer demand for our services and the ability of our customers, lenders and other counterparties to meet their obligations to us. Poor economic conditions may result in 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, corporate solutions and market technology. Trading volume is driven primarily by general market conditions and declines in trading volume may affect our market share and impact our pricing.

The number of listings on our markets is primarily influenced by factors such as investor demand, the global economy, available sources of financing, and tax and regulatory policies. Adverse conditions may jeopardize the ability of our listed companies to comply with the continued listing requirements of our exchanges.

Market data revenues also may be significantly affected by global economic conditions. Professional subscriptions to our market data are at risk if staff reductions occur in financial services companies, which could result in significant reductions in our market data professional user revenue. In addition, adverse market conditions may cause reductions in the number of non-professional investors with investments in the market.

A reduction in trading volumes, market share of trading, the number of our listed companies and a decline in market data revenue due to economic conditions or other market factors could adversely affect our business, financial condition and operating results.

### ***A decline in trading and clearing volume will decrease our trading and clearing revenues.***

Trading and clearing volumes are 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. In recent years, trading and clearing volumes across our markets have fluctuated significantly depending on market conditions and other factors beyond our control. Current initiatives being considered by regulators and governments, such as restrictions on algorithmic (high-frequency) trading, could have a material adverse effect on overall trading and clearing volumes. Because a significant percentage of our revenues is tied directly to the volume of securities traded and cleared on our markets, it is likely that a general decline in trading and clearing volumes would lower revenues and may adversely affect our operating results if we are unable to offset falling volumes through our pricing. Declines in trading and clearing volumes may also impact our market share or pricing structures and adversely affect our business and financial condition.

***Our market share of trading has declined and may continue to decline.***

Our matched market share in NASDAQ-listed securities executed on NASDAQ declined from 46.1% in 2007 to 25.6% in 2012 and our combined matched market share in all U.S.-listed securities executed on all of our platforms declined from 29.1% in 2007 to 20.8% in 2012. In addition, as a result of the adoption of MiFID, a number of MTFs have launched, thereby significantly increasing competition in Europe. As a result, our matched market share in securities listed on our exchanges comprising NASDAQ OMX Nordic and NASDAQ OMX Baltic has declined from 100% in 2007 to 68.7% in 2012.

If our total market share in these securities continues to decrease relative to our competitors, our venues may be viewed as less attractive sources of liquidity. If growth in overall trading volume of these securities does not offset continued declines in our market share, or if our exchanges are perceived to be less liquid, then our business, financial condition and operating results could be adversely affected.

Since some of our exchanges offer clearing services in addition to trading services, a decline in market share of trading could lead to a decline in clearing revenues. Declines in market share also could result in issuers viewing the value of a listing on our exchanges as less attractive, thereby adversely affecting our listing business. Finally, declines in market share of NASDAQ-listed securities could lower NASDAQ's share of tape pool revenues under the consolidated data plans, thereby reducing the revenues of our market data business.

***We may experience losses and liabilities as a result of systems issues that arose during the Facebook, Inc. IPO.***

In connection with the IPO by Facebook on May 18, 2012, systems issues were experienced at the opening of trading of Facebook shares. Certain of our members may have been disadvantaged by such systems issues, which have subsequently been remedied. We have announced a program for voluntary accommodations to qualifying members of up to \$62 million, subject to approval by the SEC. As a result of the systems issues, we have been sued by retail investors and trading firms in certain putative class actions, many of which have been consolidated into one action, asserting negligence claims and violations of Rule 10b-5, promulgated under the Securities Exchange Act of 1934, as amended, as well as in four other lawsuits by individual investors. We believe that these lawsuits are without merit and intend to defend them vigorously. In addition, the SEC is conducting an investigation into the Facebook matter, in which we are fully cooperating. While we are unable to predict the outcome of the pending litigation or the SEC investigation, an unfavorable outcome in one or more of these matters could have a material adverse effect on us. Pending the resolution of these matters, we expect to incur significant additional expenses in defending the lawsuits, in connection with the SEC investigation and in implementing technical changes and remedial measures which may be necessary or advisable.

***Our role in the global marketplace may place us at greater risk for a cyber attack or other security incidents.***

Our systems and operations are vulnerable to damage or interruption from security breaches, hacking, data theft, denial of service attacks, human error, natural disasters, power loss, fire, sabotage, terrorism, computer viruses, intentional acts of vandalism and similar events. Given our position in the global securities industry, we may be more likely than other companies to be a direct target, or an indirect casualty, of such events. In February 2011, we announced that, through our normal security monitoring systems, we detected suspicious files on our U.S. servers. The files were immediately removed and there has been no evidence that any customer information was accessed or acquired by third parties.

While we continue to employ resources to monitor our systems and protect our infrastructure, these measures may prove insufficient depending upon the attack or threat posed. Any system issue, whether as a result of an intentional breach or a natural disaster, could damage our reputation and cause us to lose customers, experience lower trading volume, incur significant liabilities or otherwise have a negative impact on our business, financial condition and operating results. We also could incur significant expense in addressing any of these problems and in addressing related data security and privacy concerns.

***System limitations or failures 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. Our markets have experienced occasional systems failures and delays in the past and could experience future systems failures and delays.

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. If trading volumes increase unexpectedly, we may 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.

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While we have programs in place to identify and minimize our exposure to vulnerabilities and work in collaboration with the technology industry to share corrective measures with our business partners, we cannot guarantee that such events will not occur in the future. Any system issue that causes an interruption in services, decreases the responsiveness of our services or otherwise affects our services could impair our reputation, damage our brand name and negatively impact our business, financial condition and operating results.

### ***Regulatory changes and changes in market structure, especially in response to adverse financial conditions, 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, the securities markets have been the subject of increasing governmental and public scrutiny in response to the global economic crisis and market volatility.

In June 2012, the SEC approved a plan for FINRA and the national securities exchanges to institute a limit up-limit down system designed to reduce short-term volatility in equity trading by preventing trades in individual exchange-listed stocks from occurring outside of a specified price band. The plan is expected to be implemented in 2013 with the intention of replacing the single stock trading pauses currently in place. In July 2012, the SEC voted to require national securities exchanges and FINRA to establish a market-wide consolidated audit trail (CAT) to improve regulators' ability to monitor trading activity. We are currently working with FINRA and the other national securities exchanges in developing a plan to create a consolidated audit trail. At the end of 2012, new regulations relating to CCP services and OTC derivatives transactions were adopted that will affect our clearinghouses in Europe.

In addition, in the past two years, the SEC has taken regulatory actions in connection with issues described in its 2010 concept release on market structure, as well as the events of the May 6, 2010 "flash crash." In 2011, the SEC implemented a new short sale restriction that triggers when a security declines 10% from its previous close and expanded its existing single stock trading pause to include all Regulation NMS securities. Any potential rules concerning trading halts during volatile markets, market access, algorithmic (high-frequency) trading, alternative trading systems (such as dark pools), and other market structure issues could change the competitive landscape and have a material impact on our business.

During the coming year, it is likely that there will be additional changes in the regulatory environment in which we operate our businesses, although we cannot predict the nature of these changes or their impact on our business at this time. The European Parliament continues its review of MiFID that could affect our operations in Europe. In addition, actions on any of the specific regulatory issues currently under review in the U.S. and Europe such as short selling, co-location, algorithmic (high-frequency) trading, market halts, the market data business, derivatives clearing, market transparency, taxes on stock transactions, restrictions on proprietary trading by certain of our customers and other related proposals could have a material impact on our business. In the U.S., the CFTC and SEC also will continue to take actions to fully implement the Dodd-Frank Act, a comprehensive banking and financial services reform package.

Our market participants also operate in a highly regulated industry. The SEC, the SFSA and other regulatory authorities could impose regulatory changes that could adversely impact the ability of our market participants to use our markets. 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 our markets.

### ***Regulatory changes or future court rulings may have an adverse impact on our revenue from proprietary market data products.***

Regulatory and legal developments could reduce the amount of revenue that we earn from our proprietary market data products. In the U.S., we generally are required to seek approval from the SEC for the fees that we charge for our market data products. In recent years, certain industry groups have objected to the ability of exchanges to charge for certain market data products. One industry challenge is currently pending in federal appeals court. An adverse ruling in this matter could cause the SEC to more closely examine exchange market data fees. The SEC also has authority to undertake such review at its own discretion. If such an examination is conducted, and the results are detrimental to our U.S. exchanges' ability to charge for market data, there could be a negative impact on our revenues. We cannot predict whether, or in what form, any regulatory changes will be implemented, or their potential impact on our business. A determination by the SEC, for example, to link market data fees to marginal costs, to take a more active role in the market data rate-setting process, or to reduce the current levels of market data fees could have an adverse effect on our market data revenues.

Our European exchanges currently offer market data to customers on a non-discriminatory basis at a reasonable cost. Future actions by the European Commission or European court decisions could affect our ability to offer market data products in the same manner that we do today thereby causing an adverse effect on our European market data revenues.

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***We will need to invest in our operations to maintain and grow our business and to integrate acquisitions, 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 facilities, if the capital and credit markets 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 in the future 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 acquired businesses and to fund new initiatives. 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 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 our existing credit facilities, the indentures governing our notes and our other debt instruments. Furthermore, if adverse economic conditions occur, 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.

***Stagnation or decline in the initial public offering market could have an adverse effect on our revenues.***

The market for initial public offerings is dependent on the prosperity of companies and the availability of risk capital, both of which have been severely tested in recent years. 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.

***Any reduction in our credit rating could increase the cost of our funding from the capital markets.***

Our long-term debt is currently rated investment grade by two of the major rating agencies. These rating agencies regularly evaluate us and their ratings of our long-term debt are based on a number of factors, including our financial strength as well as factors not entirely within our control, including conditions affecting the financial services industry generally. There can be no assurance that we will maintain our current ratings. Our failure to maintain those ratings could adversely affect the cost and other terms upon which we are able to obtain funding and increase our cost of capital. A reduction in credit ratings would also result in increases in the cost of our outstanding debt as the interest rate on the outstanding amounts under our credit facilities and our 5.25% senior notes due 2018 fluctuates based on our credit ratings.

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***The success of our business depends on our ability to keep up with rapid technological and other competitive changes affecting our industry. Specifically, we must complete development of, successfully implement and maintain electronic trading platforms that have the functionality, performance, capacity, reliability and speed required by our business, as well as by our customers.***

The markets in which we compete are characterized by rapidly changing technology, evolving industry standards, frequent enhancements to existing products and services, the adoption of new services and products and changing customer demands. We may not be able to keep up with rapid technological and other competitive changes affecting our industry. For example, we must continue to enhance our electronic trading platforms to remain competitive, and our business will be negatively affected if our electronic trading platforms fail to function as expected. If we are unable to develop our electronic trading platforms to include other products and markets, or if our electronic trading platforms do not have the required functionality, performance, capacity, reliability and speed required by our business, as well as by our customers, we may not be able to compete successfully. 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.

***Damage to our reputation or brand name 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:

- our ability to maintain the security of our data and systems;
- the quality and reliability of our technology platforms and systems;
- the ability to execute our business plan, key initiatives or new business ventures and the ability to keep up with changing customer demand;
- 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;
- the quality of our disclosure controls or internal controls over financial reporting, including any failures in supervision;
- extreme price volatility on our markets, such as that seen with the “flash crash” on May 6, 2010;
- any negative publicity surrounding our listed companies; and
- any misconduct, fraudulent activity or theft by our employees or other persons formerly or currently associated with us.

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 may incur goodwill, intangible asset or other long-lived 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, 2012, goodwill totaled approximately \$5.3 billion and intangible assets, net of accumulated amortization, totaled approximately \$1.7 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 assess goodwill and intangible assets as well as other long-lived assets, including equity method investments, property and equipment and other assets for impairment by applying a fair value based test by analyzing historical performance, capital requirements and projected cash flows on an annual basis or more frequently if indicators of impairment arise. Considerable management judgment is necessary to evaluate the impact of operating and macroeconomic changes and to estimate cash flows. Although there are inherent uncertainties in this assessment process, the estimates and assumptions we use are consistent with our

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internal planning. There was no impairment of goodwill for the years ended December 31, 2012, 2011 and 2010. However, disruptions to our business, such as economic weakness and unexpected significant declines in operating results, may result in an impairment charge related to our goodwill, intangible assets or other long-lived assets in the future. A significant impairment charge in the future could have a material adverse effect on our operating results.

### ***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 reducing trading volumes.

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 transaction 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 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.

We clear or stand as riskless principal to a range of equity-related and fixed-income-related derivative products, energy-related commodity products and resale and repurchase agreements. We assume the counterparty risk for all transactions that are cleared through our markets and guarantee that our cleared contracts 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 experiencing financial losses from 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.

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.

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

In connection with acquisitions and share repurchases, we incurred a significant amount of indebtedness. Our indebtedness as of December 31, 2012 was approximately \$2.0 billion. We also may borrow up to an additional \$624 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 and conduct transactions with affiliates. Failure to meet any of the covenant terms of our 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 and accelerate all amounts outstanding. Our credit facilities allow us to pay cash dividends on our common stock as long as certain leverage ratios are maintained.

### ***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 the rules and operations of our markets, 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 ATSS that are not subject to the same SEC approval process but also with other exchanges that may 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 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 a broker-dealer's 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. 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 exchanges or central securities depositories. The countries in which we currently operate or share ownership in regulated businesses include Sweden, Finland, Denmark, Iceland, Estonia, Lithuania, Latvia, Norway, Armenia, Switzerland, the Netherlands 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 interests 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. The loss of a significant number of customers or a reduction in trading activity on any of our European exchanges as a result of such changes could have a material adverse effect on 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 in the U.S., 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 subsidiary NFX is subject to oversight by the CFTC. Our subsidiary NOCC is regulated as a power marketer by the Federal Energy Regulatory Commission (for transactions in every state but Texas) and the Public Utility Commission of Texas (for transactions in Texas). In the case of non-compliance with our obligations under the securities, commodities or other 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.

Some of our other liability risks arise under the laws and regulations relating to the insurance, tax, intellectual property, 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. Although we carry insurance that may limit our risk of damages in some cases, we still may sustain losses that would affect our financial condition and results of operations.

***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 our U.S. cash equities and options exchanges 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.

Our Nordic and Baltic exchanges also monitor trading and compliance with listing standards. They monitor the listing of cash equities and other financial instruments. The prime objective of such monitoring activities is to promote confidence in the exchanges among the general public and to ensure fair and orderly functioning markets. 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 these exchanges and to avoid conflicts of interest. Any failure to diligently and fairly regulate the Nordic and Baltic exchanges could significantly harm our reputation, prompt scrutiny from regulators and adversely affect our business and reputation.

***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 officers or other key employees who leave, 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 other senior officers and key employees who possess extensive financial markets knowledge and technology skills. We do not have employment agreements with some of these key senior officers. We do not maintain “key person” life insurance policies on any of our senior 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, or allegations that we have infringed on the intellectual property rights of others, 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 in the United States and other foreign jurisdictions. 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.

Third parties may assert intellectual property rights claims against us, which may be costly to defend, could require the payment of damages and could limit our ability to use certain technologies, trademarks or other intellectual property. Any intellectual property claims, with or without merit, could be expensive to litigate or settle and could divert management resources and attention. Successful challenges against us could require us to modify or discontinue our use of technology or business processes where such use is found to infringe or violate the rights of others, or require us to purchase licenses from third parties, any of which could adversely affect our business, financial condition and operating results.

***We rely on third parties to perform certain functions, and our business could be adversely affected if these third parties fail to perform as expected.***

We rely on third parties for regulatory, data center and other services. For example, we have a contractual arrangement with FINRA pursuant to which FINRA performs certain regulatory functions on our behalf. We also are highly reliant on third-party data centers provided by Verizon. To the extent that FINRA, Verizon or any other vendor or third-party service provider experiences difficulties, materially changes their business relationship with us or is unable for any reason to perform their obligations, our business or our reputation may be materially adversely affected.

We also rely on members of our trading community to maintain markets and add liquidity. To the extent that any of our largest members experiences difficulties, materially changes their business relationship with us or is unable for any reason to perform market making activities, our business or our reputation may be materially adversely affected.

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

Over the past several years, acquisitions 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 and investments or entering into partnerships 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.

In December 2012, we entered into an agreement with Thomson Reuters to acquire its Investor Relations, Public Relations and Multimedia Solutions businesses. The proposed transaction is subject to customary regulatory approvals and is expected to close in the first half of 2013. Although we are confident in the ability to close this transaction, we cannot predict with certainty the timing, the resources that will be required and the conditions that will need to be implemented to complete this transaction.

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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.

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.

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

We must rationalize, coordinate and integrate the operations of acquired businesses. This process involves complex technological, operational and personnel-related challenges, which are time-consuming 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 the U.S. and abroad, which may be conflicting;
- resolving possible inconsistencies in standards, controls, procedures and policies, business cultures and compensation structures;
- the diversion of management's attention from ongoing business concerns and other strategic opportunities;
- 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 a combined company;

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- 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 acquisitions. Any actual cost savings and synergies may be lower than we expect and may take a longer time to achieve than we anticipate, and we may fail to realize the anticipated benefits of acquisitions.

### ***Changes in tax laws, regulations or policies could have a material adverse effect on our financial results.***

Like other corporations, we are subject to taxes at the federal, state and local levels, as well as in non-U.S. jurisdictions. Changes in tax laws, regulations or policies could result in us having to pay higher taxes, which would in turn reduce our net income.

In addition, some of our subsidiaries are subject to tax in the jurisdictions in which they are organized or operate. In computing our tax obligation in these jurisdictions, we take various tax positions on matters that are not entirely free from doubt. We cannot assure you that upon review of these positions the applicable authorities will agree with our positions. A successful challenge by a tax authority could result in additional tax imposed on our subsidiaries.

### ***Our non-U.S. business operates in various international markets, particularly 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 and in the rollout of our 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 transactions executed on these platforms 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., the Nordic and Baltic countries, Australia and many other foreign countries. We therefore have significant exposure to exchange rate movements between the Euro, Swedish Krona, Danish Krone, Norwegian Krone, British Pound Sterling, Australian Dollar and other foreign currencies towards the U.S. dollar. 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.

### ***If our risk management methods are not effective, our business, reputation and financial results may be adversely affected.***

We have methods to identify, monitor and manage our risks, including oversight of risk management by NASDAQ OMX's Risk Committee, which is comprised of employees of NASDAQ OMX. However, these methods may not be fully effective. Some of our risk management methods may depend upon evaluation of information regarding markets, customers or other matters. That information may not in all cases be accurate, complete, up-to-date or properly evaluated. If our methods are not effective or we are not successful in monitoring or evaluating the risks to which we are or may be exposed, our business, reputation, financial condition and operating results could be materially adversely affected.

### ***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 indefinite-lived 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, or EPS, could be adversely affected by a number of financial adjustments required by U.S. GAAP including the following:

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- we may incur additional amortization expense over the estimated useful lives of certain of the intangible assets acquired in connection with 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 becomes impaired, we may be required to incur material charges relating to the impairment of those assets; and
- we may incur certain adjustments to reflect the financial condition and operating results under U.S. GAAP and U.S. dollars.

### **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
- purchases or sales of our common stock, including purchases or sales of our common stock by our directors, officers, significant stockholders or strategic investors.

#### ***Decisions to declare future dividends on our common stock will be at the discretion of our board of directors based upon a review of relevant considerations. Accordingly, there can be no guarantee that we will pay future dividends to our stockholders.***

In 2012, our board of directors declared quarterly cash dividend payments of \$0.13 per share of outstanding common stock paid in June, September and December. Future declarations of quarterly dividends and the establishment of future record and payment dates are subject to approval by NASDAQ OMX's board of directors. The board's determination to declare dividends will depend upon our profitability and financial condition, contractual restrictions, restrictions imposed by applicable law and other factors that the board deems relevant. Based on an evaluation of these factors, the board of directors may determine not to declare future dividends at all or to declare future dividends at a reduced amount. Accordingly, there can be no guarantee that we will pay future dividends to our stockholders.

#### ***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, 2012, there were 165,605,838 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 NASDAQ OMX's Equity Incentive Plan, or Equity Plan. There were 7,545,777 options exercisable as of December 31, 2012 at a weighted average exercise price of \$21.10.

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It is our intent and policy to settle the principal amount of our 2.50% convertible senior notes due August 2013, or the 2013 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 as of December 31, 2012, subject to adjustment due to certain events including cash dividends, is 18.4504 shares of common stock per \$1,000 principal amount of notes, which is equivalent to a conversion price of \$54.20 per share of common stock.

### ***Provisions of our certificate of incorporation, by-laws, 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. The holders of our common stock are entitled to one vote per share on all matters to be voted upon by the stockholders except that no person may exercise voting rights in respect of any shares in excess of 5% of the then outstanding shares of our common stock. Any change to the 5% voting limitation would require SEC approval.

In response to the SEC's concern about a concentration of our ownership, the rules of our U.S. exchanges include a rule prohibiting any member or any person associated with a member of the exchange 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. The rules of our U.S. exchanges 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.

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### Item 1B. Unresolved Staff Comments.

None.

### 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	25,000	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	94,000	Lease
Rockville, Maryland	General office space	48,000	Lease
Shelton, Connecticut	General office space	29,000	Lease
Stockholm, Sweden	European headquarters	296,000	Lease
London, England	General office space	71,000	Lease
Helsinki, Finland	General office space	19,800	Lease
Copenhagen, Denmark	General office space	23,900	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, Italy, Japan, Latvia, Lithuania, Netherlands, Norway, Singapore and United Arab Emirates.

In addition to the above, we currently lease administrative, sales and disaster preparedness facilities in California, Colorado, Illinois, Massachusetts, 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. We believe the facilities we occupy are adequate for the purposes for which they are currently used and are well-maintained. As of December 31, 2012, approximately 278,719 square feet of space was available for sublease.

### Item 3. Legal Proceedings.

In 2012, we became a party to several legal and regulatory proceedings relating to the Facebook IPO that occurred on May 18, 2012. In our most recent Quarterly Report on Form 10-Q for the quarter ended September 30, 2012, we identified several putative class actions in which we were named as a defendant. All but one of those actions are putative national class actions and have been consolidated into a matter pending in the U.S. District Court for the Southern District of New York, under the caption *In re Facebook, Inc., IPO Securities and Derivative Litigation*, MDL No. 2389. Of the 10 prior actions consolidated under this caption, nine were brought by retail investors seeking damages for alleged negligence, while one was brought by professional proprietary trading firms for alleged violations of Rule 10b-5 promulgated under the Securities Exchange Act of 1934, as amended.

An additional putative class action lawsuit, *Zack v. The NASDAQ OMX Group, Inc. and The NASDAQ Stock Market LLC* (filed June 26, 2012; re-filed August 7, 2012), alleges negligence and seeks to represent only citizens of the state of New York. Four other lawsuits have been brought by individual investors (filed between June 18, 2012 and October 12, 2012). Those actions also assert claims for negligence, gross negligence, and/or fraud. The *Zack* action and the individual actions are not consolidated with the putative nationwide class actions, but are being coordinated with them in the Facebook action referenced above.

We also received a demand letter from a member organization, seeking indemnification for alleged losses associated with the Facebook IPO. No complaint has been filed in this matter.

We believe that these lawsuits and the demand are without merit and intend to defend them vigorously.

In connection with the Facebook matter, the New York Regional Office of the SEC's Division of Enforcement is conducting an investigation. To date, we have been responding to requests for information, documentation, and witness interviews, and have been cooperating fully in the investigation. We are unable to predict the outcome of this investigation, or its potential impact on us.

Except as disclosed above, we are not currently a party to any litigation or proceeding that we believe could have a material adverse effect on our business, condensed consolidated 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.

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**Item 4. Mine Safety Disclosures.**

Not applicable.

## 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 Stock 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 fiscal years 2012 and 2011. 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 2012</i>		
Fourth quarter	\$26.80	\$22.63
Third quarter	24.50	21.58
Second quarter	26.12	21.03
First quarter	27.34	24.14
<i>Fiscal 2011</i>		
Fourth quarter	\$26.81	\$21.69
Third quarter	26.32	20.32
Second quarter	29.50	23.02
First quarter	29.71	23.09

As of February 8, 2013, we had approximately 672 holders of record of our common stock. As of February 8, 2013, the closing price of our common stock was \$29.47.

#### Dividends

In each of the second, third and fourth quarters of 2012, the Company paid a quarterly cash dividend of \$0.13 per share and expects to pay quarterly cash dividends in the future, subject to approval by the board of directors. There were no dividends declared or paid during the first quarter of 2012 or during 2011. Our credit facilities allow us to pay cash dividends on our common stock as long as certain leverage ratios are maintained.

#### Issuer Purchases of Equity Securities

##### *Share Repurchase Programs*

In the fourth quarter of 2011, our board of directors approved a share repurchase program authorizing NASDAQ OMX to repurchase in the aggregate up to \$300 million of our outstanding common stock. In the third quarter of 2012, our board of directors authorized the repurchase of up to an additional \$300 million of our outstanding common stock. These purchases may be made from time to time at prevailing market prices in open market purchases, privately-negotiated transactions, block purchase techniques or otherwise, as determined by our management. The purchases will be funded from existing cash balances. The share repurchase program may be suspended, modified or discontinued at any time.

During 2012, we repurchased 11,544,457 shares of our common stock at an average price of \$23.82, for an aggregate purchase price of \$275 million, completing the share repurchase program authorized in the fourth quarter of 2011. The shares repurchased under the share repurchase program are available for general corporate purposes. As of December 31, 2012, the remaining amount for share repurchases under the program authorized in the third quarter of 2012 was \$225 million.

##### *Employee Transactions*

In addition to our share repurchase program, during the fiscal quarter ended December 31, 2012, we also purchased shares from employees in connection with the settlement of income tax and related benefit withholding obligations arising from vestings of restricted stock grants.

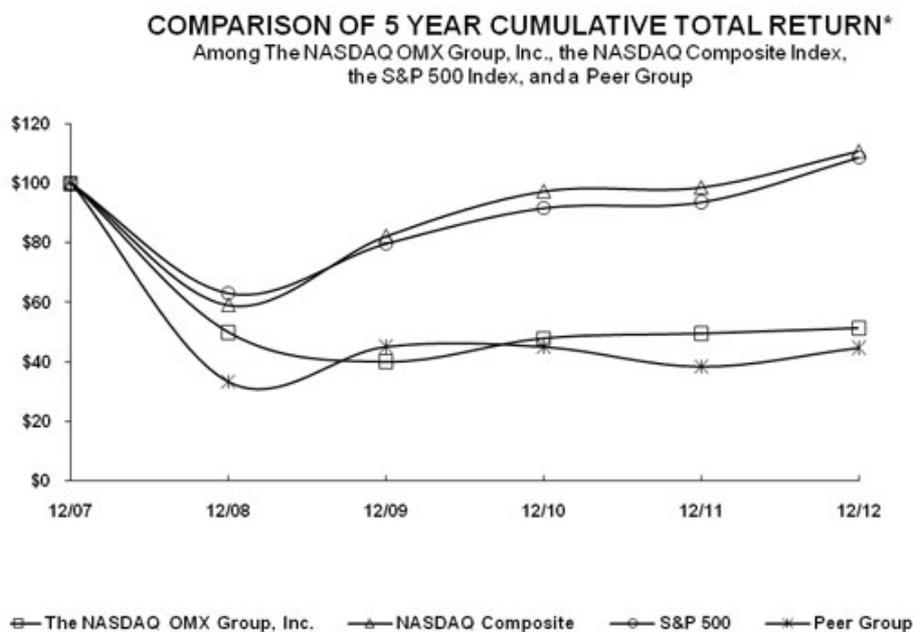
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The table below represents repurchases made by or on behalf of us or any “affiliated purchaser” of our common stock during the fiscal quarter ended December 31, 2012:

<u>Period</u>	<u>(a) Total Number of Shares Purchased</u>	<u>(b) Average Price Paid Per Share</u>	<u>(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</u>	<u>(d) Maximum Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs (in millions)</u>
<b><u>October 2012</u></b>				
Share repurchase program	323,900	\$ 23.49	323,900	\$ 268
Employee transactions	4,437	\$ 23.67	N/A	N/A
<b><u>November 2012</u></b>				
Share repurchase program	1,197,100	\$ 23.80	1,197,100	\$ 239
Employee transactions	1,704	\$ 24.15	N/A	N/A
<b><u>December 2012</u></b>				
Share repurchase program	580,300	\$ 23.96	580,300	\$ 225
Employee transactions	447,719	\$ 24.85	N/A	N/A
<b><u>Total Fiscal Quarter Ended December 31, 2012</u></b>				
Share repurchase program	<u>2,101,300</u>	<u>\$ 23.79</u>	<u>2,101,300</u>	<u>\$ 225</u>
Employee transactions	<u>453,860</u>	<u>\$ 24.84</u>	<u>N/A</u>	<u>N/A</u>

**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, IntercontinentalExchange Inc., LSE, and NYSE Euronext. Information for the indices and the peer group is provided from December 31, 2007 through December 31, 2012. The figures represented below assume an initial investment of \$100 in the common stock or index at the closing price on December 31, 2007 and the reinvestment of all dividends.



\*\$100 invested on 12/31/07 in stock or index, including reinvestment of dividends. Fiscal year ending December 31.

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	12/07	12/08	12/09	12/10	12/11	12/12
The NASDAQ OMX Group, Inc.	\$100.00	\$49.93	\$40.05	\$47.95	\$49.53	\$ 51.35
NASDAQ Composite	100.00	59.03	82.25	97.32	98.63	110.78
S&P 500	100.00	63.00	79.67	91.67	93.61	108.59
Peer Group	100.00	33.24	44.99	44.95	38.29	44.61

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**Item 6. Selected Financial Data.**

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,				
	2012 <sup>(1)</sup>	2011 <sup>(1)</sup>	2010 <sup>(1)</sup>	2009	2008 <sup>(1)</sup>
(in millions, except share and per share amounts)					
<b>Statements of Income Data:</b>					
Total revenues <sup>(2)</sup>	\$ 3,119	\$ 3,430	\$ 3,191	\$ 3,410	\$ 3,650
Cost of revenues <sup>(2)</sup>	(1,456)	(1,748)	(1,675)	(1,961)	(2,194)
Revenues less transaction rebates, brokerage, clearance and exchange fees	1,663	1,682	1,516	1,449	1,456
Total operating expenses	973	986	885	846	816
Operating income	690	696	631	603	640
Net income attributable to NASDAQ OMX	352	387	395	266	314
Net income applicable to common stockholders	352	387	394	266	314
<b>Per share information:</b>					
Basic earnings per share	\$ 2.09	\$ 2.20	\$ 1.94	\$ 1.30	\$ 1.65
Diluted earnings per share	\$ 2.04	\$ 2.15	\$ 1.91	\$ 1.25	\$ 1.55
Cash dividends declared per common share <sup>(3)</sup>	\$ 0.39	\$ —	\$ —	\$ —	\$ —
<b>Weighted-average common shares outstanding for earnings per share:</b>					
Basic	168,254,653	176,331,819	202,975,623	204,698,277	190,362,605
Diluted	172,587,870	180,011,247	206,514,655	214,537,907	204,514,862

	December 31,				
	2012	2011	2010	2009	2008
(in millions)					
<b>Balance Sheets Data:</b>					
Cash and cash equivalents and financial investments	\$ 720	\$ 785	\$ 568	\$ 902	\$ 601
Total assets <sup>(4)(5)</sup>	9,132	14,091	16,207	10,722	12,752
Total long-term liabilities	2,996	3,067	3,247	2,909	3,372
Total equity	5,209	4,986	4,729	4,944	4,303

<sup>(1)</sup> We completed several acquisitions during the years ended December 31, 2012, 2011, 2010 and 2008 and included the financial results of such acquisitions in our consolidated financial statements from the respective acquisition dates.

<sup>(2)</sup> We record execution revenues from transactions on a gross basis in revenues and record related expenses as cost of revenues.

<sup>(3)</sup> In June, September and December of 2012, we paid quarterly cash dividends of \$0.13 per share on our outstanding common stock.

<sup>(4)</sup> Total assets included resale agreements, at contract value of \$3.7 billion at December 31, 2011 and \$3.4 billion at December 31, 2010. In September 2010, we launched a clearing service for the resale and repurchase agreement market.

<sup>(5)</sup> Total assets decreased \$5.0 billion at December 31, 2012 as compared to December 31, 2011, primarily due to our new clearing structure which significantly changed the nature and extent of the risk of loss to NASDAQ OMX Nordic Clearing in the event of a member default. As a result, we no longer record derivative positions or resale and repurchase agreements in the Consolidated Balance Sheet. See "Open Clearing Contracts," of Note 2, "Summary of Significant Accounting Policies," to the consolidated financial statements for further discussion.

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

The following discussion and analysis of the financial condition and results of operations of NASDAQ OMX should be read 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."

### **Business Overview**

We are a leading global exchange group that delivers trading, clearing, exchange technology, regulatory, securities listing, and public company services across six continents. Our global offerings are diverse and include trading and clearing 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.

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 the following acquisitions during 2008, 2010, 2011 and 2012:

- PHLX, July 2008;
- BSX, August 2008;
- Certain subsidiaries of Nord Pool, October 2008;
- The assets of North American Energy Credit and Clearing Corp., March 2010;
- A derivatives trading market through the purchase of the remaining business of Nord Pool, May 2010;
- SMARTS, August 2010;
- FTEN, December 2010;
- ZVM, December 2010;
- Glide Technologies, October 2011;
- The business of RapiData, December 2011;
- NOS Clearing, July 2012; and
- The index business of Mergent, Inc., including Indxis, December 2012.

These acquisitions also have been treated as purchases for accounting purposes, with NASDAQ OMX treated as the acquirer. Additionally, we purchased a majority stake in IDCG in December 2008 which was sold in August 2012, a 22% equity interest in EMCF in January 2009, and a 72% ownership interest in Bwise in May 2012. The financial results of these transactions are included in the consolidated financial results beginning on the date of each acquisition or strategic initiative.

Most recently, in December 2012, we entered into an agreement with Thomson Reuters to acquire its Investor Relations, Public Relations and Multimedia Solutions businesses. Upon closing, these complementary businesses will be integrated into our Corporate Solutions business. The proposed transaction is subject to customary regulatory approvals and is expected to close in the first half of 2013. We also announced an agreement to acquire a 25% stake in TOM, a Dutch cash equities and equity derivatives trading venue. The terms of the transaction also provide us an option to acquire an additional 25.1% of the remaining shares at a future date. This proposed transaction delivers on our strategy to expand our derivatives presence across the European market and will be part of our European Transaction Services business. The acquisition is also subject to regulatory approval.

### **Business Environment**

We serve listed companies, market participants and investors by providing high quality cash equity, derivative and commodities markets, thereby facilitating economic growth and corporate entrepreneurship. We also provide market technology to exchanges, clearing organizations and central securities depositories 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, government and private sector demands for capital, the regulatory environment for capital markets, and changing technology in the financial services industry. Our future revenues and net income will continue to be influenced by a number of domestic and international economic trends including:

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- Trading volumes, particularly in U.S. and European cash equity and derivative securities, which are driven primarily by overall macroeconomic conditions;
- The number of companies seeking equity financing, which is affected by factors such as investor demand, the global economy, availability of diverse sources of financing as well as tax and regulatory policies;
- The demand for information about, or access to, our markets, which is dependent on the products we trade, our importance as a liquidity center, and the quality and pricing of our data and access services;
- The demand by companies and other organizations for the products sold by our Corporate Solutions business, which is largely driven by the overall state of the economy and the attractiveness of our offerings;
- The outlook of our technology customers for capital market activity;
- Continuing pressure in transaction fee pricing due to intense competition in the U.S. and Europe;
- Competition for listings and trading related to pricing, product features and service offerings;
- Regulatory changes imposed upon certain types of instruments, transactions, or capital market participants; and
- Technological advancements and members' demand for speed, efficiency, and reliability.

Currently our business drivers are defined by investors' continuing cautious outlook about the slow pace of global economic recovery and certain governments' ability to fund their sovereign debt. Should the global economy avoid the intermittent crisis environments of 2010-2012, we expect moderate growth in our businesses rather than the recent sporadic increases in the level of market volatility, oscillating trading volumes, and general business uncertainty. Many of our largest customers are also altering their business models and associated trading volumes as they address the implementation of regulatory changes initiated following the global financial crisis. In 2012, both the U.S. and European cash equity trading and derivative trading and clearing businesses were negatively impacted by significantly lower industry trading volumes. In spite of strong performances by major stock market indices over the prior twelve months, the global IPO market in 2012 was relatively unchanged when compared to 2011. Additional impacts on our business drivers include the international enactment and implementation of new legislative and regulatory initiatives, and the continued rapid evolution and deployment of new technology in the financial services industry. The business environment that influenced our financial performance for 2012 may be characterized as follows:

- A slightly weaker pace of new equity issuance in the U.S. with 72 IPOs on The NASDAQ Stock Market, down from 78 in 2011. IPO activity remained slow in the Nordics with 6 IPOs in 2012 on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic;
- Matched share volume for all of our U.S. cash equity markets decreased by 20.4%, while average daily U.S. share volume fell by 17.9% relative to 2011. Volatility, often a driver of volume levels, was considerably lower in 2012 compared to 2011. Losses in matched share volume were primarily due to lower U.S. consolidated volume, though market share decreased slightly from 21.2% (NASDAQ 18.1%; NASDAQ OMX BX 2.1%; NASDAQ OMX PSX 1.0%) to 20.8% (NASDAQ 17.0%; NASDAQ OMX BX 2.7%; NASDAQ OMX PSX 1.1%);
- Matched equity options volume for our three U.S. options exchanges, NASDAQ OMX PHLX, The NASDAQ Options Market, and NASDAQ OMX BX Options, decreased 12.5% compared to 2011, driven mainly by a decrease in overall U.S. options volume. In addition, our combined matched market share for our three U.S. options exchanges decreased by 0.5 percentage points;
- A 12.4% decrease relative to 2011 in the average daily number of cash equity trades on our Nordic and Baltic exchanges;
- A 25.0% decrease relative to 2011 in the SEK value of cash equity transactions on our Nordic and Baltic exchanges;
- A decline of 10.0% experienced by our Nordic and Baltic exchanges relative to 2011 in the number of traded and cleared equity and fixed-income contracts (excluding Finnish option contracts traded on Eurex);
- Intense competition among U.S. exchanges and dealer-owned systems for cash equity trading volume and strong competition between multilateral trading facilities and exchanges in Europe for cash equity trading volume;
- Globalization of exchanges, customers and competitors extending the competitive horizon beyond national markets; and

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- 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 increasing numbers of new companies are created, and as emerging countries show ongoing interest in developing their financial markets.

### Financial Summary

The following summarizes significant changes in our financial performance for the year ended December 31, 2012 when compared with the same period in 2011.

	Year Ended December 31,		Percentage Change
	2012	2011	
	(in millions)		
Revenues less transaction rebates, brokerage, clearance and exchange fees	\$ 1,663	\$ 1,682	(1.1)%
Operating expenses	973	986	(1.3)%
Operating income	690	696	(0.9)%
Interest expense	(97)	(119)	(18.5)%
Asset impairment charges	(40)	(18)	#
Loss on divestiture of business	(14)	—	#
Income before income taxes	548	573	(4.4)%
Income tax provision	199	190	4.7%
Net income attributable to NASDAQ OMX	\$ 352	\$ 387	(9.0)%
Diluted earnings per share	\$ 2.04	\$ 2.15	(5.1)%

# Denotes a variance greater than 100.0%.

- The decrease in revenues less transaction rebates, brokerage, clearance and exchange fees was primarily due to a decrease in cash equity trading revenues less transaction rebates, brokerage, clearance and exchange fees and derivative trading revenues less transaction rebates, brokerage, clearance and exchange fees, partially offset by increases in Corporate Solutions revenues, Access Services revenues, Market Data revenues, Global Index Group revenues, and other market services revenues.
- The decrease in operating expenses was primarily due to decreases in merger and strategic initiatives expense and general, administrative and other expense, partially offset by expense related to restructuring actions taken during 2012 and increased professional and contract services expense.
- Interest expense decreased primarily due to lower average outstanding debt obligations and lower interest rates in 2012.
- Asset impairment charges in 2012 of \$40 million were related to certain acquired intangible assets associated with technology (\$19 million), customer relationships (\$6 million), and a certain trade name (\$3 million), as well as an other-than-temporary impairment charge of \$12 million related to our equity interest in EMCF. The asset impairment charge in 2011 of \$18 million was due to an other-than-temporary impairment charge related to our available-for-sale investment security in Dubai Financial Market PJSC, or DFM.
- Loss on divestiture of business in 2012 of \$14 million relates to the sale of IDCG. See "2012 Divestiture," of Note 4, "Acquisitions and Divestitures," for further discussion.
- The increase in the income tax provision reflects an increase in the overall effective tax rate from 33.2% in 2011 to 36.3% in 2012.

Excluding our restructuring charges, merger and strategic initiatives expense, asset impairment charges, loss on divestiture of business and other items that are not reflective of our core business performance, net of taxes, consolidated net income attributable to NASDAQ OMX for the year ended December 31, 2012 was \$432 million, or \$2.50 per diluted share, compared with \$455 million, or \$2.53 per diluted share, for the year ended December 31, 2011. See "Non-GAAP Financial Measures" below for further discussion.

In countries with currencies other than the U.S. dollar, revenues and expenses are translated using monthly average exchange rates. The following discussion of results of operations isolates the impact of year-over-year foreign currency fluctuations to better measure the comparability of operating results between periods. Operating results excluding the impact of foreign currency fluctuations are calculated by translating the current period's results by the prior period's exchange rates.

Impacts associated with fluctuations in foreign currency are discussed in more detail under "Item 7A. Quantitative and Qualitative Disclosures about Market Risk." For the year ended December 31, 2012, approximately 34.8% of our revenues less transaction rebates, brokerage, clearance and exchange fees and 26.5% of our operating income were derived in currencies other than the U.S. dollar, primarily the Swedish Krona, Euro, Norwegian Krone and Danish Krone.

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The following summarizes significant changes in our financial performance for the year ended December 31, 2012 when compared with the same period in 2011:

- Revenues less transaction rebates, brokerage, clearance and exchange fees decreased \$19 million, or 1.1%, to \$1,663 million in 2012, compared with \$1,682 million in 2011, reflecting an unfavorable impact from foreign exchange of \$27 million, partially offset by an operational increase in revenues of \$8 million. The increase in operational revenues was primarily due to an:
  - increase in Issuer Services revenues of \$19 million, primarily from Corporate Solutions and Global Index Group revenues;
  - increase in Access Services revenues of \$16 million;
  - increase in Market Data revenues of \$15 million, primarily from U.S. market data products;
  - increase in other market services revenues of \$11 million, primarily reflecting income from open positions relating to the operations of the exchange; and an
  - increase in Market Technology revenues of \$7 million, primarily from delivery project and change request, advisory and broker surveillance revenues, partially offset by a;
  - decrease in cash equity trading revenues less transaction rebates, brokerage, clearance and exchange fees of \$43 million; and a
  - decrease in derivative trading and clearing revenues less transaction rebates, brokerage, clearance and exchange fees of \$18 million.
- Operating expenses decreased \$13 million, or 1.3%, to \$973 million in 2012, compared with \$986 million in 2011, reflecting a favorable impact from foreign exchange of \$17 million, partially offset by an increase in operating expenses of \$4 million. The operational increase in operating expenses was primarily due to restructuring actions taken during 2012 and increased professional and contract services expense, partially offset by decreased merger and strategic initiatives expense and general, administrative and other expense.
- Interest expense decreased \$22 million, or 18.5%, to \$97 million in 2012, compared with \$119 million in 2011, primarily due to lower average outstanding debt obligations and lower interest rates in 2012.
- In 2012, asset impairment charges of \$40 million were related to certain acquired intangible assets associated with technology (\$19 million), customer relationships (\$6 million), and a certain trade name (\$3 million), as well as an other-than-temporary impairment charge of \$12 million related to our equity interest in EMCF. The asset impairment charge in 2011 of \$18 million was due to an other-than-temporary impairment charge related to our available-for-sale investment security in DFM.
- In 2012, we sold IDCG and recorded a loss of \$14 million. See “2012 Divestiture,” of Note 4, “Acquisitions and Divestitures,” for further discussion.
- Income tax provision increased \$9 million, or 4.7%, in 2012 compared with 2011, primarily due to the impact to deferred tax assets and deferred tax liabilities resulting from changes in tax rates in various jurisdictions within the U.S. and outside the U.S., as well as a shift in the geographic mix of earnings and losses.

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

### **2013 Outlook**

For the fifth year in a row, more share value traded on The NASDAQ Stock Market than on any other single cash equities exchange in the world. However, 2012 presented a challenging economic environment with uncertainty in Europe and a continuing debate over future fiscal policy in the U.S. By traditional measures, it was also a difficult year for the exchange business. After reaching an all-time high in 2009, U.S. cash equity trading volume fell for a third consecutive year. For the last five years, trading volume in the U.S. and around the world has been driven by volatility associated with the global financial crisis, rather than the prospects for economic growth. While the worst of the financial crisis may be behind us, robust economic growth has yet to develop. Consequently, NASDAQ OMX has intentionally structured its organization to account for the highly cyclical nature of our industry. By diversifying our earnings through the sale of Corporate Solutions, Access Services, Market Technology and Market Data and by delivering on cost savings, NASDAQ OMX has been able to provide stable revenues and operating income during these tough conditions. Should 2013 present an equally difficult environment, we believe our organization is positioned to succeed.

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We launched several important initiatives during 2012 that we expect to benefit us during the challenging and competitive economic environment anticipated for 2013. These new initiatives include the launch of the NASDAQ OMX BX Options market, our third options platform which allows us to support multiple allocation and priority models. The standout performance and flexibility of our technology has enabled us to enter new markets with a low cost and highly regarded platform that offers strong performance to both existing and new clients, while creating additional sales opportunities for both our Transactions Services and Market Data businesses.

In addition, our Corporate Solutions business continued to have solid revenue growth, driven by the acquisitions of a majority interest in Bwise in May 2012 and Glide Technologies in October 2011 and growth in our Shareholder.com and GlobeNewswire products. In December 2012, we entered into an agreement with Thomson Reuters to acquire its Investor Relations, Public Relations and Multimedia Solutions businesses. Upon closing, these complementary businesses will be integrated into our Corporate Solutions business. The proposed transaction is subject to customary regulatory approvals and is expected to close in the first half of 2013. We continue to leverage the opportunities in our Corporate Solutions business by offering new products to our expanding customer base and by strengthening our direct relationships with those customers.

During 2012, the U.S. IPO market continued its recovery from the impact of the 2008 financial crisis. In April 2012, President Obama signed into law the Jumpstart Our Business Startups Act, or JOBS Act, which is intended to encourage companies to seek access to public capital through an IPO. The long-term effects of the bill remain to be seen, but the overall increase in IPOs compared to 2011 despite global economic uncertainty is a positive signal when looking ahead to 2013. We expect the demand for public equity capital from companies experiencing the gradual return of global economic growth to support increases in the number of IPOs. Furthermore, an improved outlook for equity investments and the number of private companies seeking capital is expected to add to the IPO pipeline in 2013.

During 2013, we expect to confront changes in both the competitive and regulatory environments. In December 2012, ICE announced plans to acquire NYSE Euronext. The deal is expected to close in the second half of 2013, subject to regulatory and shareholder approvals. Should the proposed transaction be completed, ICE has indicated its intent to spin off Euronext via an IPO. This acquisition has the potential to affect the competitive environment we face in both the U.S. and Europe.

European regulators are currently considering a number of new policies affecting the operation and infrastructure of the financial markets. Also, European regulations governing clearinghouses will be implemented in 2013, impacting our clearing business in the Nordics. We expect global markets to continue to be marked by significant change in 2013, driven primarily by regulatory initiatives in the U.S. and Europe. We expect that cash equities markets will continue to fragment into additional venues, and trading will continue to migrate from exchanges to OTC systems. Conversely, trading in OTC derivatives will begin to move onto exchanges and other public execution facilities.

We expect it is likely that the year ahead will be positive for our business drivers and our operations as the global economy continues to recover. We believe that our aggressive steps in meeting our cost, revenue, and technology objectives over the last three years will enable us to benefit from improving economic conditions in 2013. We will continue to look for opportunities to further diversify our business with enhanced product offerings and/or acquisitions that are complementary to our existing businesses.

### **Business Segments**

Prior to January 1, 2013, we managed, operated and provided 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, which include Access Services, as well as our Market Data and Broker Services businesses. We offer trading on multiple exchanges and facilities across several asset classes, including cash equities, derivatives, debt, commodities, structured products and ETFs. In addition, in some of the countries where we operate exchanges, we also provide clearing, settlement and depository services.

#### ***Issuer Services***

In 2012, our Issuer Services segment included our Global Listing Services and Global Index Group businesses. We offer capital raising solutions to over 3,300 companies around the globe representing approximately \$6.2 trillion in total market value as of December 31, 2012.

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. We offer a consolidated global listing application to companies to enable them to apply for listing

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on The NASDAQ Stock Market and the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic, as well as NASDAQ Dubai. In addition, through our Corporate Solutions business, we offer companies access to innovative products and software solutions and services that ease transparency, mitigate risk, maximize board efficiency and facilitate better corporate governance.

### **Market Technology**

Our Market Technology business is the world's leading technology solutions provider and partner to exchanges, clearing organizations and central securities depositories. Our technology business also is the sales channel for our complete global offering to other marketplaces.

Market Technology provides technology solutions for trading, clearing, settlement, surveillance and information dissemination for markets with wide-ranging requirements, from the leading markets in the U.S., Europe and Asia to smaller African markets. Furthermore, the solutions we offer can handle all classes of assets, including cash equities, currencies, various interest-bearing securities, commodities, energy products and derivatives.

Our management allocates resources, assesses performance and manages these businesses as three separate segments. See Note 19, "Business Segments," to the consolidated financial statements for further discussion.

As announced in January 2013, we realigned our reportable segments as a result of changes to the organizational structure of our businesses. See Note 20, "Subsequent Event," 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 individual customer share volumes, and recognized as transactions occur. We charge transaction fees for executing cash equity trades in NASDAQ-listed and other listed securities on our cash equities exchanges as well as on orders that are routed to other market venues for execution.

In the U.S., we record execution revenues from transactions on a gross basis in revenues and record related expenses as cost of revenues.

For The NASDAQ Stock Market and NASDAQ OMX PSX, we credit a portion of the per share execution charge to the market participant that provides the liquidity, and for NASDAQ OMX BX, we credit a portion of the per share execution charge to the market participant that takes the liquidity. We record these credits as transaction rebates that are included in cost of revenues in the Consolidated Statements of Income. These transaction 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 NASDAQ's, NASDAQ OMX BX's and NASDAQ OMX PSX's platforms, 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 transaction 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. These transaction fees are charged per executed order and as per value traded.

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

###### *U.S. Derivative Trading and Clearing*

U.S. derivative trading and clearing revenues are variable, based on traded and cleared volumes, and recognized when executed or when contracts are cleared. The principal types of derivative contracts traded on NASDAQ OMX PHLX, The NASDAQ Options Market and NASDAQ OMX BX Options are equity options, ETF options, index options and currency options. We also operate NFX, which offers trading of futures contracts on spot gold.

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Similar to U.S. cash equity trading, we credit a portion of the per share execution charge to the market participant that provides the liquidity and record the transaction rebate as a cost of revenues in the Consolidated Statements of Income. Also, we pay Section 31 fees to the SEC for supervision and regulation of securities markets. See “U.S. Cash Equity Trading” above for further discussion.

We engage in riskless principal trading and clearing of OTC power and gas contracts through our subsidiary NOCC. Revenues are based on notional amounts or volume of power and gas transacted and/or delivered and are recognized upon settlement of the contracts.

### *European Derivative Trading and Clearing*

European derivative trading and clearing revenues received from transactions conducted on NASDAQ OMX Stockholm are variable, based on the volume and value of traded and cleared contracts, and recognized when executed or when contracts are cleared. 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 CCP. 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 OTC contracts.

On NASDAQ OMX Stockholm, we also offer clearing services for resale and repurchase agreements. Clearing revenues for resale and repurchase agreements are based on the value and length of the contract and are recognized when cleared.

NASDAQ OMX Commodities offers trading and clearing of international power derivatives, carbon and other commodities products. Our trading and clearing revenues are variable, based on volume and the value of the contract cleared. Revenues are recognized when contracts are traded or cleared. We also generate clearing revenues for contracts traded on the OTC derivative market which are also recognized when contracts are cleared. In addition, NASDAQ OMX Commodities members are billed an annual fee in January which is recognized ratably over the following 12-month period.

European derivative trading and clearing revenues include revenues from NOS Clearing which we acquired in July 2012. NOS Clearing is a leading Norway-based clearinghouse primarily for OTC traded derivatives for the freight market and seafood derivatives market.

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 transaction 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 provide co-location services to market participants whereby firms may lease space for equipment within our data center. These participants are charged monthly fees for cabinet space, connectivity and support. We also earn revenues from annual and monthly exchange membership and registration fees. Revenues for providing access to our markets, co-location services 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.

Access Services revenues also include revenues from FTEN, which we acquired in December 2010. FTEN is a leading provider of RTRM solutions for the financial securities market. As a market leader in RTRM, FTEN provides broker-dealers and their clients the ability to manage risk more effectively in real-time, which leads to better utilization of capital as well as improved regulatory compliance. Revenues for FTEN services are primarily based on subscription agreements with customers and are recognized when an arrangement exists, services are delivered to the customer, the selling price of the services to be provided under the arrangement is fixed or determinable, and collectability is reasonably assured. Most contracts include professional services, implementation fees, monthly subscription fees from customers accessing on-demand services, and customer support. Implementation fees are recognized upon completion of the implementation. Monthly professional services, subscription, and usage fees are recognized in the month the service is provided.

### Market Data

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

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

Revenues from U.S. tape plans include eligible UTP Plan revenues that are shared among UTP Plan participants and are presented on a net basis. 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 revenues collected. After these costs are deducted from the tape revenues, we distribute to the respective UTP Plan participants, including The NASDAQ Stock Market, NASDAQ OMX BX and NASDAQ OMX PSX, their share of tape revenues 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 MKT-listed securities are reported and disseminated in real time, and as such, we share in the tape revenues for information on NYSE- and NYSE MKT-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 own data, as well as select third-party content. 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 are based on the trading information from the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic, as well as NASDAQ OMX Commodities, for the following classes of securities: cash equities, bonds, derivatives and commodities. We provide varying levels of quote and trade information to market participants and to data distributors, who in turn provide subscriptions for this information. Revenues from European market data are subscription-based, are generated primarily based on the number of data subscribers and distributors of our data 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. The primary services offered are flexible back-office systems which 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

##### *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 do not require any judgments or assumptions by management as these amounts 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 and projected future listing duration.

##### *European Listing Services*

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

##### *Corporate Solutions*

Global Listing Services revenues also include fees from Corporate Solutions. Revenues primarily include subscription income from Shareholder.com, Directors Desk and Glide Technologies, fees from GlobeNewswire and ZVM, and license, maintenance and professional service fees from BWISE.

Fee income for services is recognized as those services are provided. 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 also are 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.

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Glide Technologies revenues are primarily based on subscription agreements with customers and are recognized ratably over the contract period, generally one year in length. GlobeNewswire generates fees primarily from wire distribution services, and revenues are recognized as services are provided. ZVM generates revenues from webcasting services and revenues are recognized as services are provided. Bwise revenues are primarily based on license, maintenance and service agreements with customers. License and maintenance agreements are generally one year in length and revenues are recognized over the contract period. Professional service revenues are recognized as the services are performed.

### Global Index Group

We develop and license NASDAQ OMX branded indexes, associated derivatives and financial products as part of our Global Index Group business. Revenues primarily include license fees from these branded indexes, associated derivatives and financial products 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.

### **Market Technology Revenues**

Market Technology provides technology solutions for trading, clearing, settlement, and information dissemination, and also offers facility management integration, surveillance solutions and advisory services. Revenues are primarily derived from license, support and facility management revenues, delivery project revenues, as well as change request, advisory and broker surveillance revenues.

We enter into multiple-element sales arrangements to provide technology solutions and services to our customers. In order to recognize revenues associated with each individual element of a multiple-element sales arrangement separately, we are required to establish the existence of vendor specific objective evidence, or VSOE, of fair value for each element. When VSOE for individual elements of an arrangement cannot be established, revenue is generally deferred and recognized over either the final element of the arrangement or the entire term of the arrangement for which the services will be delivered.

License and support revenues are derived from the system solutions developed and sold by NASDAQ OMX that are generally entered into in multiple-element sales arrangements. After we have developed and sold a system solution, the customer licenses the right to use the software and may require post contract support and other services. Facility management revenues are also generally entered into in multiple-element sales arrangements and are derived when NASDAQ OMX assumes responsibility for the continuous operation of a system platform for a customer and receives facility management revenues which can be both fixed and volume-based. Revenues for license, support and facility management services are generally deferred and recognized over either the final element of the arrangement or the entire term of the arrangement for which the services will be delivered. We record the deferral of revenue associated with multiple-element sales arrangements in deferred revenue and non-current deferred revenue and the deferral of costs in other current assets and other non-current assets in the Consolidated Balance Sheets.

Delivery project revenues are derived from the installation phase of the system solutions developed and sold by NASDAQ OMX. The majority of our delivery projects involve individual adaptations to the specific requirements of the customer, such as those relating to functionality and capacity. We may customize our software technology and make significant modifications to the software to meet the needs of our customers, and as such, we account for these arrangements under contract accounting. Under contract accounting, when VSOE for valuing certain elements of an arrangement cannot be established, total revenues, as well as costs incurred, are deferred until the customization and significant modifications are complete and are then recognized over the post contract support period. We record the deferral of this revenue in deferred revenue and non-current deferred revenue and the deferral of costs in other current assets and other non-current assets in the Consolidated Balance Sheets.

Change request revenues include customer specific adaptations and modifications of the system solution sold by NASDAQ OMX after delivery has occurred. Change request revenues are recognized in revenue when earned. Advisory services are designed to support our customers' strategies and help them with critical decisions in a highly demanding business environment. Advisory services revenues are recognized in revenue when earned. Broker surveillance revenues are derived from surveillance solutions targeting brokers and regulators throughout the world. Broker surveillance revenues are subscription based and 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,		
	2012	2011	2010
<b>Market Services</b>			
<b>Cash Equity Trading</b>			
<u>NASDAQ securities</u>			
Total average daily share volume (in billions)	1.75	2.02	2.19
Matched market share executed on NASDAQ	25.6%	27.7%	28.6%
Matched market share executed on NASDAQ OMX BX	2.7%	2.1%	2.9%
Matched market share executed on NASDAQ OMX PSX	1.4%	1.1%	0.1%
Market share reported to the FINRA/NASDAQ Trade Reporting Facility	32.3%	30.9%	35.5%
Total market share <sup>(1)</sup>	62.0%	61.7%	67.1%
<u>NYSE securities</u>			
Total average daily share volume (in billions)	3.64	4.34	4.83
Matched market share executed on NASDAQ	12.9%	13.4%	13.7%
Matched market share executed on NASDAQ OMX BX	2.6%	2.3%	3.6%
Matched market share executed on NASDAQ OMX PSX	0.7%	0.7%	0.1%
Market share reported to the FINRA/NASDAQ Trade Reporting Facility	29.8%	27.7%	31.3%
Total market share <sup>(1)</sup>	46.0%	44.0%	48.7%
<u>NYSE MKT and regional securities</u>			
Total average daily share volume (in billions)	1.05	1.47	1.45
Matched market share executed on NASDAQ	17.0%	18.7%	20.7%
Matched market share executed on NASDAQ OMX BX	2.8%	1.9%	3.1%
Matched market share executed on NASDAQ OMX PSX	1.9%	1.8%	0.1%
Market share reported to the FINRA/NASDAQ Trade Reporting Facility	29.3%	25.9%	28.7%
Total market share <sup>(1)</sup>	51.0%	48.3%	52.6%
<u>Total U.S.-listed securities</u>			
Total average daily share volume (in billions)	6.44	7.84	8.47
Matched share volume (in billions)	334.1	419.6	475.0
Matched market share executed on NASDAQ	17.0%	18.1%	18.8%
Matched market share executed on NASDAQ OMX BX	2.7%	2.1%	3.3%
Matched market share executed on NASDAQ OMX PSX	1.1%	1.0%	0.1%
Total market share	20.8%	21.2%	22.2%
<u>NASDAQ OMX Nordic and NASDAQ OMX Baltic securities</u>			
Average daily number of equity trades	324,322	370,295	284,840
Total average daily value of shares traded (in billions)	\$ 3.9	\$ 5.1	\$ 4.3
Total market share	68.7%	73.1%	76.5%
<b>Derivative Trading and Clearing</b>			
<u>U.S. Equity Options</u>			
Total industry average daily volume (in millions)	14.7	16.8	14.3
NASDAQ OMX PHLX matched market share	21.3%	23.1%	23.4%
The NASDAQ Options Market matched market share	5.5%	4.6%	4.0%
NASDAQ OMX BX Options matched market share	0.4%	—	—
<u>NASDAQ OMX Nordic and NASDAQ OMX Baltic</u>			
Average Daily Volume:			
Options, futures and fixed-income contracts	412,841	458,547	428,523
Finnish option contracts traded on Eurex	85,022	99,394	117,450
<u>NASDAQ OMX Commodities</u>			
Clearing Turnover:			
Power contracts (TWh) <sup>(2)</sup>	1,703	1,747	2,108
Carbon contracts (1000 tCO2) <sup>(2)</sup>	50,375	61,569	31,500

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	Year Ended December 31,		
	2012	2011	2010
<b>Issuer Services</b>			
Initial public offerings:			
NASDAQ	72	78	89
Exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic	6	9	11
New listings:			
NASDAQ <sup>(3)</sup>	158	151	195
Exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic <sup>(4)</sup>	18	34	25
Number of listed companies:			
NASDAQ <sup>(5)</sup>	2,577	2,680	2,778
Exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic <sup>(6)</sup>	754	776	780
<b>Market Technology</b>			
Order intake (in millions) <sup>(7)</sup>	\$ 259	\$ 134	\$ 160
Total order value (in millions) <sup>(8)</sup>	\$ 546	\$ 458	\$ 495

- (1) Includes transactions executed on NASDAQ's, NASDAQ OMX BX's and NASDAQ OMX PSX's systems plus trades reported through the FINRA/NASDAQ TRF.
- (2) Primarily transactions executed on Nord Pool and reported for clearing to NASDAQ OMX Commodities measured by TWh and one thousand metric tons of carbon dioxide (1000 tCO<sub>2</sub>).
- (3) 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.
- (4) New listings include IPOs and represent companies listed on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic and companies on the alternative markets of NASDAQ OMX First North.
- (5) Number of listed companies for NASDAQ at period end, including 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 of NASDAQ OMX First North at period end.
- (7) Total contract value of orders signed during the period.
- (8) Represents total contract value of signed orders that are yet to be recognized as revenue. Market Technology deferred revenue, as discussed in Note 8, "Deferred Revenue" to the consolidated financial statements, represents cash payments received that are yet to be recognized as revenue for these signed orders.

## Segment Operating Results

Of our total 2012 revenues less transaction rebates, brokerage, clearance and exchange fees of \$1,663 million, 66.4% was from our Market Services segment, 22.5% was from our Issuer Services segment and 11.1% was from our Market Technology segment. Of our total 2011 revenues less transaction rebates, brokerage, clearance and exchange fees of \$1,682 million, 67.6% was from our Market Services segment, 21.5% was from our Issuer Services segment and 10.9% was from our Market Technology segment. Of our total 2010 revenues less transaction rebates, brokerage, clearance and exchange fees of \$1,516 million, 67.6% was from our Market Services segment, 22.3% was from our Issuer Services segment, 10.0% was from our Market Technology segment and 0.1% related to other revenues.

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

	Year Ended December 31,			Percentage Change	
	2012	2011	2010	2012 vs. 2011	2011 vs. 2010
	(in millions)				
Market Services	\$ 2,560	\$ 2,886	\$ 2,700	(11.3)%	6.9%
Cost of revenues	(1,456)	(1,748)	(1,675)	(16.7)%	4.4%
Market Services revenues less transaction rebates, brokerage, clearance and exchange fees	1,104	1,138	1,025	(3.0)%	11.0%
Issuer Services	375	361	338	3.9%	6.8%
Market Technology	184	183	152	0.5%	20.4%
Other	—	—	1	—	#
Total revenues less transaction rebates, brokerage, clearance and exchange fees	\$ 1,663	\$ 1,682	\$ 1,516	(1.1)%	10.9%

# Denotes a variance equal to 100.0%.

**MARKET SERVICES**

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

	Year Ended December 31,			Percentage Change	
	2012	2011	2010	2012 vs. 2011	2011 vs. 2010
	(in millions)				
<b>Transaction Services</b>					
<b>Cash Equity Trading Revenues:</b>					
U.S. cash equity trading <sup>(1)</sup>	\$ 1,294	\$ 1,617	\$ 1,600	(20.0)%	1.1%
Cost of revenues:					
Transaction rebates	(854)	(1,087)	(1,094)	(21.4)%	(0.6)%
Brokerage, clearance and exchange fees <sup>(1)</sup>	(318)	(375)	(341)	(15.2)%	10.0%
Total U.S. cash equity cost of revenues	(1,172)	(1,462)	(1,435)	(19.8)%	1.9%
U.S. cash equity trading revenues less transaction rebates, brokerage, clearance and exchange fees	122	155	165	(21.3)%	(6.1)%
European cash equity trading	78	93	90	(16.1)%	3.3%
<b>Total cash equity trading revenues less transaction rebates, brokerage, clearance and exchange fees</b>	<b>200</b>	<b>248</b>	<b>255</b>	<b>(19.4)%</b>	<b>(2.7)%</b>
<b>Derivative Trading and Clearing Revenues:</b>					
U.S. derivative trading and clearing <sup>(2)</sup>	458	471	390	(2.8)%	20.8%
Cost of revenues:					
Transaction rebates	(250)	(257)	(218)	(2.7)%	17.9%
Brokerage, clearance and exchange fees <sup>(2)</sup>	(34)	(29)	(22)	17.2%	31.8%
Total U.S. derivative trading and clearing cost of revenues	(284)	(286)	(240)	(0.7)%	19.2%
U.S. derivative trading and clearing revenues less transaction rebates, brokerage, clearance and exchange fees	174	185	150	(5.9)%	23.3%
European derivative trading and clearing	116	128	115	(9.4)%	11.3%
<b>Total derivative trading and clearing revenues less transaction rebates, brokerage, clearance and exchange fees</b>	<b>290</b>	<b>313</b>	<b>265</b>	<b>(7.3)%</b>	<b>18.1%</b>
<b>Access Services Revenues</b>	<b>238</b>	<b>223</b>	<b>173</b>	<b>6.7%</b>	<b>28.9%</b>
<b>Total Transaction Services revenues less transaction rebates, brokerage, clearance and exchange fees</b>	<b>728</b>	<b>784</b>	<b>693</b>	<b>(7.1)%</b>	<b>13.1%</b>
<b>Market Data Revenues:</b>					
Net U.S. tape plans	117	115	117	1.7%	(1.7)%
U.S. market data products	150	135	126	11.1%	7.1%
European market data products	77	83	70	(7.2)%	18.6%
<b>Total Market Data revenues</b>	<b>344</b>	<b>333</b>	<b>313</b>	<b>3.3%</b>	<b>6.4%</b>
<b>Broker Services Revenues</b>	<b>19</b>	<b>19</b>	<b>15</b>	<b>—</b>	<b>26.7%</b>
<b>Other Market Services Revenues</b>	<b>13</b>	<b>2</b>	<b>4</b>	<b>#</b>	<b>(50.0)%</b>
<b>Total Market Services revenues less transaction rebates, brokerage, clearance and exchange fees</b>	<b>\$ 1,104</b>	<b>\$ 1,138</b>	<b>\$ 1,025</b>	<b>(3.0)%</b>	<b>11.0%</b>

# Denotes a variance greater than 100.0%.

<sup>(1)</sup> Includes Section 31 fees of \$277 million in 2012, \$304 million in 2011 and \$252 million in 2010. Section 31 fees are recorded as U.S. cash equity trading revenues with a corresponding amount recorded in cost of revenues.

<sup>(2)</sup> Includes Section 31 fees of \$32 million in 2012, \$26 million in 2011 and \$19 million in 2010. Section 31 fees are recorded as U.S. derivative trading and clearing revenues with a corresponding amount recorded in cost of revenues.

## **Transaction Services**

Transaction Services revenues less transaction rebates, brokerage, clearance and exchange fees decreased in 2012 compared with 2011 and increased in 2011 compared with 2010. The decrease in 2012 was primarily due to a decline in cash equity trading revenues less transaction rebates, brokerage, clearance, and exchange fees, a decline in derivative trading and clearing revenues less transaction rebates, brokerage, clearance and exchange fees, and an unfavorable impact from foreign exchange of \$11 million. Partially offsetting the decrease was an increase in Access Services revenues. The increase in 2011 was primarily due to an increase in derivative trading and clearing revenues less transaction rebates, brokerage, clearance and exchange fees and Access Services revenues. The increase in 2011 was partially offset by lower cash equity trading revenues less transaction rebates, brokerage, clearance and exchange fees.

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

U.S. cash equity trading revenues less transaction rebates, brokerage, clearance and exchange fees decreased in both 2012 compared to 2011 and 2011 compared with 2010. The decreases were primarily due to declines in industry trading volumes and declines in our matched market share. The decrease in 2011 was partially offset by modified rates.

U.S. cash equity trading revenues decreased in 2012 compared to 2011 and increased in 2011 compared with 2010. The decrease in 2012 was primarily due to a decline in industry trading volumes, a decline in our matched market share, and a decrease in Section 31 pass-through fee revenues. The increase in 2011 was primarily due to an increase in Section 31 pass-through fee revenues and modified rates, partially offset by a decline in industry trading volumes and a decline in our matched market share.

We record Section 31 fees as U.S. 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. Pass-through fees can increase or decrease due to rate changes by the SEC, our percentage of the overall industry volumes processed on our systems, and differences in actual dollar value of shares traded. Since the amount recorded in revenues is equal to the amount recorded in cost of revenues, there is no impact on our revenues less transaction rebates, brokerage, clearance and exchange fees. Section 31 fees were \$277 million in 2012, \$304 million in 2011 and \$252 million in 2010. The decrease in 2012 compared with 2011 was primarily due to lower dollar value traded on the NASDAQ and NASDAQ OMX BX trading systems, partially offset by higher pass-through fee rates. The increase in 2011 compared with 2010 was primarily due to higher pass-through fee rates in 2011, partially offset by lower dollar value traded on the NASDAQ and NASDAQ OMX BX trading systems.

For NASDAQ and NASDAQ OMX PSX, we credit a portion of the per share execution charge to the market participant that provides the liquidity and for NASDAQ OMX BX, we credit a portion of the per share execution charge to the market participant that takes the liquidity. These transaction rebates decreased in both 2012 compared with 2011 and 2011 compared with 2010. The decrease in 2012 was primarily due to a decline in industry trading volumes and our matched market share. The decrease in 2011 was primarily due to a decline in industry trading volumes and our matched market share, partially offset by higher average rebate rates due to changes in our pricing program on the NASDAQ, NASDAQ OMX BX and NASDAQ OMX PSX trading systems.

Brokerage, clearance and exchange fees decreased in 2012 compared to 2011 and increased in 2011 compared with 2010. The decrease in 2012 was primarily due to a decrease in Section 31 pass-through fees and a decrease in the amount of volume routed by NASDAQ due to declines in industry trading volumes and our matched market share. The increase in 2011 was primarily due to an increase in Section 31 pass-through fees, partially offset by a decrease in the amount of volume routed by NASDAQ due to declines in industry trading volumes and our matched market share.

### ***European Cash Equity Trading Revenues***

European cash equity trading revenues include trading revenues from equity products traded on the NASDAQ OMX Nordic and NASDAQ OMX Baltic exchanges. European cash equity trading revenues decreased in 2012 compared to 2011 and increased in 2011 compared with 2010. The decrease in 2012 was primarily due to a decline in trading activity and an unfavorable impact from foreign exchange of \$5 million. The increase in 2011 was primarily due to a favorable impact from foreign exchange of \$7 million, partially offset by a decrease in trading activity.

### ***U.S. Derivative Trading and Clearing Revenues***

Both the U.S. derivative trading and clearing revenues and revenues less transaction rebates, brokerage, clearance and exchange fees decreased in 2012 compared to 2011 and increased in 2011 compared with 2010. The decreases in 2012 were primarily due to declines in industry trading volumes and declines in market share on the NASDAQ OMX PHLX market, partially offset by increases in revenue capture per traded contract, increases in market share on the NASDAQ Options Market and the inclusion of the NASDAQ OMX BX Options market, launched in June 2012. The increases in 2011 were primarily due to increases in industry trading volumes and our matched market share. The increase in U.S. derivative trading and clearing revenues in 2011 compared with 2010 was also due to higher Section 31 pass-through fee revenues as discussed below.

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Similar to U.S. cash equity trading, Section 31 fees are recorded as derivative trading and clearing 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 transaction rebates, brokerage, clearance and exchange fees. Section 31 fees were \$32 million in 2012, \$26 million in 2011 and \$19 million 2010. The increase in 2012 compared to 2011 was primarily due to higher pass-through fee rates, partially offset by a decrease in industry trading volumes. The increase in 2011 compared to 2010 was primarily due an increase in industry trading volumes and higher pass-through fee rates.

Transaction rebates, in which we credit a portion of the per share execution charge to the market participant, decreased in 2012 compared with 2011 and increased in 2011 compared with 2010. The decrease in 2012 was primarily due to a decrease in industry trading volumes and a decrease in market share, partially offset by an increase in transaction capture rate. The increase in 2011 was primarily due to increases in industry trading volumes and market share.

Brokerage, clearance and exchange fees increased in both 2012 compared with 2011 and 2011 compared with 2010. The increases were primarily due to an increase in Section 31 pass-through fees.

### **European Derivative Trading and Clearing Revenues**

European derivative trading and clearing revenues include trading and clearing revenues from derivative products traded on NASDAQ OMX Stockholm, clearing revenues from resale and repurchase agreements on NASDAQ OMX Nordic Clearing and revenues from NASDAQ OMX Commodities. Beginning in July 2012, revenues from NASDAQ OMX Commodities includes revenues from NOS Clearing for OTC traded derivatives for the freight market and seafood derivatives market. Beginning in May 2010, revenues from NASDAQ OMX Commodities includes trading and clearing revenues for energy and carbon products from Nord Pool. European derivative trading and clearing revenues decreased in 2012 compared with 2011 and increased in 2011 compared with 2010. The decrease in 2012 was primarily due to lower trading activity for index options and futures contracts and an unfavorable impact from foreign exchange of \$5 million. The increase in 2011 was primarily due to a favorable impact from foreign exchange of \$11 million, partially offset by lower trading activity in energy products.

The following table shows revenues from European derivative trading and clearing:

	Year Ended December 31,			Percentage Change	
	2012	2011	2010	2012 vs. 2011	2011 vs. 2010
	(in millions)				
<b>European Derivative Trading and Clearing Revenues:</b>					
Options and futures contracts	\$ 43	\$ 55	\$ 49	(21.8)%	12.2%
Energy carbon and other commodity products	46	45	41	2.2%	9.8%
Fixed-income products	22	22	18	—	22.2%
Other revenues and fees	5	6	7	(16.7)%	(14.3)%
<b>Total European Derivative Trading and Clearing revenues</b>	<u>\$ 116</u>	<u>\$ 128</u>	<u>\$ 115</u>	<u>(9.4)%</u>	<u>11.3%</u>

### **Access Services Revenues**

Access Services revenues increased in both 2012 compared with 2011 and 2011 compared with 2010. The increase in 2012 was primarily due to increased demand for services and revenues from new products. The increase in 2011 was primarily due to an increase in revenues from FTEN, which was acquired in December 2010, and increased demand for services.

### **Market Data**

Market Data revenues increased in both 2012 compared with 2011 and 2011 compared with 2010. The increase in 2012 was primarily due to increases in U.S. market data products revenues and net U.S. tape plans revenues, partially offset by a decline in European market data products revenues. The increase in 2011 was primarily due to increases in U.S. and European market data products revenues and a favorable impact from foreign exchange, partially offset by a decrease in net U.S. tape plans revenues.

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

The increase in net U.S. tape plans revenues in 2012 compared with 2011 was primarily due to an increase in our quoting market share. The decline in net U.S. tape plans revenues in 2011 compared with 2010 was primarily due to lower plan shareable revenues and declines in NASDAQ's trading and quoting market share of U.S. cash equities, as calculated under the SEC-mandated market data revenue quoting and trading formula.

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

The increase in U.S. market data products revenues in 2012 compared with 2011 was primarily due to higher customer demand for proprietary data products and pricing changes. The increase in U.S. market data products revenues in 2011 compared with 2010 was primarily due to higher customer demand for proprietary data products, mainly index data, and higher audit collections.

### **European Market Data Products Revenues**

The decrease in European market data products in 2012 compared with 2011 was primarily due to an unfavorable impact from foreign exchange of \$4 million and a decline in user populations. The increase in European market data products revenues in 2011 compared with 2010 was primarily due to modified fees for market data products and a favorable impact from foreign exchange of \$6 million.

### **Broker Services**

Broker Services revenues were flat in 2012 compared to 2011 and increased in 2011 compared with 2010. The increase in 2011 was primarily due to new customers and a favorable impact from foreign exchange of \$2 million.

### **Other Market Services**

The increase in other Market Services revenues in 2012 compared with 2011 was primarily due to income from open positions relating to the operations of the exchange.

## **ISSUER SERVICES**

The following table shows revenues from our Issuer Services segment:

	Year Ended December 31,			Percentage Change	
	2012	2011	2010	2012 vs. 2011	2011 vs. 2010
	(in millions)				
<b>Global Listing Services Revenues:</b>					
Annual renewal	\$ 112	\$ 117	\$ 113	(4.3)%	3.5%
Listing of additional shares	39	40	39	(2.5)%	2.6%
Initial listing	20	21	22	(4.8)%	(4.5)%
Total U.S. listing services	171	178	174	(3.9)%	2.3%
European listing services	50	55	51	(9.1)%	7.8%
Corporate Solutions	97	76	66	27.6%	15.2%
<b>Total Global Listing Services revenues</b>	<b>318</b>	<b>309</b>	<b>291</b>	<b>2.9%</b>	<b>6.2%</b>
<b>Global Index Group Revenues</b>	<b>57</b>	<b>52</b>	<b>47</b>	<b>9.6%</b>	<b>10.6%</b>
<b>Total Issuer Services revenues</b>	<b>\$ 375</b>	<b>\$ 361</b>	<b>\$ 338</b>	<b>3.9%</b>	<b>6.8%</b>

### **Global Listing Services**

Global Listing Services revenues increased in both 2012 compared with 2011 and 2011 compared with 2010. The increase in 2012 was primarily due to an increase in Corporate Solutions revenues, partially offset by decreases in total U.S. listing services and European listing services revenues. The increase in 2011 was primarily due to an increase in Corporate Solutions revenues.

The decrease in total U.S. listing services revenues in 2012 compared with 2011 was primarily due to a decrease in annual renewal revenues resulting from a decline in the number of listed companies from 2,680 as of December 31, 2011 to 2,577 as of December 31, 2012.

European listing services revenues decreased in 2012 compared with 2011 and increased in 2011 compared with 2010. The decrease in 2012 was primarily due to an unfavorable impact from foreign exchange of \$3 million, as well as a decrease in the number of listed companies from 776 as of December 31, 2011 to 754 as of December 31, 2012. The increase in 2011 was primarily due to a favorable impact from foreign exchange of \$5 million.

Corporate Solutions revenues increased in both 2012 compared with 2011 and 2011 compared with 2010. The increase in 2012 was primarily due to revenues from BWISE, which was acquired in May 2012, and Glide Technologies, which was acquired in October 2011, as well as expanded customer utilization of GlobeNewswire, Shareholder.com and Directors Desk products, partially offset by an unfavorable impact from foreign exchange of \$2 million. The increase in 2011 was primarily due to expanding customer utilization of Shareholder.com, Directors Desk and GlobeNewswire products, as well as revenues from ZVM, which was acquired in December 2010, and Glide Technologies, which was acquired in October 2011.

[Table of Contents](#)**Global Index Group Revenues**

Global Index Group revenues increased in both 2012 compared with 2011 and 2011 compared with 2010. The increase in 2012 was primarily due to an increase in the underlying assets associated with NASDAQ OMX-licensed ETFs and other financial products due to product growth and newly executed product licenses, partially offset by lower futures and options volumes. The increase in 2011 was primarily due to an increase in the underlying assets associated with NASDAQ OMX-licensed ETFs, as well as additional demand for new licensed ETFs and other financial products, partially offset by lower futures and options volumes.

**MARKET TECHNOLOGY**

The following table shows revenues from our Market Technology segment:

	Year Ended December 31,			Percentage Change	
	2012	2011	2010	2012 vs. 2011	2011 vs. 2010
	(in millions)				
<b>Market Technology:</b>					
License, support and facility management	\$ 110	\$ 115	\$ 103	(4.3)%	11.7%
Delivery project	27	24	17	12.5%	41.2%
Change request, advisory and broker surveillance	47	44	32	6.8%	37.5%
<b>Total Market Technology revenues</b>	<b>\$ 184</b>	<b>\$ 183</b>	<b>\$ 152</b>	<b>0.5%</b>	<b>20.4%</b>

Market Technology revenues increased in both 2012 compared with 2011 and 2011 compared with 2010. The increase in 2012 was primarily due to operational increases in delivery project revenues and change request, advisory and broker surveillance revenues, partially offset by an unfavorable impact from foreign exchange of \$6 million. The increase in 2011 was primarily due to a favorable impact from foreign exchange of \$18 million, as well as operational increases in change request, advisory and broker surveillance revenues and delivery project revenues.

**License, Support and Facility Management Revenues**

License, support and facility management revenues decreased in 2012 compared with 2011 and increased in 2011 compared with 2010. The decrease in 2012 was primarily due to an unfavorable impact from foreign exchange of \$4 million. The increase in 2011 was primarily due to a favorable impact from foreign exchange of \$12 million.

**Delivery Project Revenues**

Delivery project revenues increased in both 2012 compared with 2011 and 2011 compared with 2010. The increase in 2012 was primarily due to the recognition of previously deferred revenues in the current period, partially offset by an unfavorable impact from foreign exchange of \$2 million. The increase in 2011 was primarily due to the recognition of previously deferred revenues in 2011, as well as a favorable impact from foreign exchange of \$2 million. Delivery project revenues are derived from the system solutions developed and sold by NASDAQ OMX. Total revenues, as well as costs incurred, are typically deferred until the customization and any significant modifications are completed and are then recognized over the post contract support period.

**Change Request, Advisory and Broker Surveillance Revenues**

Change request, advisory and broker surveillance revenues increased in both 2012 compared with 2011 and 2011 compared with 2010. The increase in 2012 was primarily due to an increase in broker surveillance revenues resulting from increased customer demand, partially offset by a decrease in change request and advisory revenues. The increase in 2011 was primarily due to an increase in broker surveillance revenues resulting from our acquisition of SMARTS in August 2010 and a favorable impact from foreign exchange of \$4 million.

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### Total Order Value

As of December 31, 2012, total order value, which represents the total contract value of orders signed that are yet to be recognized as revenues, was \$546 million. Market Technology deferred revenue of \$149 million, which is included in this amount, represents cash payments received that are yet to be recognized as revenue for these signed orders. See Note 8, "Deferred Revenue," to the consolidated financial statements for further discussion. The recognition and timing of these revenues depends on many factors, including those that are not within our control. As such, the following table of Market Technology revenues to be recognized in the future represents our best estimate:

	<b>Total Order Value</b> (in millions)
Fiscal year ended:	
2013	\$ 157
2014	129
2015	94
2016	72
2017	51
2018 and thereafter	43
Total	<u>\$ 546</u>

### **Expenses**

#### **Operating Expenses**

The following table shows our operating expenses:

	<b>Year Ended December 31,</b>			<b>Percentage Change</b>	
	<b>2012</b>	<b>2011</b>	<b>2010</b>	<b>2012 vs. 2011</b>	<b>2011 vs. 2010</b>
	(in millions)				
Compensation and benefits	\$ 454	\$ 458	\$ 412	(0.9)%	11.2%
Marketing and advertising	26	24	20	8.3%	20.0%
Depreciation and amortization	104	109	103	(4.6)%	5.8%
Professional and contract services	96	83	72	15.7%	15.3%
Computer operations and data communications	60	65	58	(7.7)%	12.1%
Occupancy	93	91	88	2.2%	3.4%
Regulatory	34	35	35	(2.9)%	—
Merger and strategic initiatives	4	38	4	(89.5)%	#
Restructuring charges	44	—	—	#	—
General, administrative and other	58	83	93	(30.1)%	(10.8)%
<b>Total operating expenses</b>	<u><b>\$ 973</b></u>	<u><b>\$ 986</b></u>	<u><b>\$ 885</b></u>	<u><b>(1.3)%</b></u>	<u><b>11.4%</b></u>

# Denotes a variance greater than 100.0%.

Total operating expenses decreased \$13 million in 2012 compared with 2011 and increased \$101 million in 2011 compared with 2010. The decrease in 2012 reflects a favorable impact from foreign exchange of \$17 million, partially offset by an increase in operating expenses of \$4 million. The increase in 2011 reflects an operational increase of \$67 million and an unfavorable impact from foreign exchange of \$34 million. The operational increase of \$4 million in 2012 was primarily due to restructuring actions taken during 2012 and an increase in professional and contract services expense, partially offset by decreases in merger and strategic initiatives expense and general, administrative and other expense. The operational increase of \$67 million in 2011 was primarily due to increases in merger and strategic initiatives expense, compensation and benefits expense, professional and contract services expense, marketing and advertising expense and computer operations and data communications expense, partially offset by a decrease in general, administrative and other expense.

Compensation and benefits expense decreased in 2012 compared with 2011 and increased in 2011 compared with 2010. The decrease in 2012 was primarily due to a favorable impact from foreign exchange of \$8 million and lower compensation expense reflecting reduced financial performance and restructuring activities, partially offset by an increase in salary expense, primarily due to our acquisitions of Glide Technologies in October 2011, Bwise in May 2012 and NOS Clearing in July 2012. The increase in 2011 was primarily due to an increase in salary expense from SMARTS, FTEN and ZVM, which were acquired in the second half of 2010, and Glide Technologies, which was acquired in October 2011, and higher compensation expenses reflecting stronger financial

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performance, as well as an unfavorable impact from foreign exchange of \$17 million. Headcount, including staff employed at consolidated entities where we have a controlling financial interest, increased to 2,506 employees at December 31, 2012 from 2,433 employees at December 31, 2011 and 2,395 employees at December 31, 2010. The increase in headcount in 2012 compared to 2011 was primarily due to our acquisition of BWISE, partially offset by workforce reductions of 226 positions across our organization related to restructuring actions in 2012. See Note 3, "Restructuring Charges," to the consolidated financial statements for a discussion of our restructuring charges incurred in 2012. The increase in headcount in 2011 compared with 2010 was primarily due to our acquisition of Glide Technologies in October 2011.

Marketing and advertising expense increased in both 2012 compared with 2011 and 2011 compared with 2010. The increase in 2012 was primarily due to increased brand advertising primarily featuring listed issuers. The increase in 2011 was primarily due to increased advertising on behalf of new issuers.

Depreciation and amortization expense decreased in 2012 compared with 2011 and increased in 2011 compared with 2010. The decrease in 2012 was primarily due to the write-off of certain acquired intangible assets associated with technology (\$19 million), customer relationships (\$6 million), and a certain trade name (\$3 million), the write-off and disposal of leasehold improvements, asset impairments related to restructuring activities, primarily consisting of fixed assets and capitalized software which have been retired, and a favorable impact from foreign exchange of \$2 million, partially offset by additional depreciation and amortization expense as a result of our recent acquisitions, primarily BWISE in May 2012. The increase in 2011 was primarily due to an unfavorable impact from foreign exchange of \$4 million, as well as additional depreciation and amortization expense as a result of our acquisitions of SMARTS, FTEN and ZVM, which were acquired in the second half of 2010, and Glide Technologies, which was acquired in October 2011.

Professional and contract services expense increased in both 2012 compared with 2011 and 2011 compared with 2010. The increase in 2012 was primarily due to costs incurred for special legal expenses, as well as incremental spending for professional and contract services, partially offset by a favorable impact from foreign exchange of \$2 million. The increase in 2011 was primarily due to costs incurred for information technology security consultants and an unfavorable impact from foreign exchange of \$3 million.

Computer operations and data communications expense decreased in 2012 compared with 2011 and increased in 2011 compared with 2010. The decrease in 2012 was primarily due to a value added tax, or VAT, refund relating to prior periods and a favorable impact from foreign exchange of \$1 million, partially offset by additional computer operations and data communications expense as a result of our recent acquisitions, primarily Glide Technologies in October 2011 and BWISE in May 2012. The increase in 2011 was primarily due to our acquisitions of SMARTS, FTEN and ZVM, which were acquired in the second half of 2010, and an unfavorable impact from foreign exchange of \$3 million.

Occupancy expense increased in both 2012 compared with 2011 and 2011 compared with 2010. The increase in 2012 was primarily due to additional occupancy expense as a result of our recent acquisitions, primarily BWISE in May 2012, as well as a \$3 million sublease loss reserve charge on space we currently occupy due to an increase in net rental costs, partially offset by a favorable impact from foreign exchange of \$1 million. The increase in 2011 was primarily due to an unfavorable impact from foreign exchange of \$3 million.

Merger and strategic initiatives expense was \$4 million in 2012 compared with \$38 million in 2011 and \$4 million in 2010. Merger and strategic initiatives expense for 2012 primarily related to our agreement with Thomson Reuters to acquire its Investor Relations, Public Relations and Multimedia Solutions businesses and costs related to recent acquisitions and other strategic initiatives, partially offset by a gain on our acquisition of NOS Clearing in July 2012. Merger and strategic initiatives expense for 2011 primarily related to costs incurred for advisors, bank commitment fees, legal and other professional services related to our joint proposal to acquire NYSE Euronext, as well as costs related to our acquisition of Glide Technologies in October 2011. Merger and strategic initiatives expense for 2010 included legal and consulting costs related to our acquisitions of SMARTS and FTEN and costs related to strategic initiatives.

Restructuring charges were \$44 million in 2012. See Note 3, "Restructuring Charges," to the consolidated financial statements for a discussion of our restructuring charges recorded during 2012. Cash expenditures for severance and other charges necessary to execute our restructuring actions were \$20 million in 2012. Such expenditures, primarily for severance and other charges, have been funded with operating cash flows. We generated pre-tax savings of approximately \$60 million in 2012 from our restructuring actions, and we expect an annualized savings of \$60 million beginning in 2013.

General, administrative and other expense decreased in both 2012 compared with 2011 and 2011 compared with 2010. In 2011, we recorded a pre-tax charge of \$25 million related to the write-off of a portion of the unamortized balance of debt issuance costs and debt discount related to the repayment of \$335 million of the aggregate principal amount outstanding of our 2013 Convertible Notes that was completed in October 2011, and a pre-tax charge of \$6 million recorded in 2011 related to the write-off of the remaining unamortized balance of debt issuance costs related to our \$700 million senior unsecured term loan facility that was repaid in

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September 2011. General, administrative and other expense included a favorable impact from foreign exchange of \$3 million in 2012 and an unfavorable impact from foreign exchange of \$4 million in 2011. General, administrative and other expense for 2010 included a pre-tax charge of \$40 million, which included the write-off of the remaining unamortized balance of debt issuance costs of \$28 million incurred in conjunction with our senior secured credit facilities in place as of December 31, 2009, costs to terminate our float-to-fixed interest rate swaps previously designated as a cash flow hedge of \$9 million and other costs of \$3 million.

### **Non-operating Income and Expenses**

The following table shows our non-operating income and expenses:

	Year Ended December 31,			Percentage Change	
	2012	2011	2010	2012 vs. 2011	2011 vs. 2010
	(in millions)				
Interest income	\$ 10	\$ 11	\$ 9	(9.1)%	22.2%
Interest expense	(97)	(119)	(102)	(18.5)%	16.7%
Net interest expense	(87)	(108)	(93)	(19.4)%	16.1%
Asset impairment charges	(40)	(18)	—	#	#
Dividend and investment income	—	1	(3)	#	#
Loss on divestiture of businesses	(14)	—	(11)	#	#
Income (loss) from unconsolidated investees, net	(1)	2	2	#	—
Total non-operating expenses	<u>\$(142)</u>	<u>\$(123)</u>	<u>\$(105)</u>	<u>15.4%</u>	<u>17.1%</u>

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

Total non-operating expenses were \$142 million in 2012 compared with \$123 million in 2011 and \$105 million in 2010. Total non-operating expenses for 2012 primarily include net interest expense of \$87 million, asset impairment charges of \$40 million and a loss on divestiture of business of \$14 million. Total non-operating expenses for 2011 primarily include net interest expense of \$108 million and an impairment charge of \$18 million on our investment security in DFM. Total non-operating expenses for 2010 primarily include net interest expense and a pre-tax loss on divestiture of businesses.

### Interest Income

Interest income decreased slightly in 2012 compared with 2011 and increased in 2011 compared with 2010. The decrease in 2012 was primarily due to a decrease in cash and cash equivalents in 2012. The increase in 2011 was primarily due to an increase in cash and cash equivalents in 2011 and a favorable impact from foreign exchange of \$1 million.

### Interest Expense

Interest expense for 2012 was \$97 million, and was comprised of \$86 million of interest expense, \$4 million of non-cash expense associated with accretion of debt discounts, \$3 million of non-cash debt issuance amortization expense, and \$4 million of other bank and investment-related fees. Interest expense decreased in 2012 compared with 2011 due to lower average outstanding debt obligations in 2012 primarily resulting from the extinguishment of \$335 million of our 2013 Convertible Notes in the fourth quarter of 2011, as well as lower average interest rates.

Interest expense for 2011 was \$119 million, and was comprised of \$97 million of interest expense, \$13 million of non-cash expense associated with accretion of debt discounts, \$6 million of non-cash debt issuance amortization expense, and \$3 million of other bank and investment-related fees. Interest expense increased in 2011 compared with 2010 primarily due to higher average outstanding debt obligations in 2011 resulting from the issuance of our 2018 Notes in December 2010.

See Note 9, "Debt Obligations," to the consolidated financial statements for further discussion of our debt obligations.

### Asset Impairment Charges

In the second quarter of 2012, we recorded non-cash intangible asset impairment charges totaling \$28 million related to certain acquired intangible assets associated with technology (\$19 million), customer relationships (\$6 million) and a certain trade name (\$3 million). See "Intangible Asset Impairment Charges," of Note 5, "Goodwill and Purchased Intangible Assets," to the consolidated financial statements for further discussion. In the first quarter of 2012, we also recorded a non-cash other-than-temporary impairment charge of \$12 million related to our equity interest in EMCF. See "Equity Method Investments," of Note 6, "Investments," to the consolidated financial statements for further discussion.

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In the fourth quarter of 2011, we recorded a non-cash, other-than-temporary impairment charge of \$18 million related to our available-for-sale investment security in DFM. As of December 31, 2011, the cost basis of this investment security was \$36 million and the fair value was \$18 million. We reviewed the carrying amount of this investment security to determine whether an other-than-temporary decline in value existed as of December 31, 2011. We considered factors affecting the investee, factors affecting the industry the investee operates in and general market trends. We also considered the length of time the market value had been below the carrying amount and the near-term prospects for recovery of unrealized losses. Based on this review, we determined that the decline in value of this security below its carrying amount was other than temporary and we wrote down our investment to fair value which resulted in the \$18 million pre-tax, non-cash impairment charge.

### Dividend and Investment Income

Dividend and investment income increased in 2011 compared with 2010. The increase in 2011 was primarily due to an increase in the fair value of our government debt securities portfolio as a result of decreased interest rates.

### Loss on Divestiture of Businesses

In August 2012, we sold IDCG and recorded a loss of \$14 million. See “2012 Divestiture,” of Note 4, “Acquisitions and Divestitures,” for further discussion.

The loss on divestiture of businesses of \$11 million in 2010 was due to our decision to close the businesses of both NEURO (\$6 million) and Agora-X (\$5 million) in the second quarter of 2010.

### Income (Loss) from Unconsolidated Investees, net

Net loss from unconsolidated investees of \$1 million in 2012 and net income of \$2 million in both 2011 and 2010 was related to our share in the earnings and losses of our equity method investments.

### **Income Taxes**

NASDAQ OMX’s income tax provision was \$199 million in 2012 compared with \$190 million in 2011 and \$137 million in 2010. The overall effective tax rate was 36.3% in 2012, 33.2% in 2011 and 26.0% in 2010. The higher effective tax rate in 2012 when compared to 2011 was primarily due to the impact to deferred tax assets and deferred tax liabilities resulting from changes in tax rates in various jurisdictions within the U.S. and outside the U.S., adjustments related to our 2005 – 2011 tax return liabilities which resulted in an increase to the tax provision and a shift in the geographic mix of earnings and losses. These increases are partially offset by a permanent tax benefit associated with certain taxable foreign exchange revaluation losses which are not reflected in pre-tax earnings. The increase in the effective tax rate in 2011 when compared with 2010 was due to the impact of changes in tax laws in certain jurisdictions where NASDAQ OMX operates. Furthermore, in the third quarter of 2011, we recorded significant adjustments due to provision-to-tax return adjustments related to our 2010 tax return liabilities and a corresponding effect on deferred tax liabilities both which increased NASDAQ OMX’s tax provision in 2011. Also, 2010 results included reductions in deferred tax liabilities due to a revised effective tax rate and a tax deduction for a capital loss.

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.

In order to recognize and measure our unrecognized tax benefits, management determines 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.

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 the years 2007 through 2010 are currently under audit by the Internal Revenue Service and we are subject to examination for 2011. Several state tax returns are currently under examination by the respective tax authorities for the years 2005 through 2010 and we are subject to examination for 2011. Non-U.S. tax returns are subject to review by the respective tax authorities for the years 2005 through 2011. In 2012, we settled audits with the state of New York and paid a total of \$10 million with respect to the years 2000 through 2006. Of the \$10 million paid, \$5 million relates to tax and \$5 million relates to interest. Since we included \$2 million in our unrecognized tax benefits as of December 31, 2011, \$3 million affected our 2012 effective tax rate. The outcome of this audit did not have a material impact on our financial position or results of operations. We anticipate that the amount of unrecognized tax benefits at December 31, 2012 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 will not have a material impact on our consolidated financial position or results of operations.

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In the fourth quarter of 2010, we received an appeal from the Finnish Tax Authority challenging certain interest expense deductions claimed by NASDAQ OMX in Finland for the year 2008. The appeal also demands certain penalties be paid with regard to the company's tax return filing position. In October 2012, the Finnish Appeals Board disagreed with the company's tax return filing position, even though the tax return position with respect to this deduction was previously reviewed and approved by the Finnish Tax Authority. NASDAQ OMX has decided to appeal the ruling by the Finnish Appeals Board to the Finnish Administrative Court. If the Finnish Administrative Court agrees with the Finnish Appeals Board, additional tax and penalties for the years 2008 through 2012 would total approximately \$20 million. We expect the Finnish Administrative Court to agree with our position and, as such, believe it is unlikely NASDAQ OMX will be assessed any additional tax and penalties. Through December 31, 2012, we have recorded the tax benefits associated with the filing position.

### ***Net Loss Attributable to Noncontrolling Interests***

Net loss attributable to noncontrolling interests was \$3 million in 2012 compared with \$4 million in 2011 and \$6 million in 2010. The losses are primarily attributable to noncontrolling interests in IDCG.

### ***Non-GAAP Financial Measures***

In addition to disclosing results determined in accordance with U.S. GAAP, we also have provided non-GAAP net income attributable to NASDAQ OMX and non-GAAP diluted earnings per share. Management uses this non-GAAP information internally, along with U.S. GAAP information, in evaluating our performance and in making financial and operational decisions.

We believe our presentation of these measures provides investors with greater transparency and supplemental data relating to our financial condition and results of operations. In addition, we believe the presentation of these measures is useful to investors for period-to-period comparison of results as the items described below do not reflect operating performance. These measures are not in accordance with, or an alternative to, U.S. GAAP, and may be different from non-GAAP measures used by other companies. Investors should not rely on any single financial measure when evaluating our business. We recommend investors review the U.S. GAAP financial measures included in this Annual Report on Form 10-K, including our consolidated financial statements and the notes thereto. When viewed in conjunction with our U.S. GAAP results and the accompanying reconciliation, we believe these non-GAAP measures provide greater transparency and a more complete understanding of factors affecting our business than U.S. GAAP measures alone. Our management uses these measures to evaluate operating performance, and management decisions during the reporting period are made by excluding certain items that we believe have less significance on, or do not impact, the day-to-day performance of our business. We understand that analysts and investors regularly rely on non-GAAP financial measures, such as non-GAAP net income and non-GAAP diluted earnings per share, to assess operating performance. We use non-GAAP net income attributable to NASDAQ OMX and non-GAAP diluted earnings per share because they more clearly highlight trends in our business that may not otherwise be apparent when relying solely on U.S. GAAP financial measures, since these measures eliminate from our results specific financial items that have less bearing on our operating performance. Non-GAAP net income attributable to NASDAQ OMX for the periods presented below is calculated by adjusting net income attributable to NASDAQ OMX for charges or gains related to acquisition and divestiture transactions, integration activities related to acquisitions, other significant infrequent charges or gains and their related income tax effects that are not related to our core business. We do not believe these items are representative of our future operating performance since these charges were not consistent with our normal operating performance.

Non-GAAP adjustments for the year ended December 31, 2012 primarily related to the following:

(i) income from open positions relating to the operations of the exchange of \$11 million, (ii) merger and strategic initiatives costs of \$4 million related to recent acquisitions and other strategic initiatives, net of gain on acquisition of NOS Clearing, (iii) restructuring charges of \$44 million related to workforce reductions of \$23 million, facilities-related charges of \$10 million, asset impairment charges of \$9 million and \$2 million of other charges, (iv) intangible asset impairment charges of \$40 million related to certain acquired intangible assets totaling \$28 million as well as an other-than-temporary impairment charge related to our equity method interest in EMCF of \$12 million, (v) a loss on divestiture of business of \$14 million related to the sale of IDCG, (vi) special legal expenses of \$7 million, (vii) a sublease loss reserve charge of \$3 million recorded on space we currently occupy due to an increase in rental costs, (viii) a VAT refund of \$7 million relating to prior periods, (ix) adjustment to the income tax provision of \$32 million to reflect these non-GAAP adjustments, and (x) significant tax adjustments, net of \$14 million due to the impact to deferred tax assets and deferred tax liabilities resulting from changes in tax rates in various jurisdictions within the U.S. and outside the U.S., adjustments related to our 2005—2011 tax return liabilities which resulted in an increase to the tax provision, partially offset by a permanent tax benefit associated with certain taxable foreign exchange revaluation losses which are not reflected in pre-tax earnings.

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Non-GAAP adjustments for the year ended December 31, 2011 primarily related to the following:

(i) merger and strategic initiatives costs of \$38 million, primarily costs for advisors, bank commitment fees, legal and other professional services, related to our joint proposal to acquire NYSE Euronext, as well as costs related to recent acquisitions and other strategic initiatives, (ii) an asset impairment charge of \$18 million related to our available-for-sale investment security in DFM, (iii) debt extinguishment and refinancing charges of \$31 million, related to the repayment of the 2013 Convertible Notes and the repayment of our \$700 million senior unsecured term loan facility, (iv) an adjustment to the income tax provision of \$28 million to reflect these non-GAAP adjustments, and (v) significant tax adjustments, net of \$5 million due to the impact of changes in tax laws in certain jurisdictions where NASDAQ OMX operates.

Non-GAAP adjustments for the year ended December 31, 2010 primarily related to the following:

(i) merger and strategic initiatives costs of \$4 million, consisting primarily of costs for legal and consulting related to our acquisitions of SMARTS and FTEN, (ii) a loss on divestiture of businesses of \$11 million due to our decision to close the businesses of both NEURO (\$6 million) and Agora-X (\$5 million), (iii) debt extinguishment and refinancing charges of \$40 million related to the repayment of our senior secured credit facilities in place as of December 31, 2009, (iv) a sublease loss reserve charge of \$5 million recorded on space we occupy in Philadelphia, San Francisco and London due to our decision to vacate space in these properties, (v) asset retirement charges of \$2 million primarily related to obsolete technology, (vi) workforce reduction costs of \$9 million related to acquisitions, (vii) an adjustment to the income tax provision of \$28 million to reflect these non-GAAP adjustments, and (viii) significant tax adjustments, net of \$32 million due to provision-to-tax return adjustments related to our 2009 tax return liabilities.

The following table represents reconciliations between U.S. GAAP net income and diluted earnings per share and non-GAAP net income and diluted earnings per share:

	Year Ended December 31, 2012		Year Ended December 31, 2011		Year Ended December 31, 2010	
	Net Income	Diluted Earnings Per Share	Net Income	Diluted Earnings Per Share	Net Income	Diluted Earnings Per Share
(in millions, except per share amounts)						
<b>U.S. GAAP net income attributable to NASDAQ OMX and diluted earnings per share</b>	\$ 352	\$ 2.04	\$ 387	\$ 2.15	\$ 395	\$ 1.91
Non-GAAP adjustments:						
Income from open positions relating to the operations of the exchange	(11)	(0.06)	—	—	—	—
Merger and strategic initiatives	4	0.02	38	0.21	4	0.02
Restructuring charges	44	0.26	—	—	—	—
Asset impairment charges	40	0.23	18	0.10	—	—
Loss on divestiture of businesses	14	0.08	—	—	11	0.05
Special legal expenses	7	0.04	—	—	—	—
Extinguishment of debt	—	—	31	0.17	40	0.20
Sublease reserves	3	0.02	—	—	5	0.03
Asset retirements	—	—	—	—	2	0.01
Workforce reductions	—	—	—	—	9	0.04
VAT refund	(7)	(0.04)	—	—	—	—
Other	4	0.02	4	0.03	5	0.02
Adjustment to the income tax provision to reflect non-GAAP adjustments <sup>(1)</sup>	(32)	(0.19)	(28)	(0.16)	(28)	(0.14)
Significant tax adjustments, net	14	0.08	5	0.03	(32)	(0.15)
Total non-GAAP adjustments, net of tax	80	0.46	68	0.38	16	0.08
<b>Non-GAAP net income attributable to NASDAQ OMX and diluted earnings per share</b>	\$ 432	\$ 2.50	\$ 455	\$ 2.53	\$ 411	\$ 1.99
Weighted-average common shares outstanding for diluted earnings per share		172,587,870		180,011,247		206,514,655

<sup>(1)</sup> We determine the tax effect of each item based on the tax rules in the respective jurisdiction where the transaction occurred.

## Liquidity and Capital Resources

While global markets and economic conditions continue to improve from adverse levels experienced during the past several years, investors and lenders remain cautious about the pace of the global economic recovery. This lack of confidence in the prospects for growth could result in sporadic increases in market volatility and lackluster trading volumes, which could in turn affect our ability to obtain additional funding from lenders. Currently, our cost and availability of funding remain healthy.

Historically, we have funded our operating activities and met our commitments through cash generated by operations, augmented by the periodic issuance of our common stock in the capital markets and by issuing debt obligations. In addition to these cash sources, we have a \$750 million revolving credit commitment (including a swingline facility and letter of credit facility) under our senior unsecured five-year credit facility. As of December 31, 2012, \$624 million is available. See “2011 Credit Facility,” of Note 9, “Debt Obligations,” 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, debt repayments, share repurchases, dividends, and severance and other costs related to restructuring actions. Working capital (calculated as current assets less current liabilities) was \$565 million at December 31, 2012, compared with \$543 million at December 31, 2011, an increase of \$22 million.

In December 2012, we entered into an agreement with Thomson Reuters to acquire its Investor Relations, Public Relations and Multimedia Solutions businesses for \$390 million. We plan to fund this transaction through cash on hand and capacity under our revolving credit commitment. Upon closing, these complementary businesses will be integrated into our Corporate Solutions business. The proposed transaction is subject to customary regulatory approvals and is expected to close in the first half of 2013. We also announced an agreement to acquire a 25% stake in TOM, a Dutch cash equities and equity derivatives trading venue. We plan to fund this transaction through cash on hand. The terms of the transaction also provide us an option to acquire an additional 25.1% of the remaining shares at a future date. This transaction delivers on our strategy to expand our derivatives presence across the European market and will be part of our European Transaction Services business. The acquisition is subject to regulatory approval.

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
- an increase in our expenses arising, in part, from the proposed voluntary accommodation program and other expenses related to the systems issues experienced at the time of the Facebook IPO.

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

- operating covenants contained in our credit facility that limit our total borrowing capacity;
- increases in interest rates applicable to our floating rate loans under our credit facility;
- 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.

The following sections discuss the effects of changes in our financial assets, debt obligations, clearing and broker-dealer net capital requirements, and cash flows on our liquidity and capital resources.

## Financial Assets

The following table summarizes our financial assets:

	December 31, 2012	December 31, 2011
	(in millions)	
Cash and cash equivalents	\$ 497	\$ 506
Restricted cash	85	34
Non-current restricted cash	25	97
Financial investments, at fair value	223	279
<b>Total financial assets</b>	<b>\$ 830</b>	<b>\$ 916</b>

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### Cash and Cash Equivalents and Restricted Cash

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. The balance retained in cash and cash equivalents is a function of anticipated or possible short-term cash needs, prevailing interest rates, our investment policy, and alternative investment choices. As of December 31, 2012, our cash and cash equivalents of \$497 million were primarily invested in money market funds. In the long-term, we may use both internally generated funds and external sources to satisfy our debt obligations and other long-term liabilities. Cash and cash equivalents as of December 31, 2012 decreased \$9 million from December 31, 2011 primarily due to net cash used in investing and financing activities, partially offset by net cash provided by operating activities. See “Cash Flow Analysis” below for further discussion.

Current restricted cash, which was \$85 million as of December 31, 2012 and \$34 million as of December 31, 2011, is not available for general use by us due to regulatory and other requirements and is classified as restricted cash in the Consolidated Balance Sheets. As of December 31, 2012 and December 31, 2011, current restricted cash primarily includes cash held for regulatory purposes at NASDAQ OMX Stockholm and NOS Clearing. Non-current restricted cash was \$25 million at December 31, 2012 compared with \$97 million at December 31, 2011. The decline in non-current restricted cash is primarily due to the release of restricted cash due to the sale of IDCG in August 2012. Non-current restricted cash at December 31, 2012 is segregated for NOCC to improve its liquidity position, which is not available for general use.

### *Repatriation of Cash*

Our cash and cash equivalents held outside of the U.S. in various foreign subsidiaries totaled \$198 million as of December 31, 2012 and \$158 million as of December 31, 2011. The remaining balance held in the U.S. totaled \$299 million as of December 31, 2012 and \$348 million as of December 31, 2011.

Unremitted earnings of subsidiaries outside of the U.S. are used to finance our international operations and are generally considered to be indefinitely reinvested. It is not our current intent to change this position. However, the majority of cash held outside the U.S. is available for repatriation, but under current law, could subject us to additional U.S. income taxes, less applicable foreign tax credits.

### *Share Repurchase Program*

In the fourth quarter of 2011, our board of directors approved a share repurchase program authorizing NASDAQ OMX to repurchase in the aggregate up to \$300 million of our outstanding common stock. In the third quarter of 2012, our board of directors authorized the repurchase of up to an additional \$300 million of our outstanding common stock. These purchases may be made from time to time at prevailing market prices in open market purchases, privately-negotiated transactions, block purchase techniques or otherwise, as determined by our management. The purchases are funded from existing cash balances. The share repurchase program may be suspended, modified or discontinued at any time.

During the fourth quarter of 2011, we repurchased 3,983,481 shares of our common stock at an average price of \$25.10, for an aggregate purchase price of \$100 million. During 2012, we repurchased 11,544,457 shares of our common stock at an average price of \$23.82, for an aggregate purchase price of \$275 million, completing the share repurchase program authorized in the fourth quarter of 2011. The shares repurchased under the share repurchase program are available for general corporate purposes. As of December 31, 2012, the remaining amount for share repurchases under the program authorized in the third quarter of 2012 was \$225 million.

### *Cash Dividends on Common Stock*

In June, September and December of 2012, we paid quarterly cash dividends of \$0.13 per share on our outstanding common stock. See “Cash Dividends on Common Stock,” of Note 13, “NASDAQ OMX Stockholders’ Equity,” to the consolidated financial statements for further discussion of the dividends.

In January 2013, pursuant to delegated authority, the finance committee of the board of directors declared a regular quarterly cash dividend of \$0.13 per share on our outstanding common stock. The dividend is payable on March 28, 2013 to shareholders of record at the close of business on March 14, 2013. Future declarations of quarterly dividends and the establishment of future record and payment dates are subject to approval by the board of directors.

### Financial Investments, at Fair Value

Our financial investments, at fair value totaled \$223 million as of December 31, 2012 and \$279 million as of December 31, 2011 and are primarily comprised of trading securities, mainly Swedish government debt securities. Of these securities, \$134 million as of December 31, 2012 and \$212 million as of December 31, 2011 are restricted assets to meet regulatory capital requirements primarily for clearing operations at NASDAQ OMX Nordic Clearing. This balance also includes our available-for-sale investment security in DFM valued at \$22 million as of December 31, 2012 and \$18 million as of December 31, 2011. See Note 6, “Investments,” to the consolidated financial statements for further discussion of our trading securities and available-for-sale investment security.

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### **Debt Obligations**

The following table summarizes our debt obligations by contractual maturity:

	<u>Maturity Date</u>	<u>December 31, 2012</u>	<u>December 31, 2011</u>
		(in millions)	
3.75% convertible notes (net of discount) <sup>(1)</sup>	October 2012	\$ —	\$ —
2.50% convertible senior notes	August 2013	91	88
4.00% senior unsecured notes (net of discount)	January 2015	399	399
\$1.2 billion senior unsecured five-year credit facility:			
\$450 million senior unsecured term loan facility	September 2016	394	439
\$750 million revolving credit commitment	September 2016	126	226
5.25% senior unsecured notes (net of discount)	January 2018	368	367
5.55% senior unsecured notes (net of discount)	January 2020	598	598
Total debt obligations		1,976	2,117
Less current portion		(45)	(45)
Total long-term debt obligations		<u>\$ 1,931</u>	<u>\$ 2,072</u>

<sup>(1)</sup> As of December 31, 2011, approximately \$0.5 million aggregate principal amount of the 3.75% convertible notes remained outstanding. In June 2012, all of the remaining aggregate principal amount of the 3.75% convertible notes outstanding were converted into 34,482 shares of common stock in accordance with the terms of the notes.

In addition to the \$750 million revolving credit commitment, we also have other credit facilities related to our clearinghouses in order to meet liquidity and regulatory requirements. At December 31, 2012, these credit facilities, which are available in multiple currencies, primarily Swedish Krona, totaled \$310 million (\$217 million in available liquidity and \$93 million to satisfy regulatory requirements), none of which was utilized. At December 31, 2011, these credit facilities totaled \$447 million (\$206 million in available liquidity and \$241 million to satisfy regulatory requirements), none of which was utilized.

At December 31, 2012, we were in compliance with the covenants of all of our debt obligations.

See Note 9, "Debt Obligations," to the consolidated financial statements for further discussion of our debt obligations.

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

#### Clearing Operations Regulatory Capital Requirements

We are required to maintain minimum levels of regulatory capital for our clearing operations for NASDAQ OMX Nordic Clearing and NOS Clearing. 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, 2012, our required regulatory capital consisted of \$113 million of Swedish government debt securities, that are included in financial investments, at fair value in the Consolidated Balance Sheets and \$45 million of cash that is included in restricted cash in the Consolidated Balance Sheets.

In addition, we have available credit facilities of \$93 million which can be utilized to satisfy our regulatory capital requirements. See "Debt Obligations" above for further discussion.

#### 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. These requirements obligate these subsidiaries to comply with minimum net capital requirements. At December 31, 2012, Nasdaq Execution Services was required to maintain minimum net capital of \$0.3 million and had total net capital of approximately \$10.9 million, or \$10.6 million in excess of the minimum amount required. At December 31, 2012, NASDAQ Options Services also was required to maintain minimum net capital of \$0.3 million and had total net capital of approximately \$3.4 million, or \$3.1 million in excess of the minimum amount required.

#### Other Capital Requirements

NASDAQ Options Services also is required to maintain a \$2 million minimum level of net capital under our clearing arrangement with The Options Clearing Corporation, or OCC.

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### **Cash Flow Analysis**

The following tables summarize the changes in cash flows:

	<u>Year Ended December 31,</u>		<u>Percentage Change</u>
	<u>2012</u>	<u>2011</u>	
	(in millions)		
Net cash provided by (used in):			
Operating activities	\$ 594	\$ 669	(11.2)%
Investing activities	(128)	(146)	(12.3)%
Financing activities	(485)	(325)	49.2%
Effect of exchange rate changes on cash and cash equivalents	10	(7)	#
Net increase (decrease) in cash and cash equivalents	(9)	191	#
Cash and cash equivalents at the beginning of period	506	315	60.6%
Cash and cash equivalents at the end of period	<u>\$ 497</u>	<u>\$ 506</u>	(1.8)%

# Denotes a variance greater than 100.0%.

#### Net Cash Provided by Operating Activities

The following items impacted our net cash provided by operating activities for the year ended December 31, 2012:

- Net income of \$349 million, plus:
  - Non-cash items of \$251 million comprised primarily of \$104 million of depreciation and amortization expense, \$46 million of share-based compensation expense, \$40 million related to asset impairment charges, \$16 million of restructuring charges, deferred income taxes of \$16 million, and a loss on divestiture of business of \$14 million.
- Decrease in other assets of \$71 million primarily due to the release of restricted cash resulting from the sale of IDCG.

Partially offset by a:

- Increase in receivables, net of \$30 million primarily due to an increase in receivables across multiple businesses relating to timing of collections and activity, partially offset by a decrease in income tax receivables.
- Decrease in accrued personnel costs of \$27 million primarily due to the payment of our 2011 incentive compensation in the first quarter of 2012, partially offset by the 2012 accrual.
- Decrease in other liabilities of \$17 million primarily reflecting the release of escrow amounts related to certain acquisitions and the utilization of sublease reserve balances.
- Decrease in Section 31 fees payable to the SEC of \$9 million primarily due to lower dollar value traded on the NASDAQ and NASDAQ OMX BX trading systems, partially offset by higher Section 31 fee rates in 2012.

The following items impacted our net cash provided by operating activities for the year ended December 31, 2011:

- Net income of \$383 million, plus:
  - Non-cash items of \$206 million comprised primarily of \$109 million of depreciation and amortization expense, \$36 million of share-based compensation expense, \$31 million for debt extinguishment and refinancing charges, \$25 million related to loss on asset retirements and impairment charges, and \$13 million related to accretion of debt discounts, partially offset by \$10 million of excess tax benefits related to share-based compensation.
- Decrease in other assets of \$69 million primarily due to a decrease in non-current deferred tax assets related to the utilization of a capital-loss carry-back.
- Increase in accounts payable and accrued expenses of \$24 million primarily due to the timing of payments and an increase in accrued interest payable.
- Increase in Section 31 fees payable to SEC of \$24 million primarily due to higher Section 31 fee rates in 2011.

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Partially offset by a:

- Decrease in other liabilities of \$22 million primarily reflecting the utilization of sublease reserves and decreased accrued taxes.
- Decrease in deferred revenue of \$14 million primarily due to the timing and delivery of Market Technology projects.

### Net Cash Used in Investing Activities

Net cash used in investing activities for the years ended December 31, 2012 and 2011 primarily consisted of purchases of trading securities, cash used for acquisitions and purchases of property and equipment, partially offset by proceeds from sales and redemptions of trading securities.

### Net Cash Used in Financing Activities

Net cash used in financing activities for the year ended December 31, 2012 primarily consisted of \$275 million of cash used in connection with our share repurchase programs, repayment of debt obligations of \$145 million consisting of an optional prepayment of \$100 million on our revolving credit commitment and required quarterly principal payments totaling \$45 million on our \$450 million funded term loan, or 2016 Term Loan, and \$65 million related to cash dividends paid on our common stock.

Net cash used in financing activities for the year ended December 31, 2011 primarily consisted of the repayment of debt obligations of \$948 million consisting of the repayment of our term loans in place as of December 31, 2010 of \$570 million, repayment of \$335 million of the aggregate principal amount outstanding of the 2013 Convertible Notes for \$343 million, a required quarterly principal payment of \$11 million on our 2016 Term Loan, and an optional principal payment of \$24 million on our revolving credit commitment. We also utilized \$100 million of cash in connection with our share repurchase program. These decreases were partially offset by proceeds from debt obligations of \$700 million consisting of \$450 million in proceeds received from the issuance of the 2016 Term Loan and \$250 million in proceeds received from borrowings under our revolving credit commitment. For further discussion of the 2016 Term Loan, as well as the repayment of our debt obligations, see “Credit Facilities,” of Note 9, “Debt Obligations,” to the consolidated financial statements.

For further discussion of our debt obligations, see Note 9, “Debt Obligations,” to the consolidated financial statements. For further discussion of our share repurchase programs, see “Share Repurchase Programs and Share Repurchase from Borse Dubai,” of Note 13, “NASDAQ OMX Stockholders’ Equity,” to the consolidated financial statements.

### **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 as of December 31, 2012:

<u>Contractual Obligations</u>	<u>Payments Due by Period</u>				
	<u>Total</u>	<u>Less than 1 year</u>	<u>1-3 years</u>	<u>3-5 years</u>	<u>More than 5 years</u>
			(in millions)		
Debt obligations by contract maturity <sup>(1)</sup>	\$ 2,407	\$ 217	\$ 633	\$ 494	\$ 1,063
Minimum rental commitments under non-cancelable operating leases, net <sup>(2)</sup>	449	71	128	118	132
Other obligations <sup>(3)</sup>	18	16	2	—	—
Total	<u>\$ 2,874</u>	<u>\$ 304</u>	<u>\$ 763</u>	<u>\$ 612</u>	<u>\$ 1,195</u>

<sup>(1)</sup> Our debt obligations include both principal and interest obligations. At December 31, 2012, an interest rate of 1.61% was used to compute the amount of the contractual obligations for interest on our 2016 Term Loan and an interest rate of 1.42% was used to compute the amount of the contractual obligations for interest on our revolving credit commitment. All other debt obligations were calculated on a 360-day basis at the contractual fixed rate multiplied by the aggregate principal amount at December 31, 2012. See Note 9, “Debt Obligations,” to the consolidated financial statements for further discussion.

<sup>(2)</sup> 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.

<sup>(3)</sup> In connection with our acquisitions of FTEN, SMARTS, Glide Technologies and the index business of Mergent, Inc., including Indxis, we entered into escrow agreements to secure the payment of post-closing adjustments and to ensure other closing conditions. At December 31, 2012, these agreements provide for future payments of \$18 million and are included in other current liabilities and other non-current liabilities in the Consolidated Balance Sheets.

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

#### ***Default Fund Contributions and Margin Collateral Received for Clearing Operations***

##### Default Fund Contributions

Clearing members' eligible contributions may include cash and non-cash contributions. Cash contributions are invested by NASDAQ OMX Nordic Clearing in accordance with its investment policies and are included in default funds and margin deposits in the Consolidated Balance Sheets. However, non-cash contributions, which include highly rated government debt securities that must meet the investment policies of NASDAQ OMX Nordic Clearing and NOS Clearing, as well as pledged cash, are pledged assets that are not recorded in our Consolidated Balance Sheets as NASDAQ OMX Nordic Clearing and NOS Clearing do not take legal ownership of these assets and the risks and rewards remain with the clearing members. These pledged assets are held at a nominee account in NASDAQ OMX Nordic Clearing's name or NOS Clearing's name for the benefit of the clearing members and are immediately accessible by NASDAQ OMX Nordic Clearing or NOS Clearing in the event of default. The pledged asset balances may fluctuate over time due to changes in the amount of deposits required and whether members choose to provide cash or non-cash contributions. See Note 16, "Clearing Operations," to the consolidated financial statements for further discussion of our clearing operations and default fund contributions.

##### Margin Collateral Received for Clearing Operations

#### **Nordic Clearing and NOS Clearing**

NASDAQ OMX Nordic Clearing and NOS Clearing each require all clearing members to provide collateral, which may consist of cash and eligible securities, in a pledged bank account and/or an on-demand guarantee, to guarantee performance on the clearing members' open positions, or initial margin. In addition, clearing members must also provide collateral to cover the daily margin call as needed, which is in addition to the initial margin. All collateral is maintained at a third-party custodian bank or deposit bank account for the benefit of the clearing members and is immediately accessible by NASDAQ OMX Nordic Clearing or NOS Clearing in the event of default. The pledged margin collateral is not recorded in our Consolidated Balance Sheets as all risks and rewards of collateral ownership, including interest, belongs to the counterparty. Clearing member pledged margin collateral related to our clearing operations was \$6.7 billion as of December 31, 2012 and \$5.0 billion as of December 31, 2011.

NASDAQ OMX Nordic Clearing and NOS Clearing mark to market all outstanding contracts at least daily, requiring payment from clearing members whose positions have lost value and making payments to clearing members whose positions have gained value. The mark-to-market process helps identify any clearing members that may not be able to satisfy their financial obligations in a timely manner which helps NASDAQ OMX Nordic Clearing and NOS Clearing manage the risk of a clearing member defaulting due to exceptionally large losses. In the event of a default, NASDAQ OMX Nordic Clearing or NOS Clearing can access these margin deposits to cover the defaulting member's losses.

In the first half of 2013, NASDAQ OMX Nordic Clearing will implement a new collateral process. NASDAQ OMX Nordic Clearing will maintain all cash deposits related to margin collateral and will include these cash deposits in default funds and margin deposits in the Consolidated Balance Sheets as both a current asset and a current liability, as NASDAQ OMX Nordic Clearing will assume the risks and rewards of collateral ownership. In addition to cash, clearing members may also contribute eligible pledged assets consisting of highly rated government debt securities that must meet the specific criteria approved by NASDAQ OMX Nordic Clearing and/or an on-demand guarantee. These pledged assets will not be recorded in our Consolidated Balance Sheets as NASDAQ OMX Nordic Clearing will not take legal ownership of these assets as the risks and rewards will remain with the clearing members. Assets pledged will be held at a nominee account in NASDAQ OMX Nordic Clearing's name for the benefit of the clearing members and will be immediately accessible by NASDAQ OMX Nordic Clearing in the event of default.

#### **U.S. Clearing**

NOCC is the beneficiary of letters of credit from banks meeting certain rating standards, which are posted on behalf of market participants in lieu of posting cash collateral. The aggregate amount of letters of credit of which NOCC is the beneficiary was \$101 million at December 31, 2012 and \$81 million at December 31, 2011.

##### Guarantees Issued and Credit Facilities Available

In addition to the collateral pledged by clearing members discussed above, we have obtained financial guarantees and credit facilities which are guaranteed by us through counter indemnities, to provide further liquidity and default protection. Financial guarantees issued to us totaled \$7 million at December 31, 2012 and \$4 million at December 31, 2011. At December 31, 2012, credit facilities, which are available in multiple currencies, primarily Swedish Krona, totaled \$310 million (\$217 million in available liquidity and \$93 million to satisfy regulatory requirements), none of which was utilized. At December 31, 2011, these facilities totaled \$447 million (\$206 million in available liquidity and \$241 million to satisfy regulatory requirements), none of which was utilized.

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We believe that the potential for us to be required to make payments under these arrangements is mitigated through the pledged collateral and our risk management policies. Accordingly, no contingent liability is recorded in the Consolidated Balance Sheets for these arrangements.

### **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 lease agreements contain renewal options and escalation clauses based on increases in property taxes and building operating costs.

### **Other Guarantees**

We have provided other guarantees of \$18 million as of December 31, 2012 and \$17 million as of December 31, 2011. These guarantees primarily related to obligations for our rental and leasing contracts. In addition, for certain Market Technology contracts, we have provided performance guarantees of \$5 million as of December 31, 2012 and \$6 million as of December 31, 2011 related to the delivery of software technology and support services. We have received financial guarantees from various financial institutions to support these guarantees.

We also have provided a \$25 million guarantee to NOCC to cover potential losses in the event of customer defaults, net of any collateral posted against such losses.

We believe that the potential for us to be required to make payments under these arrangements is unlikely. Accordingly, no contingent liability is recorded in the Consolidated Balance Sheets for the above guarantees.

### **Brokerage Activities**

Our broker-dealer subsidiaries, 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 a clearinghouse or exchange, 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.

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

Market risk represents the potential for losses that may result from changes in the market value of a financial instrument due to changes in market conditions. As a result of our operating, investing and financing activities, we are exposed to market risks such as interest rate risk and foreign currency exchange rate risk. We are also exposed to credit risk as a result of our normal business activities.

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 of market risk exposures. 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 following table summarizes our financial assets and liabilities that are subject to interest rate risk as of December 31, 2012:

	<b>Financial Assets</b>	<b>Financial Liabilities<sup>(1)</sup></b>	<b>Negative impact of a 100 bp adverse shift in interest rate<sup>(2)</sup></b>
		<b>(in millions)</b>	
Floating rate positions <sup>(3)</sup>	\$ 902	\$ 729	\$ 2
Fixed rate positions <sup>(4)</sup>	115	1,463	1

<sup>(1)</sup> Represents total contractual debt obligations and amounts related to default fund contributions and margin deposits.

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- (2) Annualized impact of a 100 basis point parallel adverse shift in the yield curve.
- (3) Includes floating rate and fixed interest rates with a maturity or reset date due within 12 months.
- (4) Financial assets primarily consist of Swedish government debt securities, which are classified as trading investment securities, with an average duration of 1.5 years.

We are exposed to cash flow risk on floating rate financial assets of \$902 million and financial liabilities of \$729 million at December 31, 2012. When interest rates on financial assets of floating rate positions decrease, net interest income decreases. When interest rates on financial liabilities of floating rate positions increase, net interest expense increases. Based on December 31, 2012 positions, each 1.0% adverse change in interest rate would impact annual pre-tax income by \$2 million related to our floating rate positions.

We are exposed to price risk on our fixed rate financial assets, which totaled \$115 million at December 31, 2012 and have an average duration of 1.5 years. The net effect of a parallel shift on 1.0% of the interest rate curve, taking into account the change in fair value and increased interest income, would impact annual pre-tax income by \$1 million.

### Foreign Currency Exchange Rate Risk

As a leading global exchange group, we are subject to foreign currency translation risk. For the year ended December 31, 2012, approximately 34.8% of our revenues less transaction rebates, brokerage, clearance and exchange fees and 26.5% of our operating income were derived in currencies other than the U.S. dollar, primarily the Swedish Krona, Euro, Norwegian Krone and Danish Krone. For the year ended December 31, 2011, approximately 35.6% of our revenues less transaction rebates, brokerage, clearance and exchange fees and 31.4% of our operating income were derived in currencies other than the U.S. dollar, primarily the Swedish Krona, Euro, Norwegian Krone and Danish Krone.

Our primary exposure to foreign currency denominated revenues less transaction rebates, brokerage, clearance and exchange fees and operating income for the year ended December 31, 2012 is presented in the following table:

	Swedish Krona	Euro	Norwegian Krone	Danish Krone	Other Foreign Currencies
	(in millions, except currency rate)				
Average foreign currency rate to the U.S. dollar in 2012	0.1478	1.2864	0.1720	0.1728	#
Percentage of revenues less transaction rebates, brokerage, clearance and exchange fees	21.8%	4.0%	2.8%	2.5%	3.7%
Percentage of operating income	20.2%	4.2%	3.3%	3.6%	(4.8)%
Impact of a 10% adverse currency fluctuation on revenues less transaction rebates, brokerage, clearance and exchange fees	\$ (36)	\$ (7)	\$ (5)	\$ (4)	\$ (6)
Impact of a 10% adverse currency fluctuation on operating income	\$ (14)	\$ (3)	\$ (2)	\$ (8)	\$ (9)

# Represents multiple foreign currency rates.

Our primary exposure to foreign currency denominated revenues less transaction rebates, brokerage, clearance and exchange fees and operating income for the year ended December 31, 2011 is presented in the following table:

	Swedish Krona	Euro	Norwegian Krone	Danish Krone	Other Foreign Currencies
	(in millions, except currency rate)				
Average foreign currency rate to the U.S. dollar in 2011	0.1542	1.3922	0.1785	0.1868	#
Percentage of revenues less transaction rebates, brokerage, clearance and exchange fees	23.3%	3.6%	2.8%	2.8%	3.1%
Percentage of operating income	22.0%	5.9%	2.8%	3.9%	(3.2)%
Impact of a 10% adverse currency fluctuation on revenues less transaction rebates, brokerage, clearance and exchange fees	\$ (39)	\$ (6)	\$ (5)	\$ (5)	\$ (5)
Impact of a 10% adverse currency fluctuation on operating income	\$ (15)	\$ (4)	\$ (2)	\$ (5)	\$ —

# Represents multiple foreign currency rates.

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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. Substantially all of our foreign subsidiaries operate in functional currencies other than the U.S. dollar. Fluctuations in currency exchange rates may create volatility in our results of operations as we are required to translate the balance sheets and operational results of these foreign currency denominated subsidiaries into U.S. dollars for consolidated reporting. The translation of foreign subsidiaries' non-U.S. dollar balance sheets into U.S. dollars for consolidated reporting results in a cumulative translation adjustment which is recorded in accumulated other comprehensive loss within stockholders' equity in the Consolidated Balance Sheets.

Our primary exposure to net assets in foreign currencies as of December 31, 2012 is presented in the following table:

	Net Assets	Impact of a 10% Adverse Currency Fluctuation
	(millions of dollars)	
Swedish Krona <sup>(1)</sup>	\$4,262	\$ (426)
Norwegian Krone	326	(33)
Euro	144	(14)
Australian Dollar	95	(10)

<sup>(1)</sup> Includes goodwill of \$3,359 million and intangible assets, net of \$1,041 million.

### **Credit Risk**

Credit risk is the potential loss due to the default or deterioration in credit quality of customers or counterparties. 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 evaluating 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 which have investment grade ratings, 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 routing services they provide for our trading customers. System trades in cash equities routed to other market centers for members of The NASDAQ Stock Market are routed by Nasdaq Execution Services for clearing to NSCC. In this function, Nasdaq Execution Services is to be neutral by the end of the trading day, but may be exposed to intraday risk if a trade extends beyond the trading day and into the next day, thereby leaving Nasdaq Execution Services susceptible to counterparty risk in the period between accepting the trade and routing it to the clearinghouse. In this interim period, Nasdaq Execution Services is not novating like a clearing broker but instead is subject to the short-term risk of counterparty failure before the clearinghouse enters the transaction. Once the clearinghouse officially accepts the trade for novation, Nasdaq Execution Services is legally removed from risk. 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. For these trades, novation is done at the end of the trading day, and settlement is complete by 10:00 am on the following day.

Pursuant to the rules of the NSCC and Nasdaq Execution Services' clearing agreement, Nasdaq Execution Services is liable for any losses incurred due to a 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 liable for any losses incurred due to a 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. Historically, neither Nasdaq Execution Services nor NASDAQ Options Services has 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.

We are exposed to credit risk through our clearing operations with NASDAQ OMX Nordic Clearing, NOS Clearing, and riskless principal trading and clearing at NOCC. NOCC is the legal counterparty for each of their customer's positions traded or cleared and thereby guarantee the fulfillment of each of their customer's contracts. See "Default Fund Contributions and Margin Collateral Received for Clearing Operations," of "Off-Balance Sheet Arrangements," above, as well as Note 16, "Clearing Operations" for further discussion.

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We also have credit risk related to transaction revenues 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. Most of our customers are financial institutions whose ability to satisfy their contractual obligations may be impacted by volatile securities markets.

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

### **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 revenues 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 and projected future listing duration. Unamortized balances are recorded as deferred revenue in the Consolidated Balance Sheets.

#### Market Technology Revenues

Revenues are primarily derived from license, support and facility management revenues, delivery project revenues, as well as change request, advisory and broker surveillance revenues.

We enter into multiple-element sales arrangements to provide technology solutions and services to our customers. In order to recognize revenues associated with each individual element of a multiple-element sales arrangement separately, we are required to establish the existence of VSOE of fair value for each element. When VSOE for individual elements of an arrangement cannot be established, revenue is generally deferred and recognized over either the final element of the arrangement or the entire term of the arrangement for which the services will be delivered.

License and support revenues are derived from the system solutions developed and sold by NASDAQ OMX that are generally entered into in multiple-element sales arrangements. After we have developed and sold a system solution, the customer licenses the right to use the software and may require post contract support and other services. Facility management revenues are also generally entered into in multiple-element sales arrangements and are derived when NASDAQ OMX assumes responsibility for the continuous operation of a system platform for a customer and receives facility management revenues which can be both fixed and volume-based. Revenues for license, support and facility management services are generally deferred and recognized over either the final element of the arrangement or the entire term of the arrangement for which the services will be delivered. We record the deferral of revenue associated with multiple-element sales arrangements in deferred revenue and non-current deferred revenue and the deferral of costs in other current assets and other non-current assets in the Consolidated Balance Sheets.

Delivery project revenues are derived from the installation phase of the system solutions developed and sold by NASDAQ OMX. The majority of our delivery projects involve individual adaptations to the specific requirements of the customer, such as those relating to functionality and capacity. We may customize our software technology and make significant modifications to the software to meet the needs of our customers, and as such, we account for these arrangements under contract accounting. Under contract accounting, when VSOE for valuing certain elements of an arrangement cannot be established, total revenues, as well as costs incurred, are deferred until the customization and significant modifications are complete and are then recognized over the post contract support period. We record the deferral of this revenue in deferred revenue and non-current deferred revenue and the deferral of costs in other current assets and other non-current assets in the Consolidated Balance Sheets.

Change request, advisory and broker surveillance revenues do not require any judgments or assumptions by management as these amounts are recognized in revenue when earned.

### ***Goodwill and Related Impairment***

Goodwill represents the excess of purchase price over the value assigned to the net tangible and identifiable intangible assets of a business acquired. Goodwill is allocated to our reporting units based on the assignment of the fair values of each reporting unit of the acquired company. We test goodwill for impairment at the reporting unit level annually, or in interim periods if certain events occur indicating that the carrying amount may be impaired, such as changes in the business climate, poor indicators of operating performance or the sale or disposition of a significant portion of a reporting unit. We test for impairment during the fourth quarter of our fiscal year using carrying amounts as of October 1. In conducting the 2012 annual impairment test for goodwill, we first performed a qualitative assessment to determine whether it was more likely than not that the fair value of a reporting unit was less than the carrying amount as a basis for determining whether it was necessary to perform the two-step quantitative goodwill impairment test described in Financial Accounting Standards Board, or FASB, Accounting Standards Codification, or ASC, Topic 350, "Intangibles—Goodwill and Other," or ASC Topic 350. The more-likely-than-not threshold is defined as having a likelihood of more than 50 percent. If, after assessing the totality of events or circumstances, we determine that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, then the two-step quantitative test for goodwill impairment is performed for the appropriate reporting units. Otherwise, we conclude that no impairment is indicated and the two-step quantitative test for goodwill impairment is not performed.

In conducting the initial qualitative assessment, we analyzed actual and projected growth trends for each reporting unit, as well as historical performance versus plan and the results of prior quantitative tests performed. Additionally, each reporting unit assesses critical areas that may impact their business, including macroeconomic conditions and the related impact, market related exposures, competitive changes, new or discontinued products, changes in key personnel, or any other potential risks to their projected financial results.

If required, the quantitative goodwill impairment test is a two-step process performed at the reporting unit level. First, the fair value of each reporting unit is compared to its corresponding carrying amount, including goodwill. The fair value of each reporting unit is estimated using a combination of discounted cash flow valuation, which incorporates assumptions regarding future growth rates, terminal values, and discount rates, as well as guideline public company valuations, incorporating relevant trading multiples of comparable companies and other factors. The estimates and assumptions used consider historical performance and are consistent with the assumptions used in determining future profit plans for each reporting unit, which are approved by our board of directors. If the first step results in the carrying amount exceeding the fair value of the reporting unit, then a second step must be completed in order to determine the amount of goodwill impairment that should be recorded, if any. In the second step, the implied fair value of the reporting unit's goodwill is determined by allocating the reporting unit's fair value to all of its assets and liabilities other than goodwill in a manner similar to a purchase price allocation. The implied fair value of the goodwill that results from the application of this second step is then compared to the carrying amount of the goodwill and an impairment charge is recorded for any difference.

For our annual test of goodwill impairment in 2012, we considered the results of our 2011 and 2010 quantitative impairment tests, which indicated that the fair value of each reporting unit was in excess of its carrying amount. We also considered future financial projections, current market conditions, and any changes in the carrying amount of the reporting units.

At the time of our 2012 annual impairment test, our goodwill balance was \$5.3 billion, of which \$4.7 billion was attributable to our Market Services segment, \$0.4 billion was attributable to our Issuer Services segment and \$0.2 billion was attributable to our Market Technology segment.

We utilized the qualitative screen for Issuer Services and Market Technology, as the excesses of their fair values over their respective carrying amounts were significant. In conducting the qualitative assessment for these two reporting units, we evaluated future financial projections by management to determine if there were any changes in the key inputs used to determine the fair values of each reporting unit. We also considered the qualitative factors in ASC Topic 350, as well as other relevant events and circumstances. Based on the results of the qualitative assessment for each reporting unit, we concluded based on a preponderance of positive indicators and the weight of such indicators that the fair values of our Issuer Services and Market Technology reporting units are more likely than not greater than their respective carrying amounts and as a result, quantitative analyses were not needed. Therefore, no further testing of goodwill for impairment was performed for these reporting units for the year ended December 31, 2012.

Based on unfavorable domestic and international economic trends, particularly declining cash equity and derivative trading volumes, we bypassed the qualitative assessment for the Market Services reporting unit. We performed step one of the quantitative goodwill impairment test and determined that the fair value of our Market Services reporting unit exceeded its carrying amount. As a result, no goodwill impairment was recorded. The fair value of our Market Services reporting unit was determined using a combination of two equally weighted valuation methods, a market approach and an income approach. The market approach estimates

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fair value by applying revenues, earnings and cash flow multiples to the Market Services reporting segment's operating performance. The multiples are derived from comparable publicly-traded companies with similar operating and investment characteristics to our Market Services reporting unit. The market approach requires management's judgment to determine several valuation inputs, including the selection of comparable companies and control premium. The control premium is based on recent transactions in the marketplace. Under the income approach, we estimated future cash flows of our Market Services reporting unit based on internally generated forecasts of future financial performance. We determined a long-term growth rate for the terminal year period based on historical and expected inflation rates as well as management's estimate of the long-term growth of the business. We then discounted the projected cash flows using a weighted average cost of capital of 11.2%. The fair value of our Market Services reporting unit exceeded its carrying amount by less than 10%. Holding all other assumptions constant at the testing date, a 5% decrease in the estimated free cash flows of this reporting unit would not reduce the estimated fair value below the carrying amount. However, holding all other assumptions constant, a 50 basis point increase in the discount rate used in the testing of this reporting unit would reduce the estimated fair value below its carrying amount by 1%, indicating a possible impairment. Because step two of the impairment was not required for this reporting unit, it is not possible at this time to determine if a decrease in our valuation inputs would result in an impairment charge, or if such a charge would be material.

Although we believe our estimates of fair value are reasonable, the determination of certain valuation inputs is subject to management's judgment. Changes in these inputs could materially affect the results of our impairment review. If our forecast of cash flows generated by our Market Services reporting unit or other key inputs are negatively revised in the future, the estimated fair value of the Market Services reporting unit would be adversely impacted, potentially leading to an impairment in the future that could materially affect our operating results.

Subsequent to our annual impairment test, no indications of an impairment were identified.

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

Intangible assets deemed to have indefinite useful lives are not amortized but instead are tested for impairment at least annually and more frequently whenever events or changes in circumstances indicate that the fair value of the asset may be less than its carrying amount. The fair value of indefinite-lived intangible assets is primarily determined on the basis of estimated discounted value, using the relief from royalty approach for trade names and the Greenfield Approach for exchange and clearing registrations and licenses, both of which incorporate assumptions regarding future revenue projections and discount rates. Similar to goodwill impairment testing, we test for impairment of indefinite-lived intangible assets during the fourth quarter of our fiscal year using carrying amounts as of October 1. In conducting the 2012 annual impairment test for indefinite-lived intangible assets, we first performed a qualitative assessment to determine whether it was more likely than not that the fair value of an indefinite-lived intangible asset was less than the carrying amount as a basis for determining whether it was necessary to perform the quantitative impairment test described in ASC Topic 350. The more-likely-than-not threshold is defined as having a likelihood of more than 50 percent. If, after assessing the totality of events or circumstances, we determine that it is more likely than not that the fair value of an indefinite-lived intangible asset is less than its carrying amount, then the quantitative test for indefinite-lived intangible assets impairment is performed for the appropriate intangible assets. If the carrying amount of the indefinite-lived intangible asset exceeds its fair value, an impairment charge is recorded for the difference.

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

We also assess potential impairments to our other long-lived assets, including finite-lived intangible assets, equity method investments, property and equipment and other assets, 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 exceeds its fair value and is not recoverable. 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. We evaluate 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. 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 amount of the related asset and a charge to operating results.

### ***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 average estimated useful lives as follows:

- Technology: 3—5 years
- Customer relationships: 10—30 years
- Other: 2—10 years

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The estimated useful life of developed and new technology is based on the likely duration of benefits 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 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 an analysis of the legal, regulatory, contractual, competitive, economic, or other factors that limit the useful life of customer relationships.

See Note 4, "Acquisitions and Divestitures," and Note 5, "Goodwill and Purchased Intangible Assets," to the consolidated financial statements for further discussion of intangible assets.

### ***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. Our deferred tax assets are 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. Management is required 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.

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.

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

The accounting for share-based compensation requires the measurement and recognition of compensation expense for all share-based awards made to employees based on estimated fair values. Share-based awards, or equity awards, include employee stock options, restricted stock and performance share units, or PSUs. Restricted stock awards generally refer to restricted stock units.

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We estimate the fair value of employee stock options 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 market-based implied volatility.

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

### **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.

Certain costs incurred in connection with developing or obtaining internal use software are capitalized. We capitalize internal and third party costs incurred in connection with the development of internal use software.

Under our Market Technology segment, costs of computer software to be sold, leased, or otherwise marketed as a separate product or as part of a product or process 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.

### **Foreign Currency Translation**

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 remeasured 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 accumulated other comprehensive loss within stockholders' equity in the Consolidated Balance Sheets. Assets and liabilities are translated at the balance sheet date while revenues and expenses are recorded at the date the transaction occurs or at an applicable average rate.

Deferred taxes are not provided on cumulative translation adjustments where we expect earnings of a foreign subsidiary to be indefinitely reinvested. The income tax effect of currency translation adjustments related to foreign subsidiaries that are not considered indefinitely reinvested is recorded as a component of deferred taxes with an offset to accumulated other comprehensive loss within stockholders' equity in the Consolidated Balance Sheets.

### **Recently Adopted Accounting Pronouncements**

**ASC Topic 820**—In May 2011, the FASB issued amended guidance relating to ASC Topic 820 which requires the categorization by level of the fair value hierarchy for items not measured at fair value on our Consolidated Balance Sheets, but for which the fair value is disclosed. This accounting guidance was effective for us on January 1, 2012. Since this guidance only required additional disclosure, it did not affect our financial position or results of operations.

**ASC Topic 220**—In June 2011, the FASB issued amended guidance relating to ASC Topic 220, "Comprehensive Income," or ASC Topic 220, which eliminates the option to present the components of other comprehensive income as part of the statement of equity. Instead, the amended guidance requires entities to report components of comprehensive income in either a single continuous statement of comprehensive income containing two sections, net income and other comprehensive income, or in two separate but consecutive statements. This accounting guidance was effective for us on January 1, 2012 with early adoption permitted. We adopted this guidance as of June 30, 2011 and present two separate but consecutive statements presenting the components of comprehensive income. Since this guidance only required a change in the format of the presentation of comprehensive income, it did not affect our financial position or results of operations.

**ASC Topic 350**—In September 2011, the FASB issued amended guidance relating to ASC Topic 350, which affects all entities that have goodwill reported in the financial statements. The amended guidance permits an entity to first assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than the carrying amount as a basis for determining whether it is necessary to perform the two-step quantitative goodwill impairment test described in ASC Topic 350. The more-likely-than-not threshold is defined as having a likelihood of more than 50 percent. If, after assessing the totality of events or

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circumstances, an entity determines that it is more likely than not that the fair value of a reporting unit exceeds its carrying amount, then performing the two-step impairment test is unnecessary. This accounting guidance was effective for us on January 1, 2012 with early adoption permitted. We adopted this guidance as of September 30, 2011 and used the qualitative assessment option for our annual goodwill impairment test performed for fiscal 2011. For testing procedures and results, see “Goodwill,” of Note 2, “Summary of Significant Accounting Policies,” to the consolidated financial statements. Since this guidance only changed the manner in which we assess goodwill for impairment, it did not affect our financial position or results of operations.

In July 2012, the FASB issued amended guidance relating to ASC Topic 350, which permits an entity to first assess qualitative factors to determine whether it is more likely than not that an indefinite-lived intangible asset is impaired as a basis for determining whether it is necessary to perform the quantitative impairment test in accordance with ASC Topic 350. The more-likely-than-not threshold is defined as having a likelihood of more than 50 percent. If, after assessing the totality of events and circumstances, an entity concludes that it is not more likely than not that the indefinite-lived intangible asset is impaired, then no further action is required. This accounting guidance is effective for us on January 1, 2013 with early adoption permitted. We adopted this guidance as of September 30, 2012 and used the qualitative assessment options for our annual indefinite-lived intangible asset impairment test performed for fiscal 2012. For testing procedures and results, see “Intangible Assets, net,” of Note 2, “Summary of Significant Accounting Policies,” to the consolidated financial statements. Since this guidance only changes the manner in which we assess indefinite-lived intangible assets for impairment, it did not affect our financial position or results of operations.

### Summarized Quarterly Financial Data (Unaudited)

	1st Qtr 2012	2nd Qtr 2012	3rd Qtr 2012	4th Qtr 2012
	(in millions, except per share amounts)			
Total revenues	\$ 801	\$ 823	\$ 743	\$ 752
Cost of revenues	(390)	(399)	(334)	(333)
Revenues less transaction rebates, brokerage, clearance and exchange fees	411	424	409	419
Total operating expenses	240	249	239	244
Operating income	171	175	170	175
Net income attributable to NASDAQ OMX	\$ 85	\$ 93	\$ 89	\$ 85
Basic earnings per share	\$ 0.49	\$ 0.55	\$ 0.53	\$ 0.52
Diluted earnings per share	\$ 0.48	\$ 0.53	\$ 0.52	\$ 0.50
Cash dividends declared per common share	\$ —	\$ 0.13	\$ 0.13	\$ 0.13

	1st Qtr 2011	2nd Qtr 2011	3rd Qtr 2011	4th Qtr 2011
	(in millions, except per share amounts)			
Total revenues	\$ 815	\$ 837	\$ 944	\$ 837
Cost of revenues	(402)	(422)	(508)	(417)
Revenues less transaction rebates, brokerage, clearance and exchange fees	413	415	436	420
Total operating expenses	230	257	241	259
Operating income	183	158	195	161
Net income attributable to NASDAQ OMX	\$ 104	\$ 92	\$ 110	\$ 82
Basic earnings per share	\$ 0.59	\$ 0.52	\$ 0.62	\$ 0.46
Diluted earnings per share	\$ 0.57	\$ 0.51	\$ 0.61	\$ 0.45

### 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, 2012 and 2011, Consolidated Statements of Income for the years ended December 31, 2012, 2011 and 2010, Consolidated Statements of Comprehensive Income for the years ended December 31, 2012, 2011 and 2010, Consolidated Statements of Changes in Equity for the years ended December 31, 2012, 2011 and 2010, Consolidated Statements of Cash Flows for the years ended December 31, 2012, 2011 and 2010 and notes to our consolidated financial statements, together with a report thereon of Ernst & Young LLP, dated February 21, 2013, are attached hereto as pages F-1 through F-59 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 Chief Financial Officer and Executive Vice President, Corporate Strategy, 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 Exchange Act) as of the end of the period covered by this report. Based upon that evaluation, NASDAQ OMX's Chief Executive Officer, and Chief Financial Officer and Executive Vice President, Corporate Strategy 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.** There have been no 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 the quarter ended December 31, 2012 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. Although there are inherent limitations in the effectiveness of any system of internal control over 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, 2012, 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. Based on its assessment, our management believes that, as of December 31, 2012, our internal control over financial reporting is effective.

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 included 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, 2012, 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.

In our opinion, The NASDAQ OMX Group, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2012, based on the COSO criteria.

We also have audited, in accordance with the standard of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of The NASDAQ OMX Group, Inc. as of December 31, 2012 and 2011, and the related consolidated statements of income, comprehensive income, changes in equity, and cash flows for each of the three years in the period ended December 31, 2012 of The NASDAQ OMX Group, Inc. and our report dated February 21, 2013 expressed an unqualified opinion thereon.

*/s/ Ernst & Young LLP*

New York, New York  
February 21, 2013

**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 2013 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 "Director Compensation," "Compensation Discussion and Analysis" 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 our officers and other employees, directors and consultants. In addition, most employees of NASDAQ OMX and its subsidiaries are eligible to participate in the NASDAQ OMX 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. 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, 2012.

<u>Plan Category</u>	<u>Number of shares to be issued upon exercise of outstanding options, warrants and rights(a)(1)</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	7,545,777	\$ 21.10	7,406,552(2)
Equity compensation plans not approved by stockholders	—	\$ —	—
<b>Total</b>	<b>7,545,777</b>	<b>\$ 21.10</b>	<b>7,406,552(2)</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, 2012, we also had 5,083,987 shares to be issued upon vesting of outstanding restricted stock and PSUs.

(2) This amount includes 4,072,284 shares of common stock that may be awarded pursuant to the Equity Plan and 3,334,268 shares of common stock that may be issued pursuant to the ESPP.

**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.

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### **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, 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**

<u>Exhibit Number</u>	
2.1	Binding Offer Letter Agreement, dated as of December 12, 2012 between NASDAQ OMX and Thomson Reuters (Markets) LLC.
3.1	Restated Certificate of Incorporation of NASDAQ OMX (incorporated herein by reference to Exhibit 3.1 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2009 filed on August 7, 2009).
3.1.1	Certificate of Designation of Series A Convertible Preferred Stock of NASDAQ OMX (incorporated herein by reference to Exhibit 3.1.8 to the Current Report on Form 8-K filed on October 6, 2009).
3.2	By-Laws of NASDAQ OMX (incorporated herein by reference to Exhibit 3.2 to the Current Report on Form 8-K filed on February 14, 2013).
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	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).
4.3	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).
4.4	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).
4.5	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).
4.5.1	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 (incorporated herein by reference to Exhibit 4.10.1 to the Annual Report on Form 10-K for the year ended December 31, 2008 filed on February 26, 2009).
4.6	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).
4.6.1	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 (incorporated herein by reference to Exhibit 4.11.1 to the Annual Report on Form 10-K for the year ended December 31, 2008 filed on February 26, 2009).

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<u>Exhibit Number</u>	
4.7	Indenture, dated as of January 15, 2010, between NASDAQ OMX and Wells Fargo Bank, National Association, as Trustee (incorporated herein by reference to Exhibit 4.1 to the Current Report on Form 8-K filed on January 19, 2010).
4.8	First Supplemental Indenture, dated as of January 15, 2010, among NASDAQ OMX and Wells Fargo Bank, National Association, as Trustee (incorporated herein by reference to Exhibit 4.2 to the Current Report on Form 8-K filed on January 19, 2010).
4.9	Second Supplemental Indenture, dated as of December 17, 2010, among NASDAQ OMX and Wells Fargo Bank, National Association, as Trustee (incorporated herein by reference to Exhibit 4.1 to the Current Report on Form 8-K filed on December 21, 2010).
4.10	NASDAQ Stockholders' Agreement, dated as of December 16, 2010, between The NASDAQ OMX Group, Inc. and Investor AB (incorporated herein by reference to Exhibit 4.12 to the Annual Report on Form 10-K for the year ended December 31, 2010 filed on February 24, 2011).
10.1	Amended and Restated Board Compensation Policy, effective as of May 26, 2011 (incorporated herein by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2011 filed on August 4, 2011).*
10.2	The NASDAQ OMX Group, Inc. 2010 Executive Corporate Incentive Plan, effective as of January 1, 2010 (incorporated herein by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2010 filed on August 4, 2010).*
10.3	Form of NASDAQ OMX Non-Qualified Stock Option Award Certificate (incorporated herein by reference to Exhibit 10.3 to the Annual Report on Form 10-K for the year ended December 31, 2010 filed on February 24, 2011).*
10.4	Form of NASDAQ OMX Restricted Unit Award Certificate (employees) (incorporated herein by reference to Exhibit 10.4 to the Annual Report on Form 10-K for the year ended December 31, 2010 filed on February 24, 2011).*
10.5	Form of NASDAQ OMX Restricted Stock Unit Award Certificate (directors) (incorporated herein by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2012 filed on August 3, 2012).*
10.6	Form of NASDAQ OMX One-Year Performance Share Unit Agreement (incorporated herein by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2012 filed on August 3, 2012).*
10.7	Form of NASDAQ OMX Three-Year Performance Share Unit Agreement (incorporated herein by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2012 filed on August 3, 2012).*
10.8	Amended and Restated Supplemental Executive Retirement Plan, dated as of December 17, 2008 (incorporated herein by reference to Exhibit 10.6 to the Annual Report on Form 10-K for the year ended December 31, 2008 filed on February 26, 2009).*
10.8.1	Amendment No. 1 to Amended and Restated Supplemental Executive Retirement Plan, effective as of December 31, 2008 (incorporated herein by reference to Exhibit 10.6.1 to the Annual Report on Form 10-K for the year ended December 31, 2008 filed on February 26, 2009).*
10.9	The NASDAQ OMX Group, Inc. Supplemental Employer Retirement Contribution Plan, dated as of December 17, 2008 (incorporated herein by reference to Exhibit 10.7 to the Annual Report on Form 10-K for the year ended December 31, 2008 filed on February 26, 2009).*
10.10	Employment Agreement between NASDAQ OMX and Robert Greifeld, effective as of February 22, 2012 (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on February 28, 2012).*
10.10.1	Memorandum of Understanding between NASDAQ OMX and Robert Greifeld, effective as of December 11, 2012.*
10.11	Nonqualified Stock Option Agreement between Nasdaq and Robert Greifeld reflecting December 13, 2006 grant (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).*
10.12	Nonqualified Stock Option Agreement between NASDAQ OMX and Robert Greifeld reflecting June 30, 2009 grant (incorporated herein by reference to Exhibit 10.11 to the Annual Report on Form 10-K for the year ended December 31, 2009 filed on February 18, 2010).*

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<u>Exhibit Number</u>	
10.13	2011 Performance Share Unit Agreement between NASDAQ OMX and Robert Greifeld (incorporated herein by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q for the quarter ended September 30, 2011 filed on November 4, 2011).*
10.14	Form of Amended and Restated Letter Agreement, effective as of December 31, 2008, between NASDAQ OMX and Certain Executive Officers (incorporated herein by reference to Exhibit 10.12 to the Annual Report on Form 10-K for the year ended December 31, 2008 filed on February 26, 2009).*
10.15	Employment Agreement between Nasdaq and Edward Knight, effective as of December 29, 2000 (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).*
10.15.1	First Amendment to Employment Agreement between Nasdaq and Edward Knight, effective February 1, 2002 (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).*
10.15.2	Second Amendment to Employment Agreement between NASDAQ OMX and Edward Knight, effective as of December 31, 2008 (incorporated herein by reference to Exhibit 10.13.2 to the Annual Report on Form 10-K for the year ended December 31, 2008 filed on February 26, 2009).*
10.15.3	Third Amendment to Employment Agreement between NASDAQ OMX and Edward Knight, effective as of February 22, 2012 (incorporated herein by reference to Exhibit 10.2 to the Current Report on Form 8-K filed on February 28, 2012).*
10.16	Employment Agreement, dated as of June 24, 2008, between OMX AB and Hans-Ole Jochumsen (incorporated herein by reference to Exhibit 10.18 to the Annual Report on Form 10-K for the year ended December 31, 2009 filed on February 18, 2010).*
10.17	Credit Agreement, dated as of September 19, 2011, among NASDAQ OMX, Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities, Inc., Nordea Bank AB (publ.), Merchant Banking, Skandinaviska Enskilda Banken AB (publ.) UBS Securities LLC and Wells Fargo Securities, LLC (incorporated herein by reference to Exhibit 4.1 to the Current Report on Form 8-K filed on September 22, 2011).
11	Statement regarding computation of per share earnings (incorporated herein by reference from Note 13 to the consolidated financial statements under Part II, Item 9 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 Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”).
31.2	Certification of Chief Financial Officer and Executive Vice President, Corporate Strategy 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.
101.INS	XBRL Instance Document**
101.SCH	XBRL Taxonomy Extension Schema
101.CAL	XBRL Taxonomy Extension Calculation Linkbase
101.DEF	Taxonomy Extension Definition Linkbase
101.LAB	XBRL Taxonomy Extension Label Linkbase
101.PRE	XBRL Taxonomy Extension Presentation Linkbase

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\* Management contract or compensatory plan or arrangement.

\*\* The following materials from The NASDAQ OMX Group, Inc. Annual Report on Form 10-K for the year ended December 31, 2012, formatted in XBRL (eXtensible Business Reporting Language); (i) Consolidated Statements of Income for the years ended December 31, 2012, 2011 and 2010; (ii) Consolidated Balance Sheets at December 31, 2012 and December 31, 2011; (iii) Consolidated Statements of Comprehensive Income for the years ended December 31, 2012, 2011 and 2010; (iv) Consolidated Statements of Changes in Equity for the years ended December 31, 2012, 2011 and 2010; (v) Consolidated Statements of Cash Flows for the years ended December 31, 2012, 2011 and 2010; and (vi) notes to consolidated financial statements.

(b) Exhibits:

See Item 15(a)(3) above.

(c) Financial Statement Schedules:

See Item 15(a)(2) above.



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\* 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 and schedule 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 Comprehensive Income</a>	F-5
<a href="#">Consolidated Statements of Changes in Equity</a>	F-6
<a href="#">Consolidated Statements of Cash Flows</a>	F-8
<a href="#">Notes to Consolidated Financial Statements</a>	F-9
<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, 2012 and 2011, and the related consolidated statements of income, comprehensive income, changes in equity, and cash flows for each of the three years in the period ended December 31, 2012. Our audits also included the financial statement schedule listed in the Index under Item 15(a)(2). 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, 2012 and 2011, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2012, 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, 2012, 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 21, 2013 expressed an unqualified opinion thereon.

*/s/ Ernst & Young LLP*

New York, New York  
February 21, 2013

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

	December 31, 2012	December 31, 2011
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 497	\$ 506
Restricted cash	85	34
Financial investments, at fair value	223	279
Receivables, net	333	308
Deferred tax assets	33	16
Default funds and margin deposits	209	17
Open clearing contracts:		
Derivative positions, at fair value	—	1,566
Resale agreements, at contract value	—	3,745
Other current assets	112	110
Total current assets	1,492	6,581
Non-current restricted cash	25	97
Property and equipment, net	211	193
Non-current deferred tax assets	294	392
Goodwill	5,335	5,061
Intangible assets, net	1,650	1,648
Other non-current assets	125	119
Total assets	<u>\$ 9,132</u>	<u>\$ 14,091</u>
<b>Liabilities</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 172	\$ 164
Section 31 fees payable to SEC	97	106
Accrued personnel costs	111	132
Deferred revenue	139	124
Other current liabilities	119	112
Deferred tax liabilities	35	27
Default funds and margin deposits	209	17
Open clearing contracts:		
Derivative positions, at fair value	—	1,566
Repurchase agreements, at contract value	—	3,745
Current portion of debt obligations	45	45
Total current liabilities	927	6,038
Debt obligations	1,931	2,072
Non-current deferred tax liabilities	713	670
Non-current deferred revenue	156	154
Other non-current liabilities	196	171
Total liabilities	<u>3,923</u>	<u>9,105</u>
<b>Commitments and contingencies</b>		
<b>Equity</b>		
NASDAQ OMX stockholders' equity:		
Common stock, \$0.01 par value, 300,000,000 shares authorized, shares issued: 213,426,908 at December 31, 2012 and 213,398,111 at December 31, 2011; shares outstanding: 165,605,838 at December 31, 2012 and 173,552,939 at December 31, 2011	2	2
Preferred stock, 30,000,000 shares authorized, series A convertible preferred stock: shares issued: 1,600,000 at December 31, 2012 and December 31, 2011; shares outstanding: none at December 31, 2012 and December 31, 2011	—	—
Additional paid-in capital	3,771	3,793
Common stock in treasury, at cost: 47,821,070 shares at December 31, 2012 and 39,845,172 shares at December 31, 2011	(1,058)	(860)
Accumulated other comprehensive loss	(185)	(350)
Retained earnings	2,678	2,391
Total NASDAQ OMX stockholders' equity	5,208	4,976
Noncontrolling interests	1	10
Total equity	<u>5,209</u>	<u>4,986</u>
Total liabilities and equity	<u>\$ 9,132</u>	<u>\$ 14,091</u>

See accompanying notes to consolidated financial statements.

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

	Year Ended December 31,		
	2012	2011	2010
<b>Revenues:</b>			
Market Services	\$ 2,560	\$ 2,886	\$ 2,700
Issuer Services	375	361	338
Market Technology	184	183	152
Other	—	—	1
Total revenues	3,119	3,430	3,191
<b>Cost of revenues:</b>			
Transaction rebates	(1,104)	(1,344)	(1,312)
Brokerage, clearance and exchange fees	(352)	(404)	(363)
Total cost of revenues	(1,456)	(1,748)	(1,675)
<b>Revenues less transaction rebates, brokerage, clearance and exchange fees</b>	<b>1,663</b>	<b>1,682</b>	<b>1,516</b>
<b>Operating expenses:</b>			
Compensation and benefits	454	458	412
Marketing and advertising	26	24	20
Depreciation and amortization	104	109	103
Professional and contract services	96	83	72
Computer operations and data communications	60	65	58
Occupancy	93	91	88
Regulatory	34	35	35
Merger and strategic initiatives	4	38	4
Restructuring charges	44	—	—
General, administrative and other	58	83	93
Total operating expenses	973	986	885
<b>Operating income</b>	<b>690</b>	<b>696</b>	<b>631</b>
Interest income	10	11	9
Interest expense	(97)	(119)	(102)
Asset impairment charges	(40)	(18)	—
Dividend and investment income	—	1	(3)
Loss on divestiture of businesses	(14)	—	(11)
Income (loss) from unconsolidated investees, net	(1)	2	2
<b>Income before income taxes</b>	<b>548</b>	<b>573</b>	<b>526</b>
Income tax provision	199	190	137
<b>Net income</b>	<b>349</b>	<b>383</b>	<b>389</b>
Net loss attributable to noncontrolling interests	3	4	6
<b>Net income attributable to NASDAQ OMX</b>	<b>\$ 352</b>	<b>\$ 387</b>	<b>\$ 395</b>
<b>Per share information:</b>			
Basic earnings per share	\$ 2.09	\$ 2.20	\$ 1.94
Diluted earnings per share	\$ 2.04	\$ 2.15	\$ 1.91
Cash dividends declared per common share	\$ 0.39	\$ —	\$ —

See accompanying notes to consolidated financial statements.

**The NASDAQ OMX Group, Inc.**  
**Consolidated Statements of Comprehensive Income**  
**(in millions)**

	<u>Year Ended December 31,</u>		
	<u>2012</u>	<u>2011</u>	<u>2010</u>
<b>Net income</b>	<b>\$349</b>	<b>\$ 383</b>	<b>\$ 389</b>
Other comprehensive income (loss):			
Net unrealized holding gains (losses) on available-for-sale investment securities:			
Unrealized holding gains (losses) arising during the period	4	(15)	(3)
Income tax benefit, net of valuation allowance	—	—	1
Reclassification adjustment for losses realized in net income on available-for-sale investment securities	—	18	—
Total	<u>4</u>	<u>3</u>	<u>(2)</u>
Foreign currency translation gains (losses):			
Net foreign currency translation gains (losses)	262	(120)	231
Income tax benefit (expense)	(95)	40	(98)
Total	<u>167</u>	<u>(80)</u>	<u>133</u>
Cash flow hedges:			
Reclassification adjustment for loss realized in net income on cash flow hedges	—	—	9
Income tax benefit recognized in net income during the period	—	—	(3)
Total	<u>—</u>	<u>—</u>	<u>6</u>
Employee benefit plans:			
Employee benefit plan adjustment losses	(10)	(2)	(5)
Income tax benefit	4	1	2
Total	<u>(6)</u>	<u>(1)</u>	<u>(3)</u>
Total other comprehensive income (loss), net of tax	165	(78)	134
<b>Comprehensive income</b>	<b>514</b>	<b>305</b>	<b>523</b>
Comprehensive loss attributable to noncontrolling interests	3	4	6
<b>Comprehensive income attributable to NASDAQ OMX</b>	<b><u>\$517</u></b>	<b><u>\$ 309</u></b>	<b><u>\$ 529</u></b>

See accompanying notes to consolidated financial statements.

**The NASDAQ OMX Group, Inc.**

**Consolidated Statements of Changes in Equity**  
(in millions, except share amounts)

	Number of Common Shares Outstanding	Common Stock at Par Value	Additional Paid-in Capital	Common Stock in Treasury at Cost	Accumulated Other Comprehensive Loss	Retained Earnings	Noncontrolling Interests	Total
Balance at December 31, 2009	211,385,464	\$ 2	\$ 3,736	\$ (10)	\$ (406)	\$ 1,610	\$ 12	\$4,944
Net income (loss)	—	—	—	—	—	395	(6)	389
Reclassification adjustment for loss realized in net income on cash flow hedges, net of tax of (\$3)	—	—	—	—	6	—	—	6
Foreign currency translation, net of tax of (\$98)	—	—	—	—	133	—	—	133
Employee benefit plan adjustments, net of tax of \$2	—	—	—	—	(3)	—	—	(3)
Net unrealized holding gains (losses) on available-for-sale securities, net of tax of \$1	—	—	—	—	(2)	—	—	(2)
Share repurchase program	(37,831,647)	—	—	(797)	—	—	—	(797)
Conversion of series A convertible preferred stock to common stock and accretion	845,646	—	16	—	—	(1)	—	15
Amortization and vesting of restricted stock and PSUs	579,759	—	23	(4)	—	—	—	19
Stock options exercised, net	708,731	—	5	9	—	—	—	14
Other issuances of common stock, net	94,730	—	1	6	—	—	—	7
Purchases of subsidiary shares from noncontrolling interests	—	—	(1)	—	—	—	(1)	(2)
Sale of subsidiary shares to noncontrolling interests and other adjustments	—	—	—	—	—	—	6	6
Balance at December 31, 2010	175,782,683	\$ 2	\$ 3,780	\$ (796)	\$ (272)	\$ 2,004	\$ 11	\$4,729
Net income (loss)	—	—	—	—	—	387	(4)	383
Foreign currency translation, net of tax of \$40	—	—	—	—	(80)	—	—	(80)
Employee benefit plan adjustments, net of tax of \$1	—	—	—	—	(1)	—	—	(1)
Unrealized holding losses on available-for-sale securities, net of reclassification for losses realized in net income	—	—	—	—	3	—	—	3
Share repurchase program	(3,983,481)	—	—	(100)	—	—	—	(100)
Tender offer related to the 2013 Convertible Notes	—	—	(9)	—	—	—	—	(9)
Amortization and vesting of restricted stock and PSUs	632,682	—	14	8	—	—	—	22
Stock options exercised, net	1,030,721	—	(5)	22	—	—	—	17
Other issuances of common stock, net	90,334	—	13	6	—	—	—	19
Sale of subsidiary shares to noncontrolling interests and other adjustments	—	—	—	—	—	—	3	3
Balance at December 31, 2011	173,552,939	\$ 2	\$ 3,793	\$ (860)	\$ (350)	\$ 2,391	\$ 10	\$4,986

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	<u>Number of Common Shares Outstanding</u>	<u>Common Stock at Par Value</u>	<u>Additional Paid-in Capital</u>	<u>Common Stock in Treasury at Cost</u>	<u>Accumulated Other Comprehensive Loss</u>	<u>Retained Earnings</u>	<u>Noncontrolling Interests</u>	<u>Total</u>
Net income (loss)	—	—	—	—	—	352	(3)	349
Foreign currency translation, net of tax of \$95	—	—	—	—	167	—	—	167
Employee benefit plan adjustments, net of tax of \$4	—	—	—	—	(6)	—	—	(6)
Unrealized holding gains on available-for-sale securities	—	—	—	—	4	—	—	4
Cash dividends declared per common share	—	—	—	—	—	(65)	—	(65)
Share repurchase program	(11,544,457)	—	—	(275)	—	—	—	(275)
Amortization and vesting of restricted stock and PSUs	1,997,516	—	(8)	44	—	—	—	36
Stock options exercised, net	2,051,066	—	(22)	45	—	—	—	23
Other purchases of common stock, net	(451,226)	—	8	(12)	—	—	—	(4)
Sale of subsidiary shares to noncontrolling interests and other adjustments	—	—	—	—	—	—	(6)	(6)
Balance at December 31, 2012	<u>165,605,838</u>	<u>\$ 2</u>	<u>\$ 3,771</u>	<u>\$ (1,058)</u>	<u>\$ (185)</u>	<u>\$ 2,678</u>	<u>\$ 1</u>	<u>\$5,209</u>

See accompanying notes to consolidated financial statements.

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

	Year Ended December 31,		
	2012	2011	2010
<b>Cash flows from operating activities:</b>			
Net income	\$ 349	\$ 383	\$ 389
Adjustments to reconcile net income to cash provided by operating activities:			
Depreciation and amortization	104	109	103
Share-based compensation	46	36	33
Excess tax benefits related to share-based compensation	(7)	(10)	(2)
Loss on divestiture of businesses	14	—	11
Provision for bad debts	6	4	5
Charges related to debt extinguishment and refinancing	—	31	37
Deferred income taxes	16	4	(35)
Non-cash restructuring charges	16	—	—
Net (income) loss from unconsolidated investees	1	(2)	(2)
Asset retirements and impairment charges	40	25	6
Amortization of debt issuance costs	3	6	6
Accretion of debt discounts	4	13	14
Other non-cash items included in net income	8	(10)	2
Net change in operating assets and liabilities, net of effects of acquisitions and divestitures:			
Receivables, net	(30)	(11)	5
Other assets	71	69	(85)
Accounts payable and accrued expenses	1	24	4
Section 31 fees payable to SEC	(9)	24	(55)
Accrued personnel costs	(27)	10	2
Deferred revenue	5	(14)	14
Other liabilities	(17)	(22)	(12)
<b>Net cash provided by operating activities</b>	<u>594</u>	<u>669</u>	<u>440</u>
<b>Cash flows from investing activities:</b>			
Purchases of trading securities	(301)	(533)	(237)
Proceeds from sales and redemptions of trading securities	372	501	350
Proceeds from sales of equity method investments	—	—	1
Acquisitions of businesses, net of cash and cash equivalents acquired	(112)	(26)	(190)
Purchases of property and equipment	(87)	(88)	(42)
<b>Net cash used in investing activities</b>	<u>(128)</u>	<u>(146)</u>	<u>(118)</u>
<b>Cash flows from financing activities:</b>			
Proceeds from debt obligations, net of debt issuance costs	—	700	2,409
Payments of debt obligations	(145)	(948)	(2,216)
Cash paid for repurchase of common stock	(275)	(100)	(797)
Cash dividends	(65)	—	—
Proceeds from contributions of noncontrolling interests	—	3	3
Issuances of common stock, net of treasury stock purchases	(3)	10	6
Excess tax benefits related to share-based compensation	7	10	2
Other financing activities	(4)	—	(2)
<b>Net cash used in financing activities</b>	<u>(485)</u>	<u>(325)</u>	<u>(595)</u>
Effect of exchange rate changes on cash and cash equivalents	10	(7)	(6)
Net increase (decrease) in cash and cash equivalents	(9)	191	(279)
Cash and cash equivalents at beginning of period	506	315	594
Cash and cash equivalents at end of period	<u>\$ 497</u>	<u>\$ 506</u>	<u>\$ 315</u>
<b>Supplemental Disclosure Cash Flow Information</b>			
Cash paid for:			
Interest	\$ 80	\$ 86	\$ 53
Income taxes, net of refund	\$ 177	\$ 129	\$ 148
Non-cash investing activities:			
Investment in LCH.Clearnet Group Limited	\$ 37	\$ —	\$ —

See accompanying notes to consolidated financial statements.

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

**1. Organization and Nature of Operations**

We are a leading global exchange group that delivers trading, clearing, exchange technology, regulatory, securities listing, and public company services across six continents. Our global offerings are diverse and include trading and clearing 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 single cash equities securities market in the U.S. in terms of listed companies and in the world in terms of share value traded. As of December 31, 2012, The NASDAQ Stock Market was home to 2,577 listed companies with a combined market capitalization of approximately \$5.2 trillion. In addition, in the U.S. we operate two additional cash equities trading markets, three options markets and a futures market. We also engage in riskless principal trading and clearing of OTC power and gas contracts.

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. Collectively, 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 and clearing of resale and repurchase agreements. Through NASDAQ OMX First North, our Nordic and Baltic operations also offer alternative marketplaces for smaller companies. As of December 31, 2012, the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic, together with NASDAQ OMX First North, were home to 754 listed companies with a combined market capitalization of approximately \$1.0 trillion. We also operate NASDAQ OMX Armenia.

In addition, NASDAQ OMX Commodities operates the world's largest power derivatives exchange, one of Europe's largest carbon exchanges and together with Nord Pool Spot, N2EX, a marketplace for physical U.K. power contracts. We also operate NOS Clearing, a leading Norway-based clearinghouse primarily for OTC traded derivatives for the freight market and seafood derivatives market.

In some of the countries where we operate exchanges, we also provide clearing, settlement and depository services.

Prior to January 1, 2013, we managed, operated and provided our products and services in three business segments: Market Services, Issuer Services and Market Technology. As announced in January 2013, we realigned our reportable segments as a result of changes to the organizational structure of our businesses. See Note 20, "Subsequent Event," for further discussion.

**Market Services**

Our Market Services segment includes our U.S. and European Transaction Services businesses, which include Access Services, as well as our Market Data and Broker Services businesses. We offer trading on multiple exchanges and facilities across several asset classes, including cash equities, derivatives, debt, commodities, structured products and ETFs. In addition, in some of the countries where we operate exchanges, we also provide clearing, settlement and depository services.

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

In the U.S., we offer trading in cash equity securities, derivatives and ETFs on The NASDAQ Stock Market, The NASDAQ Options Market, NASDAQ OMX PHLX, NASDAQ OMX BX, NASDAQ OMX BX Options, NASDAQ OMX PSX and NFX, and engage in riskless principal trading and clearing of OTC power and gas contracts through NOCC. 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 equity securities, derivatives and ETFs. 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.

**Cash Equities Trading**

The NASDAQ Stock Market is the largest single pool of liquidity for trading U.S.-listed cash equities, matching an average of approximately 17.0% of all U.S. cash equities volume for 2012. With NASDAQ OMX BX and NASDAQ OMX PSX, we offer a second and third quote within the U.S. cash equities marketplace, providing our customers enhanced trading choices and pricing flexibility. In 2012, NASDAQ OMX BX matched an average of approximately 2.7% of all U.S. cash equities volume and NASDAQ OMX PSX matched an average of approximately 1.1% of all U.S. cash equities volume.

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### Derivative Trading and Clearing

In the U.S., we operate The NASDAQ Options Market, NASDAQ OMX PHLX and NASDAQ OMX BX Options for the trading of equity options, ETF options, index options and foreign currency options. As of December 31, 2012, NASDAQ OMX PHLX, which operates a hybrid electronic and floor-based market, was the largest equity options market in the U.S. During the year ended December 31, 2012, our options markets had an average combined market share of approximately 27.2% in the U.S. equity options market, consisting of approximately 21.3% at NASDAQ OMX PHLX, 5.5% at The NASDAQ Options Market and 0.4% at NASDAQ OMX BX Options. Together, the combined market share of 27.2% represented the largest share of the U.S. equity options market and ETF options market. Our options trading platforms provide trading opportunities to both retail investors, algorithmic trading firms and market makers, who tend to prefer electronic trading, and institutional investors, who typically pursue more complex trading strategies and often trade on the floor.

In the U.S., we also operate NFX, which offers trading of futures contracts on spot gold.

NASDAQ OMX also engages in riskless principal trading and clearing of OTC power and gas contracts through our subsidiary NOCC.

In August 2012, we sold our majority-owned subsidiary IDCG to LCH Clearnet Group Limited, or LCH. See “2012 Divestiture,” of Note 4, “Acquisitions and Divestitures,” for further discussion.

### **European Transaction Services**

#### Nordic Transaction Services

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

Trading is offered in Nordic securities such as cash equities and depository receipts, warrants, convertibles, rights, fund units, ETFs, bonds and other interest-related products. NASDAQ OMX Stockholm also offers trading in derivatives, such as stock options and futures, index options and futures, fixed-income options and futures and stock loans. Settlement and registration of cash trading takes place in Sweden, Finland, Denmark and Iceland via the local central securities depositories.

NASDAQ OMX’s trading offering also includes cash equities listed in Norway and Norwegian derivatives products. The offering is designed to provide lower trading costs and other benefits for customers seeking to trade all Nordic equity products on one platform.

Most of our cash equity trades on the exchanges that comprise NASDAQ OMX Nordic are centrally cleared by EMCF, a leading European clearinghouse in which we own a 22% equity stake.

NASDAQ OMX Stockholm offers clearing services for fixed-income options and futures, stock options and futures and index options and futures by serving as the CCP. 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 OTC contracts.

NASDAQ OMX Stockholm also offers a clearing service for the resale and repurchase agreement market. As a result of an agreement between the Swedish Money Market Council and NASDAQ OMX, a large portion of the Swedish Interbank resale and repurchase market is cleared through NASDAQ OMX Stockholm.

#### Baltic Transaction Services

NASDAQ OMX Baltic operations comprise the exchanges in Tallinn (Estonia), Riga (Latvia) and Vilnius (Lithuania). As of December 31, 2012, NASDAQ OMX owns NASDAQ OMX Tallinn and has majority ownerships in NASDAQ OMX Riga and NASDAQ OMX Vilnius. In addition, NASDAQ OMX Tallinn owns the central securities depository in Estonia, NASDAQ OMX Riga owns the central securities depository in Latvia, and NASDAQ OMX Helsinki and NASDAQ OMX Vilnius jointly own the central securities depository in Lithuania.

The exchanges that comprise NASDAQ OMX Baltic 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 cash 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, NASDAQ OMX offers 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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### Proposed Acquisition

In December 2012, we announced an agreement to acquire a 25% stake in TOM, a Dutch cash equities and equity derivatives trading venue. The terms of the transaction also provide us an option to acquire an additional 25.1% of the remaining shares at a future date. This transaction delivers on our strategy to expand our derivatives presence across the European market and will be part of our European Transaction Services business. The acquisition is subject to regulatory approval.

### Commodities Trading and Clearing

NASDAQ OMX Commodities offers trading and clearing of international power derivatives, carbon and other commodities products. NASDAQ OMX Commodities' offering includes the world's largest power derivatives exchange and one of Europe's largest carbon exchanges.

NASDAQ OMX Commodities has over 400 members 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, industrial, manufacturing and oil companies. NASDAQ OMX Commodities offers clearing services for energy derivative and carbon product contracts by serving as the CCP. 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 trades on OTC derivative contracts.

In addition, NASDAQ OMX Commodities, together with Nord Pool Spot, operates N2EX, a marketplace for physical U.K. power contracts.

In July 2012, we acquired NOS Clearing, a leading Norway-based clearinghouse primarily for OTC traded derivatives for the freight market and seafood derivatives market.

### **Access Services**

We provide market participants with several alternatives for accessing our markets for a fee. We provide co-location services to market participants whereby firms may lease space for equipment within our data center. These participants are charged monthly fees for cabinet space, connectivity and support. We also earn revenues from annual and monthly exchange membership and registration fees.

Access Services revenues also include revenues from FTEN, a leading provider of RTRM solutions for the financial securities market. As a market leader in RTRM, FTEN provides broker-dealers and their clients the ability to manage risk more effectively in real-time, which leads to better utilization of capital as well as improved regulatory compliance. Revenues for FTEN services are primarily based on subscription agreements with customers. In 2012, we announced the launch of FinQloud, a platform for financial services applications that provides efficient management and storage of financial data.

### **Market Data**

Market Data revenues are earned from U.S. tape plans and U.S. and European proprietary 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, NASDAQ OMX BX and NASDAQ OMX PSX are participants in the UTP Plan and share 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, who then provide the information to subscribers. After deducting costs associated with our role as an exclusive Securities Information Processor, as permitted under the revenue sharing provision of the UTP Plan, we distribute the tape revenues to the respective UTP Plan participants, including The NASDAQ Stock Market, NASDAQ OMX BX and NASDAQ OMX PSX, 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 MKT-listed securities are reported and disseminated in real time, and as such, we share in the tape revenues for information on NYSE—and NYSE MKT-listed securities.

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### [U.S. Market Data Products](#)

Our market data products enhance transparency and provide critical information to professional and non-professional investors. We collect, process and create information and earn revenues as a distributor of our own, as well as select third-party content. We provide varying levels of quote and trade information to market participants and to data distributors, who in turn provide subscriptions for this information. Our systems enable distributors to gain direct access to our market depth, index values, mutual fund valuation, order imbalances, market sentiment and other analytical data. We earn revenues primarily based on the number of data subscribers and distributors of our data.

### [European Market Data Products](#)

The exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic, as well as NASDAQ OMX Commodities, offer European market data products and services. These data products and services provide critical market transparency to professional and non-professional investors who participate in European marketplaces and, at the same time, give investors greater insight into these markets.

European market data products and services are based on the trading information from the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic, as well as NASDAQ OMX Commodities, for four classes of assets: cash equities, bonds, derivatives and commodities. We provide varying levels of quote and trade information to market participants and to data distributors, who in turn provide subscriptions for this information. We earn revenues 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. Broker Services provides services through a registered securities company that is regulated by the SFSA. Services primarily consist of flexible back-office systems, which 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 Global Index Group businesses. We offer capital raising solutions to over 3,300 companies around the globe representing approximately \$6.2 trillion in total market value as of December 31, 2012.

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. We offer a consolidated global listing application to companies to enable them to apply for listing on The NASDAQ Stock Market and the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic, as well as NASDAQ Dubai. In addition, through our Corporate Solutions business, we offer companies access to innovative products and software solutions and services that ease transparency, mitigate risk, maximize board efficiency and facilitate better corporate governance.

### **Global Listing Services**

Our Global Listing Services business includes our U.S. Listings, European Listings and Corporate Solutions businesses.

### [U.S. Listings](#)

Companies listed on The NASDAQ Stock Market represent a diverse array of industries including health care, consumer products, telecommunication services, information technology, financial services, 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 also 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.

### [European Listings](#)

We also offer listings on the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic. For smaller companies and growth companies, we offer access to the financial markets through the NASDAQ OMX First North alternative marketplaces. Revenues are generated through annual fees paid by companies listed on these exchanges, which are measured in terms

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of the listed company's market capitalization on a trailing 12-month basis. Our European listing customers are organizations such as companies, funds or governments. Customers issue securities in the forms of cash equities, depository receipts, warrants, ETFs, convertibles, rights, options, bonds and fixed-income related products.

### Corporate Solutions

Our Corporate Solutions business provides customer support services, products and programs to customers, including companies listed on our exchanges. Through our Corporate Solutions offerings, companies gain access to innovative products and software solutions and services that ease transparency, mitigate risk, maximize board efficiency and facilitate better corporate governance.

In May 2012, we acquired a 72% ownership interest in BWISE. BWISE revenues are included in Corporate Solutions revenues from the date of acquisition. BWISE, a Netherlands-based service provider, offers enterprise governance, risk management and compliance software and services to help companies track, measure and manage key organizational risks. We have agreed to purchase the remaining 28% ownership interest in BWISE in two separate transactions resulting in 100% ownership in the first half of 2015.

In addition, Corporate Solutions includes revenues from Glide Technologies, which we acquired in October 2011. Glide Technologies specializes in corporate communications and reputation management solutions. This acquisition allows us to offer a fully-integrated workflow solution for investor relations and public relations professionals.

In December 2012, we entered into an agreement with Thomson Reuters to acquire its Investor Relations, Public Relations and Multimedia Solutions businesses. Upon closing, these complementary businesses will be integrated into our Corporate Solutions business. The proposed transaction is subject to customary regulatory approvals and is expected to close in the first half of 2013.

### **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 Group 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 a percentage of underlying assets, dollar value of a product issuance, number of products or number of contracts traded. In addition to generating licensing revenues, these products, particularly mutual funds and ETFs, lead to increased investments in companies listed on our global exchanges, which enhances our ability to attract new listings. We also license cash-settled options, futures and options on futures on our indexes.

In December 2012, NASDAQ OMX Global Index Group acquired the index business of Mergent, Inc., including Indxis. Mergent is an established index provider and a renowned supplier of business and financial data on global publically listed companies. With this acquisition, NASDAQ OMX Global Indexes became one of the largest providers of dividend-themed indexes based on benchmarked assets and further enhanced its custom index offering capabilities and services.

### **Market Technology**

Powering more than 70 marketplaces in over 50 developed and emerging countries, our Market Technology segment is the world's leading technology solutions provider and partner to exchanges, clearing organizations and central securities depositories. We also provide surveillance technology to 11 regulators and 71 brokers world-wide. Our technology business is also the sales channel for our complete global offering to other marketplaces.

Market Technology provides technology solutions for trading, clearing, settlement, surveillance and information dissemination for markets with wide-ranging requirements, from the leading markets in the U.S., Europe and Asia to smaller African markets. Furthermore, the solutions we offer can handle all classes of assets, including cash equities, currencies, various interest-bearing securities, commodities, energy products and derivatives. Revenues are primarily derived from license, support and facility management revenues, delivery project revenues, as well as change request, advisory and broker surveillance revenues.

License and support 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 and may require post contract support and other services. Facility management revenues are derived when NASDAQ OMX assumes responsibility for the continuous operation of a system platform for a customer.

Delivery project revenues are derived from the installation phase of the system solutions developed and sold by NASDAQ OMX. The majority of our delivery projects involve individual adaptations to the specific requirements of the customer, such as those relating to functionality and capacity.

Change request revenues include customer specific adaptations and modifications of the system solution sold by NASDAQ OMX after delivery has occurred. Advisory services are designed to support our customers' strategies and help them with critical decisions in a highly demanding business environment. Broker surveillance revenues are derived from surveillance solutions targeting brokers and regulators throughout the world.

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For further discussion of our segments, see Note 19, “Business 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**

The consolidated financial statements are prepared in accordance with U.S. GAAP. The financial statements 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. When we do not have a controlling interest in an entity but exercise significant influence over the entity’s operating and financial policies, such investment is accounted for under the equity method of accounting. We recognize our share of earnings or losses of an equity method investee based on our ownership percentage. As permitted under U.S. GAAP, 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 the investee from the most recent available financial statements on a lag. See Note 6, “Investments,” for further discussion of our equity method investments.

We have evaluated subsequent events through the issuance date of this Annual Report on Form 10-K. See Note 20, “Subsequent Event,” for further discussion.

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**

Foreign denominated assets and liabilities are remeasured into the functional currency at exchange rates in effect at the balance sheet date and recorded through the income statement. Gains or losses resulting from foreign currency transactions are remeasured 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 accumulated other comprehensive loss within stockholders’ equity in the Consolidated Balance Sheets. Assets and liabilities are translated at the balance sheet date while revenues and expenses are translated at the date the transaction occurs or at an applicable average rate.

Deferred taxes are not provided on cumulative translation adjustments where we expect earnings of a foreign subsidiary to be indefinitely reinvested. The income tax effect of currency translation adjustments related to foreign subsidiaries that are not considered indefinitely reinvested is recorded as a component of deferred taxes with an offset to accumulated other comprehensive loss within stockholders’ equity in the Consolidated Balance Sheets.

### **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 \$339 million as of December 31, 2012 and \$361 million as of December 31, 2011. Cash equivalents are carried at cost plus accrued interest, which approximates fair value due to the short maturities of these investments.

### **Restricted Cash**

Restricted cash, which was \$85 million as of December 31, 2012 and \$34 million as of December 31, 2011, is not available for general use by us due to regulatory and other requirements and is classified as restricted cash in the Consolidated Balance Sheets. Non-current restricted cash was \$25 million as of December 31, 2012 and \$97 million as of December 31, 2011. As of December 31, 2012, non-current restricted cash includes \$25 million held by NOCC to improve its liquidity position. As of December 31, 2011, non-current restricted cash included our \$25 million held by NOCC to improve its liquidity position and a deposit in the guaranty fund of IDCG of \$72 million. IDCG was sold in August 2012. See “2012 Divestiture,” of Note 4, “Acquisitions and Divestitures,” for further discussion.

## **Financial Investments**

Financial investments, at fair value are primarily comprised of trading securities, mainly Swedish government debt securities, and our available-for-sale investment security in DFM. Trading securities are bought principally to meet regulatory capital requirements for NASDAQ OMX Stockholm's clearing operations and are generally sold in the near term. Changes in fair value of trading securities are included in dividend and investment income in the Consolidated Statements of Income. Equity securities that are classified as available-for-sale investment securities are carried at fair value with unrealized gains and losses, net of tax, reported in accumulated other comprehensive loss within stockholders' equity. 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 equity securities we also consider the extent to which cost exceeds fair value, the duration of that difference, 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. In addition, 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.

Fair value of both available-for-sale and trading investment securities is 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 with 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 15, "Fair Value of Financial Instruments," for further discussion of fair value measures.

## **Receivables, net**

Our receivables are concentrated with our member firms, market data distributors, listed companies and market technology customers. Receivables are shown net of a reserve 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 collectability 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. The total reserve netted against receivables in the Consolidated Balance Sheets was \$5 million as of December 31, 2012 and \$3 million as of December 31, 2011.

## **Default Funds and Margin Deposits**

NASDAQ OMX Nordic Clearing members' eligible contributions may include cash and non-cash contributions. Clearing members' cash contributions are included in default funds and margin deposits in the Consolidated Balance Sheets as both a current asset and a current liability. These balances may fluctuate over time due to changes in the amount of deposits required and whether members choose to provide cash or non-cash contributions. Non-cash contributions include highly rated government debt securities that must meet specific criteria approved by NASDAQ OMX Nordic Clearing. Non-cash contributions are pledged assets that are not recorded in the Consolidated Balance Sheets as NASDAQ OMX Nordic Clearing does not take legal ownership of these assets and the risks and rewards remain with the clearing members.

Prior to March 2012, NASDAQ OMX Nordic Clearing did not maintain a default fund to which clearing members contributed capital.

For NOCC, customer pledged cash collateral is also included in default funds and margin deposits as both a current asset and current liability in the Consolidated Balance Sheets, as the risks and rewards of collateral ownership, including interest income, belongs to NOCC.

## **Open Clearing Contracts**

### ***Derivative Positions, at Fair Value and Resale and Repurchase Agreements, at Contract Value***

The implementation of member sponsored default funds discussed in Note 16, "Clearing Operations," significantly changed the nature and extent of the risk of loss to NASDAQ OMX Nordic Clearing in the event of a member default. Since the full risk of loss to NASDAQ OMX Nordic Clearing will now be shared amongst clearing members, we no longer record derivative positions or resale and repurchase agreements in the Consolidated Balance Sheets.

Prior to the implementation of member sponsored default funds, NASDAQ OMX Nordic Clearing placed its own funds at risk and was the primary obligor that would bear the ultimate risk of counterparty default. As a result, the fair value of derivative contracts and the contract value of resale and repurchase agreements were reported gross in the Consolidated Balance Sheets as a receivable pertaining to the purchasing party and a payable pertaining to the selling party. Such receivables and payables attributable to outstanding derivative positions and resale and repurchase agreements were netted to the extent that such a legal offset right existed and, at the same time, that it was our intention to settle these items.

### **Derivative Financial Instruments and Hedging Activities**

We may hold derivative financial instruments that are 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 is 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 either other current assets or other non-current assets and our derivative liabilities in either other current liabilities or other non-current liabilities in the Consolidated Balance Sheets depending on the terms of the contract. 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, 2012, 2011 and 2010, there were no derivative financial instruments that were designated or qualified for hedge accounting. As of December 31, 2009, 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 loss in the Consolidated Balance Sheets. In the first quarter of 2010, in connection with the repayment of our senior secured credit facilities in place as of December 31, 2009, we terminated our interest rate swaps and reclassified into earnings the unrealized loss of \$9 million which was included in accumulated other comprehensive loss in the Consolidated Balance Sheets at December 31, 2009. This loss is included in general, administrative and other expense in the Consolidated Statements of Income for the year ended December 31, 2010. There was no material ineffectiveness recorded in earnings for each of the three years ended December 31, 2012.

### ***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 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. We did not enter into any derivative hedges that were designated for hedge accounting during the years ended December 31, 2012, 2011 and 2010.

### ***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 such derivative financial instruments, changes in fair value are reported in current period earnings.

We use foreign exchange forward contracts to manage foreign currency exposure of intercompany loans. These contracts are not designated as hedges for financial reporting purposes. The change in fair value of these contracts is recognized in general, administrative and other expense in the Consolidated Statements of Income and offsets the foreign currency impact recognized on the intercompany loans.

As of December 31, 2012 and 2011, the fair value amounts of our derivative instruments were immaterial.

## **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, 2 to 5 years for data processing equipment and software and 5 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 using the straight-line method. See Note 7, "Property and Equipment, net," for further discussion.

## Goodwill

Goodwill represents the excess of purchase price over the value assigned to the net tangible and identifiable intangible assets of a business acquired. Goodwill is allocated to our reporting units based on the assignment of the fair values of each reporting unit of the acquired company. 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 amount may be impaired. We test for impairment during the fourth quarter of our fiscal year using carrying amounts as of October 1. In conducting the 2012 annual impairment test for goodwill, we first performed a qualitative assessment to determine whether it was more likely than not that the fair value of a reporting unit was less than the carrying amount as a basis for determining whether it was necessary to perform the two-step quantitative goodwill impairment test described in ASC Topic 350. The more-likely-than-not threshold is defined as having a likelihood of more than 50 percent. If, after assessing the totality of events or circumstances, we determine that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, then the two-step quantitative test for goodwill impairment is performed for the appropriate reporting units. Otherwise, we conclude that no impairment is indicated and the two-step quantitative test for goodwill impairment is not performed.

In conducting the initial qualitative assessment, we analyze actual and projected growth trends for each reporting unit, as well as historical performance versus plan and the results of prior quantitative tests performed. Additionally, each reporting unit assesses critical areas that may impact their business, including macroeconomic conditions and the related impact, market related exposures, competitive changes, new or discontinued products, changes in key personnel, or any other potential risks to their projected financial results.

If required, the quantitative goodwill impairment test is a two-step process performed at the reporting unit level. First, the fair value of each reporting unit is compared to its corresponding carrying amount, including goodwill. The fair value of each reporting unit is estimated using a combination of a discounted cash flow valuation, which incorporates assumptions regarding future growth rates, terminal values, and discount rates, as well as a guideline public company valuation, incorporating relevant trading multiples of comparable companies and other factors. The estimates and assumptions used consider historical performance and are consistent with the assumptions used in determining future profit plans for each reporting unit, which are approved by our board of directors. If the first step results in the carrying amount exceeding the fair value of the reporting unit, then a second step must be completed in order to determine the amount of goodwill impairment that should be recorded, if any. In the second step, the implied fair value of the reporting unit's goodwill is determined by allocating the reporting unit's fair value to all of its assets and liabilities other than goodwill in a manner similar to a purchase price allocation. The implied fair value of the goodwill that results from the application of this second step is then compared to the carrying amount of the goodwill and an impairment charge is recorded for any difference.

There was no impairment of goodwill for the years ended December 31, 2012, 2011 and 2010. However, events such as economic weakness or unexpected significant declines in operating results of reporting units may 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 average estimated useful lives as follows:

- Technology: 3—5 years
- Customer relationships: 10—30 years
- Other: 2—10 years

Intangible assets deemed to have indefinite useful lives are not amortized but instead are tested for impairment at least annually and more frequently whenever events or changes in circumstances indicate that the fair value of the asset may be less than its carrying amount. The fair value of indefinite-lived intangible assets is primarily determined on the basis of estimated discounted value, using the relief from royalty approach for trade names and the Greenfield Approach for exchange and clearing registrations and licenses, both of which incorporate assumptions regarding future revenue projections and discount rates. Similar to goodwill impairment testing, we test for impairment of indefinite-lived intangible assets during the fourth quarter of our fiscal year using carrying amounts as of October 1. In conducting the 2012 annual impairment test for indefinite-lived intangible assets, we first performed a qualitative assessment to determine whether it was more likely than not that the fair value of an indefinite-lived intangible asset was less than the carrying amount as a basis for determining whether it was necessary to perform the quantitative impairment test described in ASC Topic 350. The more-likely-than-not threshold is defined as having a likelihood of more than 50 percent. If, after assessing the totality of events or circumstances, we determine that it is more likely than not that the fair value of an indefinite-lived intangible asset is less

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than its carrying amount, then the quantitative test for indefinite-lived intangible assets impairment is performed for the appropriate intangible assets. If the carrying amount of the indefinite-lived intangible asset exceeds its fair value, an impairment charge is recorded for the difference. 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 exceeds the fair value of the intangible asset.

### **Valuation of Other Long-Lived Assets**

We also assess potential impairments to our other long-lived assets, including property and equipment, when there is evidence that events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. 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 amount of the related asset and a charge to operating results.

### **Equity Method Investments**

In general, the equity method of accounting is used when we own 20% to 50% of the outstanding voting stock of a company and when we are able to exercise significant influence over the operating and financial policies of a company. 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. We record our pro-rata share of earnings or losses each period and record any dividends as a reduction in the investment balance. We evaluate 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. If the estimated fair value of the investment is less than the carrying amount and management considers the decline in value to be other than temporary, the excess of the carrying amount over the estimated fair value is recognized in the financial statements as an impairment.

### **Cost Method Investments**

In general, the cost method of accounting is used when we own less than 20% of the outstanding voting stock of a company which does not have a readily determinable fair value and when we are not able to exercise significant influence over the operating and financial policies of a company. Under the cost method of accounting, investments are carried at cost and are adjusted only for other-than-temporary declines in fair value, certain distributions, and additional 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 individual customer share 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, NASDAQ OMX BX, and NASDAQ OMX PSX, as well as on orders that are routed to other market venues for execution.

In the U.S., we record execution revenues from transactions on a gross basis in revenues and record related expenses as cost of revenues.

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, 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 required in accordance with U.S. GAAP. As such, losses arising as a result of the rule are accrued and charged to expense only if the loss is probable and estimable.

For The NASDAQ Stock Market and NASDAQ OMX PSX, we credit a portion of the per share execution charge to the market participant that provides the liquidity and for NASDAQ OMX BX, we credit a portion of the per share execution charge to the market participant that takes the liquidity. We record these credits as transaction rebates that are included in cost of revenues in the Consolidated Statements of Income. These transaction 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 NASDAQ's, NASDAQ OMX BX's and NASDAQ OMX PSX's platforms, and we recognize these amounts in cost of

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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 transaction 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. These transaction fees are charged per executed order and as per value traded.

The exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic do not have cost of revenues, such as transaction rebates and brokerage, clearance and exchange fees.

### *U.S. Derivative Trading and Clearing*

U.S. derivative trading and clearing revenues are variable, based on traded and cleared volumes, and recognized when executed or when contracts are cleared. The principal types of derivative contracts traded on NASDAQ OMX PHLX, The NASDAQ Options Market and NASDAQ OMX BX Options are equity options, ETF options, index options and currency options. We also operate NFX, which offers trading of futures contracts on spot gold. Similar to U.S. cash equity trading, we record derivative trading and clearing 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. For further discussion see "U.S. Cash Equity Trading" above.

As discussed under U.S. cash equity trading, for U.S. derivative trading and clearing, we also credit a portion of the per share execution charge to the market participant that provides the liquidity and record the transaction rebate as U.S. derivative trading and clearing cost of revenues in the Consolidated Statements of Income. These transaction 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 derivative trading and clearing fees. We collect the fees as a pass-through charge from organizations executing eligible trades on NASDAQ OMX PHLX, The NASDAQ Options Market and NASDAQ OMX BX Options and we recognize these amounts in U.S. derivative trading and clearing cost of revenues when incurred.

Through NOCC, we engage in riskless principal trading and clearing of OTC power and gas contracts. Revenues are based on notional amounts or volume of power and gas transacted and/or delivered and are recognized upon settlement of the contracts.

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, message or other data into our platform.

### *European Derivative Trading and Clearing*

European derivative trading and clearing revenues are variable, based on the volume and value of traded and cleared contracts, and recognized when executed or when contracts are cleared. Derivative trading and clearing is conducted on NASDAQ OMX Stockholm. 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 CCP. 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 OTC contracts.

On NASDAQ OMX Stockholm, we also offer clearing services for resale and repurchase agreements. Clearing revenues for resale and repurchase agreements are based on the value and length of the contract and are recognized when cleared.

European derivative trading and clearing revenues also include clearing revenues for commodities. NASDAQ OMX Commodities offers trading and clearing of international power derivatives, carbon and other commodity products. Our trading and clearing revenues are variable, based on cleared volume, and the value of the contracts cleared. Revenues are recognized when contracts are traded or cleared. We also generate clearing revenues for contracts traded on the OTC derivative market which are also recognized when contracts are cleared. In addition, NASDAQ OMX Commodities members are billed an annual fee which is recognized ratably over the following 12-month period.

In addition, European derivative trading and clearing revenues include revenues from NOS Clearing, which we acquired in July 2012. NOS Clearing is a leading Norway-based clearinghouse primarily for OTC traded derivatives for the freight market and seafood derivatives market.

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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 transaction 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 provide co-location services to market participants whereby firms may lease space for equipment within our data center. These participants are charged monthly fees for cabinet space, connectivity and support. We also earn revenues from annual and monthly exchange membership and registration fees. Revenues for providing access to our markets, co-location services 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.

Access Services revenues also include revenues from FTEN, which we acquired in December 2010. FTEN is a leading provider of RTRM solutions for the financial securities market. As a market leader in RTRM, FTEN provides broker-dealers and their clients the ability to manage risk more effectively in real-time, which leads to better utilization of capital as well as improved regulatory compliance. Revenues for FTEN services are primarily based on subscription agreements with customers and are recognized when an arrangement exists, services are delivered to the customer, the selling price of the services to be provided under the arrangement is fixed or determinable, and collectability is reasonably assured. Most contracts include professional services, implementation fees, monthly subscription fees from customers accessing on-demand services, and customer support. Implementation fees are recognized upon completion of the implementation. Monthly professional services, subscription, and usage fees are recognized in the month the service is provided.

### Market Data

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

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

Revenues from U.S. tape plans include eligible UTP Plan revenues that are shared among UTP Plan participants and are presented on a net basis. See “Market Data Revenue Sharing” below for further discussion of net reporting. 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 revenues collected. After these costs are deducted from the tape revenues, we distribute to the respective UTP Plan participants, including The NASDAQ Stock Market, NASDAQ OMX BX and NASDAQ OMX PSX, their share of tape revenues 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 MKT-listed securities are reported and disseminated in real time, and as such, we share in the tape revenues for information on NYSE—and NYSE MKT-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 own market data as well as select third-party content. 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 are based on the trading information from the exchanges that comprise NASDAQ OMX Nordic and NASDAQ OMX Baltic, as well as NASDAQ OMX Commodities, for the following classes of securities: cash equities, bonds, derivatives and commodities. We provide varying levels of quote and trade information to market participants and to data distributors, who in turn provide subscriptions for this information. Revenues from European market data are subscription-based, are generated primarily based on the number of data subscribers and distributors of our data and are recognized on a monthly basis.

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### *Market Data Revenue Sharing*

The most significant component of Market Data revenues presented on a net basis is the UTP Plan revenue sharing in the U.S. All indicators of gross vs. net reporting under U.S. GAAP 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 and 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 transaction 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. The primary services consist of flexible back-office systems which 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

##### *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 do not require any judgments or assumptions by management as these amounts 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 and projected future listing duration.

##### *European Listing Services*

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

##### *Corporate Solutions*

Global Listing Services revenues also include fees from Corporate Solutions. Revenues primarily include subscription income from Shareholder.com, Directors Desk and Glide Technologies, fees from GlobeNewswire and ZVM, and license, maintenance and professional service fees from Bwise.

Fee income for services is recognized as those services are provided. 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 also are 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. Glide Technologies revenues are primarily based on subscription agreements with customers and are recognized ratably over the contract period, generally one year in length. GlobeNewswire generates fees primarily from wire distribution services, and revenues are recognized as services are provided. ZVM generates revenues from webcasting services and revenues are recognized as services are provided. Bwise revenues are primarily based on license, maintenance and service agreements with customers. License and maintenance agreements are generally one year in length and revenues are recognized over the contract period. Professional service revenues are recognized as the services are performed.

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### Global Index Group

We develop and license NASDAQ OMX branded indexes, associated derivatives and financial products as part of our Global Index Group business. Revenues primarily include license fees from these branded indexes, associated derivatives and financial products 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.

### **Market Technology Revenues**

Market Technology provides technology solutions for trading, clearing, settlement and information dissemination, and also offers facility management integration, surveillance solutions and advisory services. Revenues are derived primarily from license, support and facility management revenues, delivery project revenues, as well as change request, advisory and broker surveillance revenues.

We enter into multiple-element sales arrangements to provide technology solutions and services to our customers. In order to recognize revenues associated with each individual element of a multiple-element sales arrangement separately, we are required to establish the existence of VSOE of fair value for each element. When VSOE for individual elements of an arrangement cannot be established, revenue is generally deferred and recognized over either the final element of the arrangement or the entire term of the arrangement for which the services will be delivered.

License and support revenues are derived from the system solutions developed and sold by NASDAQ OMX and are generally entered into in multiple-element sales arrangements. After we have developed and sold a system solution, the customer licenses the right to use the software and may require post contract support and other services. Facility management revenues are also generally entered into in multiple-element sales arrangements and are derived when NASDAQ OMX assumes responsibility for the continuous operation of a system platform for a customer and receives facility management revenues which can be both fixed and volume-based. Revenues for license, support and facility management services are generally deferred and recognized over either the final element of the arrangement or the entire term of the arrangement for which the services will be delivered. We record the deferral of revenue associated with multiple-element sales arrangements in deferred revenue and non-current deferred revenue and the deferral of costs in other current assets and other non-current assets in the Consolidated Balance Sheets.

Delivery project revenues are derived from the installation phase of the system solutions developed and sold by NASDAQ OMX. The majority of our delivery projects involve individual adaptations to the specific requirements of the customer, such as those relating to functionality and capacity. We may customize our software technology and make significant modifications to the software to meet the needs of our customers, and as such, we account for these arrangements under contract accounting. Under contract accounting, when VSOE for valuing certain elements of an arrangement cannot be established, total revenues, as well as costs incurred, are deferred until the customization and significant modifications are complete and are then recognized over the post contract support period. We record the deferral of this revenue in deferred revenue and non-current deferred revenue and the deferral of costs in other current assets and other non-current assets in the Consolidated Balance Sheets.

Change request revenues include customer specific adaptations and modifications of the system solutions sold by NASDAQ OMX after delivery has occurred. Change request revenues are recognized in revenue when earned. Advisory services are designed to support our customers' strategies and help them with critical decisions in a highly demanding business environment. Advisory services revenues are recognized in revenue when earned. Broker surveillance revenues are derived from surveillance solutions targeting brokers and regulators throughout the world. Broker surveillance revenues are subscription based and are recognized in revenue when earned.

### **Earnings Per Share**

We present both basic and diluted EPS. Basic EPS is computed by dividing net income attributable to NASDAQ OMX, adjusted for accretion on our series A convertible preferred stock in 2010, by the weighted average number of common shares outstanding for the period. Diluted EPS is computed by dividing net income attributable to NASDAQ OMX, adjusted for accretion on our series A convertible preferred stock in 2010, by the weighted-average number of common shares and common share equivalents outstanding during the period and reflects the assumed conversion of all dilutive securities, which consist primarily of convertible notes, employee stock options, restricted stock and PSUs. Common share equivalents are excluded from the computation in periods for which they have an anti-dilutive effect. Stock options for which the exercise price exceeds the average market price over the period are anti-dilutive and, accordingly, are excluded from the calculation. See Note 14, "Earnings Per Share," for further discussion.

### **Treasury Stock**

We account for the purchase of treasury stock under the cost method with the shares of stock repurchased reflected as a reduction to NASDAQ OMX stockholders' equity and included in common stock in treasury, at cost in the Consolidated Balance Sheets. When treasury shares are reissued, they are recorded at the average cost of the treasury shares acquired.

### **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," for further discussion.

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 represent a long-term prospective return.

### **Share-Based Compensation**

Accounting for share-based compensation requires the measurement and recognition of compensation expense for all equity awards based on estimated fair values. We recognize compensation expense for equity awards on a straight-line basis over the requisite service period of the award. See Note 12, "Share-Based Compensation," 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 million in 2012, \$7 million in 2011 and \$9 million for 2010.

### **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.

Certain costs incurred in connection with developing or obtaining internal use software are 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 is included in depreciation and amortization expense in the Consolidated Statements of Income.

Certain costs of computer software to be sold, leased, or otherwise marketed as a separate product or as part of a product or process are capitalized after the product has reached technological feasibility. Technological feasibility is established upon completion of a detailed program design or, in its absence, completion. Thereafter, all software production costs are 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.

### **Leases**

We expense rent from non-cancellable operating leases, net of sublease income, on a straight line basis, based on future minimum lease payments. The net costs are included in occupancy expense in the Consolidated Statements of Income. See Note 17, "Leases," for further discussion.

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### Income Taxes

We use the asset and liability method to determine 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.

In order to recognize and measure our unrecognized tax benefits, management determines 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.

### Recently Adopted Accounting Pronouncements

**ASC Topic 820**—In May 2011, the FASB issued amended guidance relating to ASC Topic 820, which requires the categorization by level of the fair value hierarchy for items not measured at fair value in our Consolidated Balance Sheets, but for which the fair value is disclosed. This accounting guidance was effective for us on January 1, 2012. Since this guidance only required additional disclosure, it did not affect our financial position or results of operations.

**ASC Topic 220**—In June 2011, the FASB issued amended guidance relating to ASC Topic 220, which eliminates the option to present the components of other comprehensive income as part of the statement of equity. Instead, the amended guidance requires entities to report components of comprehensive income in either a single continuous statement of comprehensive income containing two sections, net income and other comprehensive income, or in two separate but consecutive statements. This accounting guidance was effective for us on January 1, 2012 with early adoption permitted. We adopted this guidance as of June 30, 2011 and present two separate but consecutive statements presenting the components of comprehensive income. Since this guidance only required a change in the format of the presentation of comprehensive income, it did not affect our financial position or results of operations.

**ASC Topic 350**—In September 2011, the FASB issued amended guidance relating to ASC Topic 350, which affects all entities that have goodwill reported in the financial statements. The amended guidance permits an entity to first assess qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than the carrying amount as a basis for determining whether it is necessary to perform the two-step quantitative goodwill impairment test described in ASC Topic 350. The more-likely-than-not threshold is defined as having a likelihood of more than 50 percent. If, after assessing the totality of events or circumstances, an entity determines that it is more likely than not that the fair value of a reporting unit exceeds its carrying amount, then performing the two-step impairment test is unnecessary. This accounting guidance was effective for us on January 1, 2012 with early adoption permitted. We adopted this guidance as of September 30, 2011 and used the qualitative assessment option for our annual goodwill impairment test performed for fiscal year 2011. The testing procedures and results are described under “Goodwill” above. Since this guidance only changed the manner in which we assess goodwill for impairment, it did not affect our financial position or results of operations.

In July 2012, the FASB issued amended guidance relating to ASC Topic 350, which permits an entity to first assess qualitative factors to determine whether it is more likely than not that an indefinite-lived intangible asset is impaired as a basis for determining whether it is necessary to perform the quantitative impairment test in accordance with ASC Topic 350. The more-likely-than-not threshold is defined as having a likelihood of more than 50 percent. If, after assessing the totality of events and circumstances, an entity concludes that it is not more likely than not that the indefinite-lived intangible asset is impaired, then no further action is required. This accounting guidance is effective for us on January 1, 2013 with early adoption permitted. We adopted this guidance as of September 30, 2012 and used the qualitative assessment option for our annual indefinite-lived intangible asset impairment test performed for fiscal year 2012. The testing procedures and results are described under “Intangible Assets, net” above. Since this guidance only changes the manner in which we assess indefinite-lived intangible assets for impairment, it did not affect our financial position or results of operations.

### 3. Restructuring Charges

The following table presents a summary of restructuring charges in the Consolidated Statements of Income:

	<u>Year Ended</u> <u>December 31, 2012</u> <u>(in millions)</u>
Severance	\$ 23
Facilities-related	10
Asset impairments	9
Other	2
Total restructuring charges	<u>\$ 44</u>

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During the first quarter of 2012, we performed a comprehensive review of our processes, organizations and systems in a company-wide effort to improve performance, cut costs, and reduce spending. Through this initiative, we generated pre-tax savings of approximately \$60 million in 2012, and we expect an annualized savings of \$60 million beginning in 2013.

During the third quarter of 2012, we offered certain of our employees an incentive to voluntarily retire early. Charges related to the early retirement program totaled \$6 million for 2012 and primarily include severance costs that are included in severance in the above table.

During 2012, we recognized restructuring charges totaling \$44 million, including severance costs of \$23 million related to workforce reductions of 226 positions across our organization, \$10 million of facilities-related charges, discussed below, \$9 million of asset impairments, primarily consisting of fixed assets and capitalized software that have been retired, and \$2 million of other charges. In connection with our restructuring activity, we expect to incur approximately \$1 million of additional restructuring charges in the first quarter of 2013, primarily relating to severance.

### **Restructuring Reserve**

#### **Severance**

At December 31, 2012, the accrued severance balance totaled \$8 million and is included in current liabilities in the Consolidated Balance Sheets. The majority of the remaining accrued severance balance will be paid during the first half of 2013. During 2012, \$15 million of severance was paid.

#### **Facilities-related**

The facilities-related charges of \$10 million for the year ended December 31, 2012 relate to lease rent accruals for facilities we no longer occupy due to facilities consolidation as well as the write-off and the disposal of leasehold improvements and other assets. The lease rent costs included in the facilities-related charges are equal to the future costs associated with the facility, net of estimated proceeds from any future sublease agreements that could be reasonably obtained, based on management's estimate. We will continue to evaluate these estimates in future periods, and thus, there may be additional charges or reversals relating to these facilities. The facilities-related restructuring reserve will be paid over several years until the leases expire. The facilities-related reserve balance, which totaled \$3 million at December 31, 2012, is included in other current liabilities and other non-current liabilities in the Consolidated Balance Sheets.

## **4. Acquisitions and Divestitures**

We completed the following acquisitions and strategic initiatives in 2012, 2011 and 2010. Financial results of each transaction are included in our Consolidated Statements of Income from the dates of each acquisition or strategic initiative.

### **2012 Acquisitions**

	<b>Purchase Consideration</b>	<b>Total Net Assets (Liabilities) Acquired</b>	<b>Purchased Intangible Assets</b>	<b>Goodwill</b>
		(in millions)		
NOS Clearing <sup>(1)</sup>	\$ 40	\$ 43	\$ 1	\$ —
BWise.	77	(11)	35	53

<sup>(1)</sup> In 2012, we recognized a gain of \$4 million on our acquisition of NOS Clearing, which is included in merger and strategic initiatives expense in the Consolidated Statements of Income.

The amounts in the table above for NOS Clearing and BWise represent the preliminary allocation of the purchase price and are subject to revision during the remainder of the measurement period, a period not to exceed 12 months from the acquisition date. Adjustments to the provisional values during the measurement period will be pushed back to the date of acquisition. Comparative information for periods after acquisition but before the period in which the adjustments are identified will be adjusted to reflect the effects of the adjustments as if they were taken into account as of the acquisition date. Changes to amounts recorded as assets and liabilities may result in a corresponding adjustment to goodwill. There were no adjustments to the provisional values for the above acquisitions during 2012.

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### **Acquisition of NOS Clearing**

In July 2012, we acquired NOS Clearing for approximately \$40 million (233 million Norwegian Krone) in cash. NOS Clearing is a leading Norway-based clearinghouse primarily for OTC traded derivatives for the freight market and seafood derivatives market. We acquired net assets of \$43 million, primarily restricted cash related to regulatory capital. The purchased intangible assets totaling \$1 million consisted of customer relationships. NOS Clearing is part of our European derivative trading and clearing business within our Market Services segment.

### **Acquisition of B Wise**

In May 2012, we acquired a 72% ownership interest in B Wise, a Netherlands-based service provider that offers enterprise governance, risk management and compliance software and services to help companies track, measure and manage key organizational risks for approximately \$57 million (47 million Euro) in cash. We have agreed to purchase the remaining 28% ownership interest in B Wise in two separate transactions, resulting in 100% ownership by the first half of 2015 for a total purchase price of approximately \$77 million (62 million Euro). We acquired net liabilities of \$2 million and recorded a current deferred tax liability of \$1 million and a non-current deferred tax liability of \$8 million related to purchased intangible assets, resulting in total net liabilities acquired of \$11 million. The total deferred tax liabilities of \$9 million represent the tax effect of the difference between the estimated assigned fair value of the acquired intangible assets (\$35 million) and the tax basis (\$0) of such assets. The estimated amount of \$9 million was determined by multiplying the difference of \$35 million by B Wise's effective tax rate of 25%. The purchased intangible assets of \$35 million consisted of \$23 million in customer relationships, \$7 million in technology and \$5 million for the B Wise trade name. B Wise is part of our Corporate Solutions business within our Issuer Services segment.

### **Acquisition of the Index Business of Mergent, Inc., including Indxis**

In December 2012, we acquired the index business of Mergent, Inc., including Indxis, for approximately \$15 million in cash. The \$5 million in intangible assets, \$9 million in goodwill and \$1 million in net assets resulting from this acquisition are included in our Global Index Group business within our Issuer Services segment.

### **2012 Proposed Acquisitions**

In December 2012, we entered into an agreement with Thomson Reuters to acquire its Investor Relations, Public Relations and Multimedia Solutions businesses for \$390 million. Upon closing, these complementary businesses will be integrated into our Corporate Solutions business. The proposed transaction is subject to customary regulatory approvals and is expected to close in the first half of 2013.

In December 2012, we also announced an agreement to acquire a 25% stake in TOM, a Dutch cash equities and equity derivatives trading venue. The terms of the transaction also provide us an option to acquire an additional 25.1% of the remaining shares at a future date. This transaction delivers on our strategy to expand our derivatives presence across the European market and will be part of our European Transaction Services business. The acquisition is subject to regulatory approval.

### **2011 Acquisitions**

#### **Acquisition of Glide Technologies**

	<u>Purchase Consideration</u>	<u>Total Net Liabilities Acquired</u>	<u>Purchased Intangible Assets</u>	<u>Goodwill</u>
		(in millions)		
Glide Technologies	<u>\$ 22</u>	<u>\$ (2)</u>	<u>\$ 4</u>	<u>\$ 20</u>

In October 2011, we acquired Glide Technologies, a London-based service provider specializing in corporate communications and reputation management solutions, for \$22 million in cash. We acquired net liabilities, at fair value, totaling \$1 million and recorded a non-current deferred tax liability of \$1 million related to purchased intangible assets, resulting in total net liabilities acquired of \$2 million. The purchased intangible assets totaling \$4 million consisted of technology and customer relationships. Glide Technologies is part of our Corporate Solutions business within our Issuer Services segment.

We finalized the allocation of the purchase price for Glide Technologies in the fourth quarter of 2012. There were no adjustments to the provisional values for this acquisition during the year ended 2012.

#### **Acquisition of the Business of RapiData**

In December 2011, we acquired the business of RapiData LLC, a leading provider of machine-readable economic news to trading firms and financial institutions, for an immaterial amount. Through RapiData, we deliver U.S. government and other economic news directly from the source to customers interested in receiving information in an electronic feed. This service is part of our Market Data business within our Market Services segment.

**2010 Acquisitions**

	Purchase Consideration	Total Net (Liabilities) Assets Acquired	Purchased Intangible Assets	Goodwill
	(in millions)			
FTEN <sup>(1)</sup>	\$ 110	\$ (1)	\$ 46	\$ 65
SMARTS <sup>(2)</sup>	77	(5)	28	54
Nord Pool ASA <sup>(3)</sup>	17	7	2	8
Total for 2010	<u>\$ 204</u>	<u>\$ 1</u>	<u>\$ 76</u>	<u>\$ 127</u>

<sup>(1)</sup> In December 2010, we acquired FTEN, a leading provider of RTRM solutions for the financial securities market, for \$110 million in cash. The FTEN purchase consideration included \$11 million held in escrow of which \$2 million was paid in 2012 and \$9 million is still held in escrow, in accordance with the purchase agreement. We acquired net assets, at fair value, totaling \$3 million and recorded a current deferred tax liability of \$2 million and a non-current deferred tax liability of \$16 million related to purchased intangible assets, and we also recorded a non-current deferred tax asset of \$14 million related to net operating loss carry forwards, resulting in total net liabilities acquired of \$1 million. The total deferred tax liabilities of \$18 million represent the tax effect of the difference between the estimated assigned fair value of the acquired intangible assets (\$46 million) and the tax basis (\$0) of such assets. The estimated amount of \$18 million was determined by multiplying the difference of \$46 million by FTEN's effective tax rate of 39.55%. The purchased intangible assets of \$46 million consisted of \$23 million in customer relationships, \$12 million in technology, \$9 million for the FTEN trade name and \$2 million related to non-compete agreements.

<sup>(2)</sup> In August 2010, we acquired SMARTS, a leading technology provider of surveillance solutions to exchanges, regulators and brokers, to diversify our Market Technology business and enter the broker surveillance and compliance market. We completed our acquisition of SMARTS for \$77 million in cash, which included a \$75 million initial purchase price as well as a \$2 million working capital adjustment. SMARTS purchase consideration also included \$11 million held in escrow of which \$9 million was paid in 2012 and \$2 million is expected to be paid in 2013, in accordance with the purchase agreement. We acquired net assets, at fair value, totaling \$3 million and recorded a current deferred tax liability of \$1 million and a non-current deferred tax liability of \$7 million related to purchased intangible assets, resulting in total net liabilities acquired of \$5 million. The total deferred tax liabilities of \$8 million represent the tax effect of the difference between the estimated assigned fair value of the acquired intangible assets (\$28 million) and the tax basis (\$0) of such assets. The estimated amount of \$8 million was determined by multiplying the difference of \$28 million by SMARTS' effective tax rate of 30%. The purchased intangible assets of \$28 million consisted of \$11 million in technology and \$17 million in customer relationships.

<sup>(3)</sup> In May 2010, we acquired Nord Pool, a derivatives trading market, for \$17 million (101 million Norwegian Krone) in cash. We acquired net assets, at fair value, totaling \$8 million and recorded a non-current deferred tax liability of \$1 million related to purchased intangible assets, resulting in total net assets acquired of \$7 million. Through this acquisition, we now hold a Norwegian exchange license and operate the Nordic power market and the European carbon market on one trading platform.

We finalized the allocation of the purchase price for FTEN in the fourth quarter of 2011, SMARTS in the third quarter of 2011, and Nord Pool in the second quarter of 2011. There were no adjustments to the provisional values for these acquisitions during the year ended 2011.

**Acquisition of ZVM**

In December 2010, we acquired ZVM, a provider of webcasting and investor relation communication services for companies in the Nordic region, for an immaterial amount.

**Acquisition of Assets of North American Energy Credit and Clearing Corp.**

In March 2010, we purchased the assets of North American Energy Credit and Clearing Corp. for an immaterial amount. With this purchase, NASDAQ OMX expanded its presence in the OTC energy commodity markets. As previously discussed, the acquisition of these assets was effected through NOCC. In March 2010, we also provided cash of \$25 million to NOCC to improve its liquidity position. As of December 31, 2012 and 2011, this amount is classified as non-current restricted cash in the Consolidated Balance Sheets.

**Pro Forma Results and Acquisition-related Costs**

The consolidated financial statements for the years ended December 31, 2012, 2011 and 2010 include the financial results of the above 2012, 2011 and 2010 acquisitions from the date of each acquisition. Pro forma financial results for the acquisitions completed in 2012, 2011 and 2010 have not been presented since these acquisitions both individually and in the aggregate were not material to our financial results.

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Acquisition-related costs for the transactions described above were expensed as incurred and are included in merger and strategic initiatives expense in the Consolidated Statements of Income.

### 2012 Divestiture

In August 2012, we sold our majority-owned subsidiary IDCG to LCH and recorded a \$14 million loss which is included in loss on divestiture of businesses in the Consolidated Statements of Income for the year ended December 31, 2012. IDCG was part of our U.S. derivative trading and clearing business within our Market Services segment.

### 2010 Divestitures

#### *Investment in Agora-X, LLC*

In the second quarter of 2010, we made a strategic decision to close our Agora-X business and recorded a loss of \$5 million. This charge was included in loss on divestiture of businesses in the Consolidated Statements of Income for the year ended December 31, 2010.

#### *NEURO*

In the second quarter of 2010, we made a strategic decision to close the business of NEURO. We retained our London office and data hub, where we support trading and market data clients, run the U.K. power exchange N2EX and manage our overseas listings operation. As a result of this decision, we recorded a loss of \$6 million in the second quarter of 2010. This charge was included in loss on divestiture of businesses in the Consolidated Statements of Income for the year ended December 31, 2010.

## 5. Goodwill and Purchased Intangible Assets

### Goodwill

The following table presents the changes in goodwill by business segment during the year ended December 31, 2012:

	Market Services	Issuer Services	Market Technology	Total
	(in millions)			
Balance at December 31, 2011	\$4,602	\$ 306	\$ 153	\$5,061
Goodwill acquired	—	62	—	62
Foreign currency translation adjustment	188	16	8	212
Balance at December 31, 2012	<u>\$4,790</u>	<u>\$ 384</u>	<u>\$ 161</u>	<u>\$5,335</u>

As of December 31, 2012, the amount of goodwill that is expected to be deductible for tax purposes in future periods is \$82 million.

The goodwill acquired for Issuer Services shown above relates to our acquisitions of BWISE in May 2012 and the index business of Mergent, Inc., including Indxis, in December 2012. See "2012 Acquisitions," of Note 4, "Acquisitions and Divestitures," for further discussion.

### Purchased Intangible Assets

The following table presents details of our total purchased intangible assets, both finite- and indefinite-lived:

	December 31, 2012				December 31, 2011			
	Gross Amount	Accumulated Amortization	Net Amount	Weighted- Average Useful Life (in Years)	Gross Amount	Accumulated Amortization	Net Amount	Weighted- Average Useful Life (in Years)
	(in millions)				(in millions)			
<b><i>Finite-Lived Intangible Assets</i></b>								
Technology	\$ 26	\$ (10)	\$ 16	5	\$ 42	\$ (10)	\$ 32	8
Customer relationships	871	(238)	633	21	854	(196)	658	21
Other	6	(2)	4	8	6	(2)	4	8
Foreign currency translation adjustment	6	(1)	5		(25)	4	(21)	
Total finite-lived intangible assets	<u>\$ 909</u>	<u>\$ (251)</u>	<u>\$ 658</u>		<u>\$ 877</u>	<u>\$ (204)</u>	<u>\$ 673</u>	

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	December 31, 2012			Weighted-Average Useful Life (in Years)	December 31, 2011		
	Gross Amount	Accumulated Amortization	Net Amount		Gross Amount	Accumulated Amortization	Net Amount
	(in millions)				(in millions)		
<b>Indefinite-Lived Intangible Assets</b>							
Exchange and clearing registrations	\$ 790	\$ —	\$ 790		\$ 790	\$ —	\$ 790
Trade names	185	—	185		181	—	181
Licenses	51	—	51		78	—	78
Foreign currency translation adjustment	(34)	—	(34)		(74)	—	(74)
Total indefinite-lived intangible assets	\$ 992	\$ —	\$ 992		\$ 975	\$ —	\$ 975
Total intangible assets	\$1,901	\$ (251)	\$1,650		\$1,852	\$ (204)	\$1,648

Amortization expense for purchased finite-lived intangible assets was \$52 million for the year ended December 31, 2012, \$55 million for the year ended December 31, 2011 and \$57 million for the year ended December 31, 2010. The decrease in amortization expense in 2012 compared to 2011 was primarily due to lower amortization expense on certain intangible assets that were impaired in the second quarter of 2012 as discussed below, partially offset by amortization expense on identifiable finite-lived intangible assets purchased in connection with the acquisition of B Wise in May 2012. The decrease in amortization expense in 2011 compared to 2010 was primarily due to a developed technology intangible asset purchased in connection with our acquisition of OMX AB in 2008 being fully amortized in February 2011, partially offset by intangible asset amortization expense on identifiable finite-lived intangible assets purchased in connection with the acquisitions of SMARTS and FTEN as well as certain subsidiaries of Nord Pool from the date of each acquisition.

The estimated future amortization expense (excluding the impact of foreign currency translation adjustments of \$5 million as of December 31, 2012) of purchased finite-lived intangible assets as of December 31, 2012 is as follows:

	(in millions)
2013	\$ 51
2014	49
2015	47
2016	46
2017	44
2018 and thereafter	416
Total	\$ 653

**Intangible Asset Impairment Charges**

In 2012, we recorded non-cash intangible asset impairment charges totaling \$28 million related to certain acquired intangible assets associated with technology (\$19 million), customer relationships (\$6 million), and a certain trade name (\$3 million). These impairments resulted primarily from the replacement of certain acquired technology, as well as changes in the forecasted revenues associated with the acquired customer list of a certain business. The fair value of technology and trademarks was determined using the income approach, specifically the relief from royalty method. The fair value of customer relationships was determined using the income approach, specifically the multi-period excess earnings method. These charges are recorded in asset impairment charges in the Consolidated Statements of Income. Of the total impairment charge recorded in 2012, \$17 million related to our Market Services segment and \$11 million related to our Market Technology segment. However, for segment reporting purposes, these charges were allocated to corporate items based on the decision that these charges should not be used to evaluate the segment's operating performance.

## 6. Investments

### Trading Securities

Trading securities, which are included in financial investments, at fair value in the Consolidated Balance Sheets, were \$201 million as of December 31, 2012 and \$261 million as of December 31, 2011. These securities are primarily comprised of Swedish government debt securities, of which \$134 million as of December 31, 2012 and \$212 million as of December 31, 2011, are restricted assets to meet regulatory capital requirements primarily for our clearing operations at NASDAQ OMX Nordic Clearing.

### Available-for-Sale Investment Security

#### *Investment in DFM*

Our available-for-sale investment security, which is included in financial investments, at fair value in the Consolidated Balance Sheets, represents our 1% investment in DFM. The adjusted cost basis of this security was \$18 million as of December 31, 2012 and 2011. The fair value of this investment was \$22 million as of December 31, 2012 and \$18 million as of December 31, 2011. The gross change between the adjusted cost basis and fair value as of December 31, 2012 of \$4 million is reflected as an unrealized holding gain in accumulated other comprehensive loss in the Consolidated Balance Sheets.

In the fourth quarter of 2011, we recorded a pre-tax, other-than-temporary impairment loss on our investment security in DFM of \$18 million. This charge is included in asset impairment charges in the Consolidated Statements of Income.

### Equity Method Investments

The carrying amount of our equity method investments was \$13 million as of December 31, 2012 and \$27 million as of December 31, 2011 and consisted primarily of our equity interest in EMCF. Equity method investments are included in other non-current assets in the Consolidated Balance Sheets.

Income (loss) recognized from our equity interest in the earnings and losses of these equity method investments was a net loss of \$1 million for the year ended December 31, 2012 and a net gain of \$2 million for the years ended December 31, 2011 and December 31, 2010.

In the first quarter of 2012, we recorded a non-cash, other-than-temporary impairment charge on our equity investment in EMCF of \$12 million due to a decline in operations at EMCF during the three months ended March 31, 2012. This loss is included in asset impairment charges in the Consolidated Statements of Income for the year ended December 31, 2012. No other impairments of equity method investments were recorded in 2012, 2011 or 2010.

Income (loss) recognized from our equity method investments is included in income (loss) from unconsolidated investees, net in the Consolidated Statements of Income.

### Cost Method Investments

In August 2012, we sold IDCG to LCH for a 3.7% pro forma ownership interest in LCH. We account for this investment as a cost method investment as we do not control and do not exercise significant influence over LCH and there is no readily determinable fair value of LCH's shares since they are not publicly traded. The carrying amount of this investment was \$37 million as of December 31, 2012 and is included in other non-current assets in the Consolidated Balance Sheets. See "2012 Divestiture," of Note 4, "Acquisitions and Divestitures," for further discussion.

## 7. Property and Equipment, net

The following table presents our major categories of property and equipment, net:

	December 31,	
	2012	2011
	(in millions)	
Data processing equipment and software	\$ 409	\$ 392
Furniture, equipment and leasehold improvements	203	193
Total property and equipment	612	585
Less: accumulated depreciation and amortization	(401)	(392)
Total property and equipment, net	<u>\$ 211</u>	<u>\$ 193</u>

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Depreciation and amortization expense for property and equipment was \$52 million for the year ended December 31, 2012, \$54 million for the year ended December 31, 2011 and \$46 million for the year ended December 31, 2010. The decrease in depreciation and amortization expense in 2012 compared to 2011 is primarily due to our restructuring actions taken in 2012 which included the write-off and disposal of leasehold improvements and asset impairments primarily consisting of fixed assets and capitalized software which have been retired, partially offset by depreciation and amortization on assets placed into service in 2012. See Note 3, "Restructuring Charges," for further discussion of our restructuring actions. The increase in depreciation and amortization expense in 2011 compared to 2010 is primarily due to depreciation on assets placed into service in 2011 related to data processing equipment and software, partially offset by assets being fully depreciated in 2011. These amounts are included in depreciation and amortization expense in the Consolidated Statements of Income.

As of December 31, 2012 and 2011, we do not own any real estate properties.

### 8. Deferred Revenue

Deferred revenue represents cash payments received that are yet to be recognized as revenue. At December 31, 2012, we estimate that our deferred revenue, which is primarily related to Global Listing Services and Market Technology revenues, will be recognized in the following years:

	Initial Listing Revenues	Listing of Additional Shares Revenues	Annual Renewal and Other Revenues (in millions)	Market Technology Revenues <sup>(1)</sup>	Total
Fiscal year ended:					
2013	\$ 12	\$ 36	\$ 31	\$ 60	\$139
2014	8	24	1	33	66
2015	7	13	—	26	46
2016	5	5	—	19	29
2017	3	—	—	9	12
2018 and thereafter	1	—	—	2	3
	<u>\$ 36</u>	<u>\$ 78</u>	<u>\$ 32</u>	<u>\$ 149</u>	<u>\$295</u>

<sup>(1)</sup> The timing of recognition of our deferred Market Technology revenues is dependent upon the completion of customization and any significant modifications made pursuant to existing contracts. As such, as it relates to these revenues, the timing represents our best estimate.

The changes in our deferred revenue during the years ended December 31, 2012 and 2011 are reflected in the following table.

	Initial Listing Revenues	Listing of Additional Shares Revenues	Annual Renewal and Other Revenues (in millions)	Market Technology Revenues <sup>(2)</sup>	Total
Balance at December 31, 2010	\$ 42	\$ 83	\$ 21	\$ 146	\$ 292
Additions <sup>(1)</sup>	13	43	219	49	324
Amortization <sup>(1)</sup>	(16)	(40)	(214)	(66)	(336)
Translation adjustment	—	—	(1)	(1)	(2)
Balance at December 31, 2011	<u>\$ 39</u>	<u>\$ 86</u>	<u>\$ 25</u>	<u>\$ 128</u>	<u>\$ 278</u>
Additions <sup>(1)</sup>	11	31	213	98	353
Amortization <sup>(1)</sup>	(14)	(39)	(208)	(85)	(346)
Translation adjustment	—	—	2	8	10
Balance at December 31, 2012	<u>\$ 36</u>	<u>\$ 78</u>	<u>\$ 32</u>	<u>\$ 149</u>	<u>\$ 295</u>

<sup>(1)</sup> The additions and amortization for initial listing revenues, listing of additional shares revenues and annual renewal and other revenues primarily reflect Issuer Services revenues from U.S. listing revenues.

<sup>(2)</sup> Market Technology deferred revenues include revenues from delivered client contracts in the support phase charged during the 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 significant modifications are completed and delivered. Once delivered, deferred revenue and the related deferred costs are recognized over the post contract support period. We have included the deferral of costs in other current assets and other non-current assets in the Consolidated Balance Sheets. The amortization of Market Technology deferred revenue primarily includes revenues earned from client contracts recognized during the period.

## 9. Debt Obligations

The following table presents the changes in the carrying amount of our debt obligations during the year ended December 31, 2012:

	December 31, 2011	Additions	Payments, Conversions, Accretion and Other	December 31, 2012
	(in millions)			
3.75% convertible notes due October 22, 2012 (net of discount) <sup>(1)</sup>	\$ —	\$ —	\$ —	\$ —
2.50% convertible senior notes due August 15, 2013 <sup>(2)</sup>	88	—	3	91
4.00% senior unsecured notes due January 15, 2015 (net of discount) <sup>(3)</sup>	399	—	—	399
5.55% senior unsecured notes due January 15, 2020 (net of discount) <sup>(3)</sup>	598	—	—	598
5.25% senior unsecured notes due January 16, 2018 (net of discount) <sup>(3)</sup>	367	—	1	368
<b>\$1.2 billion senior unsecured five-year credit facility:</b>				
\$450 million senior unsecured term loan facility credit agreement due September 19, 2016 (average interest rate of 1.61% for the period January 1, 2012 through December 31, 2012) <sup>(4)</sup>				
	439	—	(45)	394
\$750 million revolving credit commitment due September 19, 2016 (average interest rate of 1.41% for the period January 1, 2012 through December 31, 2012) <sup>(4)</sup>				
	226	—	(100)	126
<b>Total debt obligations</b>	<b>2,117</b>	<b>—</b>	<b>(141)</b>	<b>1,976</b>
Less current portion	(45)	—	—	(45)
<b>Total long-term debt obligations</b>	<b>\$ 2,072</b>	<b>\$ —</b>	<b>\$ (141)</b>	<b>\$ 1,931</b>

<sup>(1)</sup> As of December 31, 2011, approximately \$0.5 million aggregate principal amount of the 3.75% convertible notes remained outstanding. In June 2012, all of the remaining aggregate principal amount of the 3.75% convertible notes outstanding was converted into 34,482 shares of common stock in accordance with the terms of the notes.

<sup>(2)</sup> See “2.50% Convertible Senior Notes” below for further discussion.

<sup>(3)</sup> See “Senior Unsecured Notes” below for further discussion.

<sup>(4)</sup> See “2011 Credit Facility” below for further discussion.

### 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 million aggregate principal amount of 2.50% convertible senior notes due August 15, 2013. The interest rate on the notes is 2.50% per annum payable semi-annually in arrears on February 15 and August 15.

The 2013 Convertible 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 as of December 31, 2012, subject to adjustment due to certain events including cash dividends, is 18.4504 shares of common stock per \$1,000 principal amount of notes, which is equivalent to a conversion price of approximately \$54.20 per share of common stock. As of December 31, 2012, the remaining aggregate principal amount outstanding of the 2013 Convertible Notes was convertible into 1,715,517 shares of our common stock. The conversion rate as of December 31, 2011, subject to adjustment in certain events, was 18.1386 shares of common stock per \$1,000 principal amount of notes, which was equivalent to a conversion price of approximately \$55.13 per share of common stock. As of December 31, 2011, the remaining aggregate principal amount outstanding of the 2013 Convertible Notes was convertible into 1,686,577 shares of our common stock. 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.

### Tender Offer and Early Extinguishment of Debt

On September 20, 2011, we commenced a cash tender offer for any and all of the \$428 million aggregate principal amount outstanding of the 2013 Convertible Notes, or the Offer. We offered to purchase the 2013 Convertible Notes at a price of \$1,025 for each \$1,000 of principal amount tendered, plus accrued and unpaid interest up to, but not including, October 19, 2011, the date of purchase. Holders representing approximately 78.3% of the aggregate principal amount of the outstanding 2013 Convertible Notes

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participated in the Offer resulting in the tender of \$335 million of the aggregate outstanding principal amount of the 2013 Convertible Notes for a total purchase price of \$346 million, which included the premium discussed above, accrued interest, and other costs. We funded the Offer with cash on hand and availability under the revolver in our 2011 Credit Facility. See “2011 Credit Facility” below for further discussion of our credit facility. As a result of the tender, in October 2011, we recorded a pre-tax charge of \$25 million consisting of the write-off of the associated unamortized debt discount of \$22 million, debt issuance costs of \$2 million, as well as other costs of \$1 million. This charge was recorded in general, administrative and other expense in the Consolidated Statements of Income for 2011. The 2013 Convertible Notes purchased pursuant to the Offer were cancelled and are no longer outstanding.

The tender offer and early extinguishment of debt discussed above resulted in a remaining aggregate principal amount outstanding of the 2013 Convertible Notes of \$93 million as of December 31, 2012 and 2011.

### **Liability and Equity Components**

Since the settlement structure of the 2013 Convertible Notes permits settlement in cash upon conversion, we are required to separately account for the liability and equity components of the convertible debt in a manner that reflects our nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. This entails bifurcation of a component of the debt, classification of that component in equity and then accretion of the resulting discount on the debt being reflected in the income statement as part of interest expense.

The changes in the liability and equity components of the 2013 Convertible Notes during the years ended December 31, 2012 and 2011 are as follows:

	Liability Component (in millions)			Equity Component (in millions)		
	Principal Balance	Unamortized Debt Discount	Net Carrying Amount	Gross Equity Component	Deferred Taxes	Net Equity Component
December 31, 2010	\$ 428	\$ 40	\$ 388	\$ 80	\$ 32	\$ 48
Accretion of debt discount	—	(13)	13	—	—	—
Tender offer	(335)	(22)	(313)	(9)	—	(9)
December 31, 2011	\$ 93	\$ 5	\$ 88	\$ 71	\$ 32	\$ 39
Accretion of debt discount	—	(3)	3	—	—	—
December 31, 2012	\$ 93	\$ 2	\$ 91	\$ 71	\$ 32	\$ 39

The unamortized debt discount on the 2013 Convertible Notes was \$2 million as of December 31, 2012 and \$5 million as of December 31, 2011 and is included in debt obligations in the Consolidated Balance Sheets. The remaining amount of \$2 million will be accreted as part of interest expense through August 15, 2013, the maturity date of the convertible debt. The decrease in the unamortized debt discount in 2011 compared to 2010 is due to the write-off of \$22 million associated with the Offer as discussed above and the accretion of the debt discount during 2011 of \$13 million. The effective annual interest rate on the 2013 Convertible Notes was 6.53% for the years ended December 31, 2012, 2011 and 2010, which includes the accretion of the debt discount in addition to the annual contractual interest rate of 2.50%.

The equity component of the convertible debt is included in additional paid-in capital in the Consolidated Balance Sheets and was \$39 million at December 31, 2012 and 2011.

Interest expense recognized on the 2013 Convertible Notes in the Consolidated Statements of Income for the years ended December 31, 2012, 2011 and 2010 is as follows:

	Year Ended December 31,		
	2012	2011	2010
	(in millions)		
<b>Components of interest expense recognized on the 2013 Convertible Notes</b>			
Accretion of debt discount	\$ 3	\$13	\$14
Contractual interest	3	9	10
Total interest expense recognized on the 2013 Convertible Notes	\$ 6	\$22	\$24

### **Debt Issuance Costs**

In 2008, in conjunction with the issuance of the 2013 Convertible Notes, we incurred debt issuance costs of \$10 million. These costs, which were capitalized and included in other non-current assets in the Consolidated Balance Sheets, are being amortized over the life of the debt obligation. In connection with the Offer in October 2011, we recorded a pre-tax charge for the write-off of the

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associated debt issuance costs of \$2 million for the year ended December 31, 2011. Amortization expense, which is recorded as additional interest expense for these costs, was immaterial for the year ended December 31, 2012, \$1 million for the year ended December 31, 2011 and \$2 million for the year ended December 31, 2010.

### **Senior Unsecured Notes**

#### ***4.00% and 5.55% Senior Unsecured Notes***

In January 2010, NASDAQ OMX issued \$1 billion of senior unsecured notes, or the Notes. The Notes were issued at a discount in two separate series consisting of \$400 million aggregate principal amount of 4.00% senior notes due 2015, or the 2015 Notes, and \$600 million aggregate principal amount of 5.55% senior notes due 2020, or the 2020 Notes. As a result of the discount, the proceeds received from the issuance were less than the aggregate principal amounts. As of December 31, 2012, the balance of \$399 million for the 2015 Notes and the balance of \$598 million for the 2020 Notes reflect the aggregate principal amounts, less the unamortized debt discount. The unamortized debt discount will be accreted through interest expense over the life of the Notes.

The 2015 Notes pay interest semiannually at a rate of 4.00% per annum until January 15, 2015, and the 2020 Notes pay interest semiannually at a rate of 5.55% per annum until January 15, 2020. The Notes are general unsecured obligations of ours and rank equally with all of our existing and future unsubordinated obligations. The Notes are not guaranteed by any of our subsidiaries. The Notes were issued under indentures that, among other things, limit our ability to consolidate, merge or sell all or substantially all of our assets, create liens, and enter into sale and leaseback transactions.

#### ***Debt Issuance Costs***

We incurred debt issuance and other costs of \$8 million in connection with the issuance of the Notes. These costs, which are capitalized and included in other non-current assets in the Consolidated Balance Sheets, are being amortized over the life of the debt obligations. Amortization expense, which is recorded as additional interest expense for these costs, was \$1 million for each of the three years ended December 31, 2012, 2011 and 2010.

#### ***5.25% Senior Unsecured Notes***

In December 2010, NASDAQ OMX issued \$370 million of 5.25% senior unsecured notes due January 16, 2018, or the 2018 Notes. We applied the net proceeds from the 2018 Notes of \$367 million and cash on hand of \$3 million to repay all amounts outstanding under our \$400 million senior unsecured bridge facility, or the Bridge Facility, discussed below, as well as related fees.

The 2018 Notes were issued at a discount. As a result of the discount, the proceeds received from the issuance were less than the aggregate principal amount. As of December 31, 2012, the balance of \$368 million reflects the aggregate principal amount, less the unamortized debt discount. The unamortized debt discount will be accreted through interest expense over the life of the 2018 Notes.

The 2018 Notes pay interest semiannually at a rate of 5.25% per annum until January 16, 2018 and such rate may vary with NASDAQ OMX's debt rating up to a rate not to exceed 7.25%. The 2018 Notes are general unsecured obligations of ours and rank equally with all of our existing and future unsubordinated obligations. They are not guaranteed by any of our subsidiaries. The 2018 Notes were issued under indentures that among other things, limit our ability to consolidate, merge or sell all or substantially all of our assets, create liens, and enter into sale and leaseback transactions. In addition, upon a change of control triggering event (as defined in the indenture), the terms require us to repurchase all or part of each holder's notes for cash equal to 101% of the aggregate principal amount purchased plus accrued and unpaid interest, if any.

#### ***Debt Issuance Costs***

We incurred debt issuance costs of \$3 million in connection with the issuance of the 2018 Notes. These costs, which are capitalized and included in other non-current assets in the Consolidated Balance Sheets, are being amortized over the life of the debt obligation. Amortization expense, which is recorded as additional interest expense for these costs, was immaterial for each of the three years ended December 31, 2012, 2011 and 2010.

### **Credit Facilities**

#### ***2011 Credit Facility***

In September 2011, NASDAQ OMX entered into a \$1.2 billion senior unsecured five-year credit facility which matures on September 19, 2016. The 2011 Credit Facility consists of our 2016 Term loan of \$450 million and a \$750 million revolving credit commitment (including a swingline facility and letter of credit facility). NASDAQ OMX applied the \$450 million in proceeds from the 2016 Term Loan to repay in full the remaining \$450 million principal amount outstanding on our 2010 Credit Facility, as defined below. As a result, NASDAQ OMX terminated the associated credit agreement. See "2010 Credit Facility" below for further discussion.

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In October 2011, we borrowed \$250 million under the revolving credit commitment portion of the 2011 Credit Facility and utilized cash on hand of \$96 million in order to fund the purchase of the 2013 Convertible Notes tendered in the Offer. In November 2011, we made an optional prepayment of \$24 million and in March 2012 we made an optional prepayment of \$100 million on the revolving credit commitment portion of the 2011 Credit Facility. As a result, availability under the revolving credit commitment was \$624 million as of December 31, 2012.

The loans under the 2011 Credit Facility have a variable interest rate based on either the London Interbank Offered Rate, or LIBOR, or the Federal Funds Rate, plus an applicable margin that varies with NASDAQ OMX's debt rating.

Under the 2011 Credit Facility, we are required to pay quarterly principal payments equal to 2.50% of the aggregate original principal amounts borrowed under the 2016 Term Loan. In 2012, we made required quarterly principal payments totaling \$45 million on our 2016 Term Loan.

The 2011 Credit Facility contains financial and operating covenants. Financial covenants include an interest expense coverage ratio and a maximum leverage ratio. Operating covenants include limitations on NASDAQ OMX's ability to incur additional indebtedness, grant liens on assets, enter into affiliate transactions and pay dividends. Our credit facilities allow us to pay cash dividends on our common stock as long as certain leverage ratios are maintained. The 2011 Credit Facility also contains 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 2011 Credit Facility at any time in whole or in part, without penalty. We are also required to repay loans outstanding under the 2011 Credit Facility 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 specified exceptions and thresholds.

### ***Debt Issuance Costs***

We incurred debt issuance and other costs of \$5 million in connection with the entry into the 2011 Credit Facility. These costs, which are capitalized and included in other non-current assets in the Consolidated Balance Sheets, are being amortized over the life of the 2011 Credit Facility. Amortization expense, which is recorded as additional interest expense for these costs, was \$1 million for the year ended December 31, 2012 and immaterial for the year ended December 31, 2011.

### ***2010 Credit Facility***

In January 2010, NASDAQ OMX entered into a \$950 million senior unsecured three-year credit facility, or the 2010 Credit Facility. The 2010 Credit Facility provided for a \$250 million revolving credit commitment (including a swingline facility and letter of credit facility), a \$350 million funded Tranche A term loan and a \$350 million funded Tranche X term loan, or the Term Loans. The loans under the 2010 Credit Facility had a variable interest rate based on either the LIBOR or the Federal Funds Rate, plus an applicable margin that varied with NASDAQ OMX's debt rating.

NASDAQ OMX applied the net proceeds from the Notes, the \$700 million funded Term Loans and cash on hand to repay all amounts outstanding under our senior secured credit facilities in place as of December 31, 2009 and related fees. As a result, NASDAQ OMX terminated the associated credit agreement.

Under our 2010 Credit Facility, we were required to pay quarterly principal payments of \$35 million on our Term Loans. In the first half of 2011, we made required quarterly principal payments of \$70 million, as well as an optional principal payment of \$50 million on our Term Loans. In September 2011, we applied the proceeds of \$450 million from the 2016 Term Loan discussed above, to repay the remaining \$450 million principal amount outstanding on our Term Loans. As a result, NASDAQ OMX terminated the associated credit agreement. See "2011 Credit Facility" above for further discussion of the 2011 Credit Facility.

### ***Debt Issuance and Other Costs***

We incurred debt issuance and other costs of \$13 million in connection with the entry into the 2010 Credit Facility. These costs, which were capitalized and included in other non-current assets in the Consolidated Balance Sheets, were being amortized over the life of the debt obligation. In September 2011, as a result of repayment of our 2010 Credit Facility, we recorded a pre-tax charge of \$6 million, which primarily included the write-off of the remaining unamortized balance of debt issuance costs. This charge is included in general, administrative and other expense in the Consolidated Statements of Income for the year ended December 31, 2011. Amortization expense, which was recorded as additional interest expense for these costs, was \$3 million for the year ended December 31, 2011 and \$4 million for the year ended December 31, 2010.

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### Bridge Facility

In December 2010, NASDAQ OMX entered into the Bridge Facility, and borrowed \$370 million to partially finance the purchase of our stock from Borse Dubai. See “Share Repurchase Programs and Share Repurchase from Borse Dubai,” of Note 13, “NASDAQ OMX Stockholders’ Equity,” for further discussion of our share repurchase from Borse Dubai. We applied the net proceeds from the issuance of our 2018 Notes, discussed above, and cash on hand to repay all amounts outstanding under the Bridge Facility and terminated the Bridge Facility as of December 31, 2010. The effective interest rate on borrowings under the Bridge Facility was 1.76%.

### Other Credit Facilities

In addition to the revolving credit commitment under our 2011 Credit Facility discussed above, we have credit facilities related to our clearinghouses in order to meet liquidity and regulatory requirements. At December 31, 2012, these credit facilities, which are available in multiple currencies, primarily Swedish Krona, totaled \$310 million (\$217 million in available liquidity and \$93 million to satisfy regulatory requirements), none of which was utilized. At December 31, 2011, these facilities totaled \$447 million (\$206 million in available liquidity and \$241 million to satisfy regulatory requirements), none of which was utilized.

### Debt Covenants

At December 31, 2012, we were in compliance with the covenants of all of our debt obligations.

## 10. Income Taxes

The income tax provision consists of the following amounts:

	Year Ended December 31,		
	2012	2011	2010
	(in millions)		
Current income taxes:			
Federal	\$ 130	\$ 129	\$ 116
State	37	34	36
Foreign	16	23	20
Total current income taxes	<u>183</u>	<u>186</u>	<u>172</u>
Deferred income taxes:			
Federal	(10)	(18)	(25)
State	6	—	(26)
Foreign	20	22	16
Total deferred income taxes	<u>16</u>	<u>4</u>	<u>(35)</u>
Total income tax provision	<u>\$ 199</u>	<u>\$ 190</u>	<u>\$ 137</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, 2012, the cumulative amount of undistributed earnings in these subsidiaries is approximately \$81 million. We have the intent and ability to indefinitely reinvest the undistributed earnings of our non-U.S. subsidiaries.

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, 2012, 2011 and 2010 is as follows:

	Year Ended December 31,		
	2012	2011	2010
	(in millions)		
Federal income tax provision at the statutory rate	35.0%	35.0%	35.0%
State income tax provision, net of federal effect	4.2%	3.3%	4.2%
Foreign income tax provision at a rate different than the federal rate	(3.6)%	(3.8)%	(3.2)%
Earnings from foreign affiliates, not subject to tax	(3.4)%	(3.4)%	(3.5)%
Change in deferred taxes due to change in tax rate <sup>(1)</sup>	2.3%	0.5%	(3.0)%
Change in unrecognized tax benefits	2.6%	1.0%	0.5%
Excess capital loss carry back <sup>(1)</sup>	—	—	(2.4)%
Other, net	(0.8)%	0.6%	(1.6)%
Actual income tax provision <sup>(1)</sup>	<u>36.3%</u>	<u>33.2%</u>	<u>26.0%</u>

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<sup>(1)</sup> The higher effective tax rate in 2012 when compared to 2011 was primarily due to the impact to deferred tax assets and deferred tax liabilities resulting from changes in tax rates in various jurisdictions within the U.S. and outside the U.S., adjustments related to our 2005 – 2011 tax return liabilities which resulted in an increase to the tax provision and a shift in the geographic mix of earnings and losses. These increases are partially offset by a permanent tax benefit associated with certain taxable foreign exchange revaluation losses which are not reflected in pre-tax earnings. The higher effective tax rate in 2011 when compared to 2010 was primarily due to the impact of changes in tax laws in certain jurisdictions in the U.S. Furthermore, in the third quarter of 2011, we recorded significant adjustments due to provision-to-tax return adjustments related to our 2010 tax return liabilities and a corresponding effect on deferred tax liabilities, both of which increased NASDAQ OMX's tax provision in 2011. Also, 2010 results included reductions in deferred tax liabilities due to a revised effective tax rate and a tax deduction for a capital loss.

The temporary differences, which give rise to our deferred tax assets and (liabilities), consisted of the following:

	December 31,	
	2012	2011
	(in millions)	
<b>Deferred tax assets:</b>		
Deferred revenues	\$ 31	\$ 30
U.S. federal net operating loss	10	15
Foreign net operating loss	95	99
State net operating loss	4	4
Compensation and benefits	112	88
Foreign currency translation	103	194
Lease reserves	14	19
Tax credits	17	19
Other	22	15
<b>Gross deferred tax assets</b>	<b>408</b>	<b>483</b>
<b>Deferred tax liabilities:</b>		
Amortization of software development costs and depreciation	(58)	(40)
Amortization of acquired intangible assets	(647)	(629)
Compensation and benefits	(18)	—
Other	(25)	(28)
<b>Gross deferred tax liabilities</b>	<b>(748)</b>	<b>(697)</b>
Net deferred tax liabilities before valuation allowance	(340)	(214)
Less: valuation allowance	(81)	(75)
<b>Net deferred tax liabilities</b>	<b>\$ (421)</b>	<b>\$ (289)</b>

A valuation allowance has been established with regards to the tax benefits primarily associated with certain net operating losses and impairment losses, as it is more likely than not that these benefits will not be realized in the future.

In 2012, our U.S. federal net operating loss of \$10 million, which includes \$5 million related to the acquisition of FTEN in December 2010 and \$5 million related to subsidiaries of OMX that are not included in our U.S. federal consolidated income tax return, will expire in years 2023 through 2032. Our foreign net operating loss of \$95 million, as of December 31, 2012, includes \$57 million that will expire in years 2018 through 2022 and \$38 million that has no expiration date. Also, our state net operating loss of \$4 million, as of December 31, 2012, will expire in years 2013 through 2032. Our tax credits of \$17 million include \$7 million related to U.S. research and development credits that will expire in years 2018 through 2027, and \$10 million related to non-U.S. tax credits that will expire in years 2014 through 2017.

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The following represents the domestic and foreign components of income before income tax provision:

	Year Ended December 31,		
	2012	2011	2010
	(in millions)		
Domestic	\$ 355	\$ 321	\$ 325
Foreign	193	252	201
Income before income tax provision	<u>\$ 548</u>	<u>\$ 573</u>	<u>\$ 526</u>

In 2012, 2011 and 2010, we recorded income tax benefits of \$7 million, \$10 million and \$2 million, respectively, primarily related to share-based compensation. These amounts were recorded as 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.

As of December 31, 2012 and 2011, there are \$27 million and \$11 million of unrecognized tax benefits that if recognized would affect our effective tax rate.

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

	Year Ended December 31,	
	2012	2011
	(in millions)	
Beginning balance	\$ 18	\$ 12
Additions as a result of tax positions taken in prior periods	16	6
Additions as a result of tax positions taken in the current period	3	3
Reductions related to settlements with taxing authorities	(5)	(2)
Reductions as a result of lapses of the applicable statute of limitations	—	(1)
Ending balance	<u>\$ 32</u>	<u>\$ 18</u>

Our policy is to recognize interest and/or penalties related to income tax matters in income tax expense. As of both December 31, 2012 and 2011, we had accrued \$5 million 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 the years 2007 through 2010 are currently under audit by the Internal Revenue Service and we are subject to examination for 2011. Several state tax returns are currently under examination by the respective tax authorities for the years 2005 through 2010 and we are subject to examination for 2011. Non-U.S. tax returns are subject to review by the respective tax authorities for the years 2005 through 2011. In 2012, we settled audits with the state of New York and paid a total of \$10 million with respect to the years 2000 through 2006. Of the \$10 million paid, \$5 million relates to tax and \$5 million relates to interest. Since we included \$2 million in our unrecognized tax benefits as of December 31, 2011, \$3 million affected our 2012 effective tax rate. The outcome of this audit did not have a material impact on our financial position or results of operations. We anticipate that the amount of unrecognized tax benefits at December 31, 2012 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 will not have a material impact on our consolidated financial position or results of operations.

In the fourth quarter of 2010, we received an appeal from the Finnish Tax Authority challenging certain interest expense deductions claimed by NASDAQ OMX in Finland for the year 2008. The appeal also demands certain penalties be paid with regard to the company's tax return filing position. In October 2012, the Finnish Appeals Board disagreed with the company's tax return filing position, even though the tax return position with respect to this deduction was previously reviewed and approved by the Finnish Tax Authority. NASDAQ OMX has decided to appeal the ruling by the Finnish Appeals Board to the Finnish Administrative Court. If the Finnish Administrative Court agrees with the Finnish Appeals Board, additional tax and penalties for the years 2008 through 2012 would total approximately \$20 million. We expect the Finnish Administrative Court to agree with our position and, as such, believe it is unlikely NASDAQ OMX will be assessed any additional tax and penalties. Through December 31, 2012, we have recorded the tax benefits associated with the filing position.

## 11. Employee Benefits

### U.S. Defined-Benefit Pension and Supplemental Executive Retirement Plans

We maintain non-contributory, defined-benefit pension plans, non-qualified supplemental executive retirement plans, or SERPs, for certain senior executives and post-retirement benefit plans for eligible employees in the U.S., collectively referred to as the NASDAQ OMX Benefit Plans.

Our pension plans and SERPs are frozen. Future service and salary for all participants do not count toward an accrual of benefits under the pension plans and SERPs.

### Components of Net Periodic Benefit Cost

The following table sets forth the components of net periodic pension, SERP and post-retirement benefits costs from the NASDAQ OMX Benefit Plans recognized in compensation and benefits expense in the Consolidated Statements of Income:

	Year Ended December 31,		
	2012	2011	2010
	(in millions)		
<b>Components of net periodic benefit cost</b>			
Interest cost	\$ 6	\$ 6	\$ 7
Expected return on plan assets	(5)	(5)	(5)
Recognized net actuarial loss	3	3	3
Settlement loss recognized	—	—	1
<b>Net periodic benefit cost</b>	<u>\$ 4</u>	<u>\$ 4</u>	<u>\$ 6</u>

### Benefit Obligations and Funded Status

The following table provides a reconciliation of the changes in the benefit obligation, the plan assets and the funded status of the NASDAQ OMX Benefit Plans.

	2012				2011			
	Pension	SERP	Post-retirement	Total	Pension	SERP	Post-retirement	Total
	(in millions)							
<b>Change in benefit obligation</b>								
Benefit obligation at beginning of year	\$ 86	\$ 30	\$ 11	\$127	\$ 83	\$ 30	\$ 12	\$125
Interest cost	4	2	—	6	4	1	1	6
Actuarial losses (gains)	1	—	(7)	(6)	(1)	—	(2)	(3)
Benefits paid	(4)	(2)	—	(6)	(3)	(2)	—	(5)
Loss due to change in discount rate	17	3	—	20	3	1	—	4
<b>Benefit obligation at end of year</b>	<u>104</u>	<u>33</u>	<u>4</u>	<u>141</u>	<u>86</u>	<u>30</u>	<u>11</u>	<u>127</u>
<b>Change in plan assets</b>								
Fair value of plan assets at beginning of year	62	—	—	62	65	—	—	65
Actual return on plan assets	7	—	—	7	(1)	—	—	(1)
Company contributions	10	2	—	12	1	2	—	3
Benefits paid	(4)	(2)	—	(6)	(3)	(2)	—	(5)
<b>Fair value of plan assets at end of year</b>	<u>75</u>	<u>—</u>	<u>—</u>	<u>75</u>	<u>62</u>	<u>—</u>	<u>—</u>	<u>62</u>
<b>Underfunded status of the plans</b>	<u>(29)</u>	<u>(33)</u>	<u>(4)</u>	<u>(66)</u>	<u>(24)</u>	<u>(30)</u>	<u>(11)</u>	<u>(65)</u>
<b>Accumulated benefit obligation</b>	<u>\$ 104</u>	<u>\$ 33</u>	<u>\$ 4</u>	<u>\$141</u>	<u>\$ 86</u>	<u>\$ 30</u>	<u>\$ 11</u>	<u>\$127</u>

The total underfunded status of the NASDAQ OMX Benefit Plans of \$66 million at December 31, 2012 and \$65 million at December 31, 2011 is included in other non-current 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, 2013.

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### Actuarial Assumptions

The following tables provide the weighted-average actuarial assumptions for the NASDAQ OMX Benefit Plans.

Weighted-average assumptions used to determine benefit obligations at the end of the fiscal year:

	<u>2012</u>	<u>2011</u>
<b>Discount rate:</b>		
Pension	4.00%	5.00%
SERP	4.00%	5.00%
Post-retirement	4.00%	5.00%
<b>Rate of compensation increase:</b>		
Pension	N/A	N/A
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>2012</u>	<u>2011</u>	<u>2010</u>
<b>Discount rate:</b>			
Pension	5.00%	5.25%	5.75%
SERP	5.00%	5.25%	5.75%
Post-retirement	5.00%	5.25%	5.75%
<b>Rate of compensation increase:</b>			
Pension	N/A	N/A	N/A
SERP	N/A	N/A	N/A
Post-retirement	N/A	N/A	N/A
<b>Expected return on plan assets:</b>			
Pension	7.75%	8.00%	8.00%
SERP	N/A	N/A	N/A
Post-retirement	N/A	N/A	N/A

N/A—Not applicable

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 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.

For 2013, the weighted-average assumed healthcare cost trend rate used for post-retirement measurement purposes for the NASDAQ OMX Benefit Plans is 9.0% prior to age 65 and 6.5% after age 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 for both plans.

### Plan Assets of the NASDAQ OMX Benefit Plans

NASDAQ OMX's Pension and 401(k) Committee, which is comprised of employees of NASDAQ OMX, has oversight responsibility for the plan assets of the NASDAQ OMX Benefit Plans. The investment policy and strategy of the plan assets, which was 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 NASDAQ OMX Benefit Plans. We invest in securities per the target allocations stated below. Target allocations for plan assets as of December 31, 2012 were as follows:

	<u>Target Allocation</u>
Equity securities <sup>(1)</sup>	60%
Fixed income securities <sup>(1)</sup>	25%
Other investment strategies and cash	15%
Total	<u>100%</u>

<sup>(1)</sup> Consists of securities and investments in mutual funds held in various domestic, international and emerging markets.

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Asset allocations are reviewed quarterly and adjusted, as appropriate, to remain within target allocations. The investment policy is reviewed on an annual basis, with the advice of an investment consultant, to determine if the policy or asset allocation targets should be changed.

The fair value of the plan assets for the NASDAQ OMX Benefit Plans at December 31, 2012, by asset category and fair value hierarchy, are as follows:

	Total Benefit Plan Assets as of December 31, 2012 <sup>(1)</sup>	Fair Value Measurements <sup>(2)</sup>		
		Level 1	Level 2	Level 3
		(in millions)		
Equity securities	\$ —	\$ —	\$ —	\$ —
Fixed income securities	—	—	—	—
Other investment strategies and cash	75	75	—	—
Total benefit plan assets	<u>\$ 75</u>	<u>\$ 75</u>	<u>\$ —</u>	<u>\$ —</u>

<sup>(1)</sup> As of December 31, 2012, this balance is held entirely in cash and cash equivalents due to a transition between investment advisors effective January 2013 and will be invested in accordance with the target allocations approved by NASDAQ OMX's Pension and 401(k) Committee.

<sup>(2)</sup> See Note 15, "Fair Value of Financial Instruments," for further discussion of fair value measurements.

The expected rate of return on plan assets for the NASDAQ OMX Benefit 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 determined based on asset classes held and weighted based on the current target allocation for each class. Over the long term, our investments in equity securities are expected to return between 6% and 8%, investments in fixed income securities are expected to return between 3% and 4%, other investment strategies are expected to return between 5% and 6%, and cash is expected to return between 1% and 2%. While we considered the NASDAQ OMX Benefit Plans' 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 NASDAQ OMX Pension and 401(k) Committee expects that the plans' asset managers overall will provide a modest (1% per annum) premium to their respective market benchmark indexes.

### Accumulated Other Comprehensive Income (Loss)

Accumulated other comprehensive income (loss), as of December 31, 2012, consisted of the following amounts that have yet to be recognized in net periodic benefit costs for the NASDAQ OMX Benefit Plans:

	Pension	SERP	Post- retirement	Total
	(in millions)			
Unrecognized net actuarial gain/(loss)	\$ (45)	\$ (5)	\$ 7	\$(43)
Income tax benefit	19	2	(3)	18
Employee benefit plan adjustments, net of tax	<u>\$ (26)</u>	<u>\$ (3)</u>	<u>\$ 4</u>	<u>\$(25)</u>

### Estimated Future Benefit Payments

We expect to make the following benefit payments to participants in the next ten fiscal years under the NASDAQ OMX Benefit Plans:

	Pension	SERP	Post- retirement	Total
	(in millions)			
Fiscal year ended:				
2013	\$ 4	\$ 8	\$ 1	\$ 13
2014	4	2	1	7
2015	4	3	—	7
2016	5	2	—	7
2017	4	5	—	9
2018 through 2022	25	8	1	34
	<u>\$ 46</u>	<u>\$ 28</u>	<u>\$ 3</u>	<u>\$ 77</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 and were \$18 million in 2012, \$14 million in 2011 and \$13 million in 2010.

As part of the acquisition of certain subsidiaries of Nord Pool, we assumed the obligation for several pension plans providing benefits for these 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. The projected benefit obligation was \$12 million at December 31, 2012 and \$15 million at December 31, 2011. The fair value of the plan assets was \$9 million at December 31, 2012 and \$7 million at December 31, 2011. The underfunded status of the plans was \$3 million at December 31, 2012 and \$8 million at December 31, 2011, and was included in other non-current liabilities in the Consolidated Balance Sheets. The benefit cost for these plans was immaterial in 2012, \$2 million in 2011 and \$1 million in 2010.

## **U.S. 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 \$5 million in 2012 and \$4 million in both 2011 and 2010.

We have a profit-sharing contribution feature to our 401(k) plan which allows eligible U.S. employees to receive employer retirement contributions, or ERCs, when we meet our annual corporate goals. In addition, we have a supplemental ERC for select highly compensated employees whose ERCs are limited by the annual Internal Revenue Service compensation limit. ERC expense recorded in compensation and benefits expense in the Consolidated Statements of Income was \$5 million in both 2012 and 2011 and \$4 million in 2010.

## **Employee Stock Purchase Plan**

We have an ESPP under which approximately 3.3 million shares of our common stock have been reserved for future issuance as of December 31, 2012.

Our ESPP allows eligible U.S. and non-U.S. 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.

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 2012, employees purchased 289,923 shares at a weighted-average price of \$19.34, during 2011, employees purchased 246,850 shares at a weighted-average price of \$20.64 and during 2010, employees purchased 242,865 shares at a weighted-average price of \$15.08 under the ESPP. We recorded compensation expense of \$2 million in 2012 and \$1 million in both 2011 and 2010 for the 15.0% discount that is given to our employees.

## **12. Share-Based Compensation**

We have a share-based compensation program that provides our board of directors broad discretion in creating employee equity incentives. Share-based awards, or equity awards, granted under this program include stock options, restricted stock, and PSUs. Grants of equity awards are designed to reward employees for their long-term contributions 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 three—to five-year periods beginning on the date of the grant. Stock options are also generally time-based and expire ten years from the grant date. Stock option and restricted stock awards generally include performance-based accelerated vesting features based on achievement of specific levels of corporate performance. If NASDAQ OMX exceeds the applicable performance parameters, the grants vest on the third anniversary of the grant date, if NASDAQ OMX meets the applicable performance parameters, the grants vest on the fourth anniversary of the grant date, and if NASDAQ OMX does not meet the applicable performance parameters, the grants vest on the fifth anniversary of the grant date.

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PSUs are based on performance measures that impact the amount of shares that each recipient will receive upon vesting. PSUs are granted at the fair market value of our stock on 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.

In March 2012, our board of directors approved a new performance-based long-term incentive program for our chief executive officer, executive vice presidents and senior vice presidents that focuses on total shareholder return, or TSR. This program represents 100% of our chief executive officer's and executive vice presidents' long-term stock-based compensation and 50% of our senior vice presidents' long-term stock-based compensation. Under the program, each individual receives PSUs with a three-year cumulative performance period. Performance will be determined by comparing NASDAQ OMX's TSR to two peer groups, each weighted 50%. The first peer group consists of 13 exchange companies, and the second peer group consists of all companies in the Standard & Poor 500 Index, or S&P 500. NASDAQ OMX's relative performance ranking against each of these groups will determine the final number of shares delivered to each individual under the program. The payout under this program will be between 0% and 200% of the number of PSUs granted and will be determined by NASDAQ OMX's overall performance against both peer groups. However, if NASDAQ OMX's TSR is negative for the three-year performance period, regardless of TSR ranking, the payout will not exceed 100% of the number of PSUs granted. We estimate the fair value of PSU's granted under the TSR program using the Monte Carlo simulation model, as these awards contain a market condition. The following weighted-average assumptions were used to determine the weighted-average fair values of the PSU awards granted under the TSR program for the year ended December 31, 2012:

	<b>Year Ended December 31, 2012</b>
Weighted-average risk free interest rate	0.34%
Expected volatility <sup>(1)</sup>	32.91%
Dividend yield	2.08%
Weighted-average fair value at grant date	\$ 22.50

<sup>(1)</sup> We use historic volatility for PSU awards issued under the TSR program, as implied volatility cannot be used when simulating multivariate prices for companies in the S&P 500.

### **Stock Option Exchange Program**

In May 2010, NASDAQ OMX shareholders approved a proposal to allow for a one-time voluntary stock option exchange program, designed to provide eligible employees an opportunity to exchange some or all of their eligible underwater stock options for a lesser amount of replacement stock options to be granted with a lower exercise price and a longer vesting period. Participants in the program were entitled to receive one replacement option for each 1.4 eligible options exchanged. Stock options eligible for the exchange were granted on or after January 1, 2006 and on or before June 30, 2008 with an exercise price greater than \$30.00. The program commenced on July 7, 2010 and expired on August 3, 2010. A total of 0.8 million eligible stock options were tendered by employees, representing 90% of the total stock options eligible for exchange. On August 3, 2010, we granted 0.6 million new replacement stock options with an exercise price of \$20.04, which was equal to the closing price of our common stock on that date. The replacement options were subject to a new vesting schedule with vesting occurring ratably in three equal annual installments on August 3, 2011 through August 3, 2013 and have a term of seven years. No incremental stock option expense was recognized for the replacement options as the fair value of the replacement options did not exceed the fair value of the exchanged options.

### **Summary of 2012 Equity Awards**

In May 2012, we granted restricted stock to most active employees. The restricted stock granted included a performance-based accelerated vesting feature based on achievement of specific levels of corporate performance, as described above. In 2012, we achieved the applicable performance parameters, and therefore, we will continue to expense the grant over the four-year vesting period.

During 2012, certain executive officers received grants of 1,072,446 PSUs. Of these PSUs granted, 701,470 units are subject to the performance measure and vesting schedule under the TSR program discussed above and the remaining 370,976 units are subject to a one year performance period and generally vest ratably on an annual basis from December 31, 2013 through December 31, 2015.

During 2011, certain grants of PSUs with a one-year performance period exceeded the applicable performance parameters. As a result, an additional 251,224 units were considered granted during 2012. In addition, certain grants of PSUs issued in 2009 with a three-year performance period exceeded the applicable performance parameters. As a result, an additional 40,000 units were considered granted in February 2012.

**Summary of 2011 Equity Awards**

In March 2011, we granted non-qualified stock options and/or restricted stock to most active employees. Both the stock options and restricted stock granted included a performance-based accelerated vesting feature based on achievement of specific levels of corporate performance, as described above. In 2011, we exceeded the applicable performance parameters, and therefore, we will expense the grant over a three-year vesting period.

During 2011, certain officers received grants of a target amount of 632,368 PSUs. Of these PSUs granted, 100,000 units are subject to a three-year performance period and vest at the end of the performance period. The remaining 532,368 units were subject to a one-year performance period and generally will vest ratably on an annual basis from December 31, 2012 through December 31, 2014.

See “Summary of Stock Option Activity” and “Summary of Restricted Stock and PSU Activity” below for further discussion.

**Summary of 2010 Equity Awards**

In March 2010, we granted non-qualified stock options and/or restricted stock to most active employees. Both the stock options and restricted stock granted included a performance-based accelerated vesting feature based on achievement of specific levels of corporate performance, as described above. In 2010, we achieved the applicable performance parameters, and therefore, we will continue to expense the grant over the four-year vesting period.

In 2010, certain officers received grants of 629,743 PSUs. Of these PSUs granted, 80,000 units were subject to a three-year performance period and vest at the end of the period. The remaining 549,743 units were subject to a one-year performance period and generally vest ratably on an annual basis from December 31, 2011 through December 31, 2013. During 2010, certain grants exceeded the applicable performance parameters for the one-year performance PSUs. As a result, an additional 19,142 units were considered granted in February 2011.

**Common Shares Available Under Our Equity Plan**

As of December 31, 2012, we had approximately 4.1 million shares of common stock authorized for future issuance under our Equity Plan.

**Summary of Share-Based Compensation Expense**

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, 2012, 2011 and 2010 in the Consolidated Statements of Income:

	Year Ended December 31,		
	2012	2011	2010
	(in millions)		
Share-based compensation expense before income taxes	\$ 46	\$ 36	\$ 33
Income tax benefit	(18)	(14)	(13)
Share-based compensation expense after income taxes	<u>\$ 28</u>	<u>\$ 22</u>	<u>\$ 20</u>

We estimated the fair value of stock option awards using the Black-Scholes valuation model with the following assumptions:

	Year Ended December 31,		
	2012 <sup>(1)</sup>	2011	2010
Expected life (in years)	—	5	5
Weighted-average risk free interest rate	—	2.16%	2.03%
Expected volatility	—	27.0%	32.0%
Dividend yield	—	—	—
Weighted-average fair value at grant date	\$ —	\$ 7.06	\$ 6.30

<sup>(1)</sup> No stock option awards were granted during the year ended December 31, 2012.

Our computation of expected life was 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 was based on a market-based implied volatility. In June, September, and December of 2012, we paid quarterly cash dividends of \$0.13 per share on our outstanding common stock. Prior to the June 2012 dividend, it was not our policy to declare or pay cash dividends on our common stock.

**Summary of Stock Option Activity**

A summary of stock option activity for the years ended December 31, 2012, 2011 and 2010 is as follows:

	<b>Stock Options Outstanding</b>	
	<b>Number of Stock Options</b>	<b>Weighted-Average Exercise Price</b>
Outstanding at December 31, 2009	10,206,871	\$ 18.18
Granted <sup>(1)</sup>	1,855,979	19.87
Exercised	(708,731)	9.23
Forfeited or expired	(395,148)	29.87
Stock option exchange program <sup>(2)</sup>	(846,129)	38.96
Outstanding at December 31, 2010	10,112,842	\$ 16.92
Granted <sup>(1)</sup>	1,267,430	25.28
Exercised	(1,030,721)	9.68
Forfeited or expired	(425,516)	26.85
Outstanding at December 31, 2011	9,924,035	\$ 18.33
Exercised	(2,051,066)	7.37
Forfeited or expired	(327,192)	23.41
Outstanding at December 31, 2012	<u>7,545,777</u>	<u>\$ 21.10</u>

<sup>(1)</sup> Stock options granted in 2011 and 2010 primarily reflect our company-wide equity grants issued in March 2011 and 2010, which include a performance-based accelerated vesting feature based on achievement of specific levels of corporate performance, as described above. Stock options granted in 2010 also include the issuance of replacement stock options in connection with our stock option exchange program. See “Stock Option Exchange Program” above for further discussion.

<sup>(2)</sup> Represents stock options tendered in our stock option exchange program. See “Stock Option Exchange Program” above for further discussion.

We received net cash proceeds of \$15 million from the exercise of approximately 2,051,066 stock options for the year ended December 31, 2012, received net cash proceeds of \$10 million from the exercise of approximately 1,030,721 stock options for the year ended December 31, 2011, and received net cash proceeds of \$7 million from the exercise of approximately 708,731 stock options for the year ended December 31, 2010. 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, 2012:

<u>Range of Exercise Prices</u>	<u>Number of Stock Options</u>	<u>Weighted-Average Remaining Contractual Term (in years)</u>	<u>Weighted-Average Exercise Price</u>	<u>Aggregate Intrinsic Value (in millions)</u>	<u>Number Exercisable</u>	<u>Weighted-Average Remaining Contractual Term (in years)</u>	<u>Weighted-Average Exercise Price</u>	<u>Aggregate Intrinsic Value (in millions)</u>
\$6.15 — \$19.69	1,986,331	1.43	\$ 7.66	\$ 34	1,906,464	1.21	\$ 7.17	\$ 34
\$19.70 — \$25.01	2,381,434	6.87	20.52	11	1,258,206	6.59	20.97	5
\$25.02 — \$35.91	1,905,297	7.10	25.30	—	848,162	5.80	25.31	—
\$35.92 — \$45.59	1,272,715	3.98	36.88	—	1,272,715	3.98	36.88	—
<b>Total</b>	<u>7,545,777</u>	5.01	<u>\$ 21.10</u>	<u>\$ 45</u>	<u>5,285,547</u>	3.90	<u>\$ 20.52</u>	<u>\$ 39</u>

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, 2012 of \$24.99 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 \$24.99 as of December 31, 2012, which would have been received by the option holders had the option holders exercised their stock options on that date. This amount can change based on the fair market value of our common stock. The total number of in-the-money stock options exercisable as of December 31, 2012 was 3.2 million. As of December 31, 2011, 5.8 million outstanding stock options were exercisable and the weighted-average exercise price was \$15.02.

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Total fair value of stock options vested was \$11 million for the year ended December 31, 2012 and \$6 million for the year ended December 31, 2011. The total pre-tax intrinsic value of stock options exercised was \$35 million during 2012, \$15 million during 2011 and \$8 million during 2010.

At December 31, 2012, \$5 million of total unrecognized compensation cost related to stock options is expected to be recognized over a weighted-average period of 1.2 years.

### Summary of Restricted Stock and PSU Activity

The following table summarizes our restricted stock and PSU activity for the years ended December 31, 2012, 2011 and 2010:

	Restricted Stock		PSUs	
	Number of Awards	Weighted-Average Grant Date Fair Value	Number of Awards	Weighted-Average Grant Date Fair Value
Unvested balances at December 31, 2009	2,208,748	\$ 27.48	552,682	\$ 31.59
Granted	1,223,921 <sup>(2)</sup>	19.80	714,328 <sup>(1)</sup>	20.31
Vested	(459,759)	39.89	(120,000)	33.19
Forfeited	(213,819)	26.87	(48,381)	27.79
Unvested balances at December 31, 2010	2,759,091	\$ 22.00	1,098,629	\$ 24.25
Granted	1,393,373 <sup>(2)</sup>	25.31	651,510 <sup>(1)</sup>	25.14
Vested	(353,235)	24.26	(279,447)	28.70
Forfeited	(427,896)	22.28	(155,512)	27.94
Unvested balances at December 31, 2011	3,371,333	\$ 23.10	1,315,180	\$ 23.33
Granted	1,478,855 <sup>(2)</sup>	23.62	1,363,670 <sup>(1)</sup>	23.28
Vested	(1,295,030)	23.39	(702,486)	23.74
Forfeited	(350,970)	23.29	(96,565)	23.30
Unvested balances at December 31, 2012	<u>3,204,188</u>	<u>\$ 23.20</u>	<u>1,879,799</u>	<u>\$ 23.14</u>

<sup>(1)</sup> PSUs granted in 2012, 2011 and 2010 primarily reflect awards issued to certain officers, as described above.

<sup>(2)</sup> Restricted stock granted in 2012, 2011 and 2010 primarily reflect our company wide grants, which include a performance-based accelerated vesting feature based on achievement of specific levels of corporate performance, as described above.

At December 31, 2012, \$62 million of total unrecognized compensation cost related to restricted stock and PSUs is expected to be recognized over a weighted-average period of 1.7 years.

### 13. NASDAQ OMX Stockholders' Equity

#### Common Stock

At December 31, 2012, 300,000,000 shares of our common stock were authorized, 213,426,908 shares were issued and 165,605,838 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 shares of NASDAQ OMX common stock. 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 shares of NASDAQ OMX common stock.

#### Common Stock in Treasury, at Cost

We held 47,821,070 shares of common stock in treasury as of December 31, 2012 and 39,845,172 shares as of December 31, 2011. The increase during the year ended December 31, 2012 was primarily due to our share repurchase program, partially offset by shares of common stock in treasury reissued under our share-based compensation program. See "Share Repurchase Programs and Share Repurchase from Borse Dubai" below for further discussion of our share repurchase programs and Note 12, "Share-Based Compensation," for further discussion of our share-based compensation program.

#### Share Repurchase Programs and Share Repurchase from Borse Dubai

In the fourth quarter of 2011, our board of directors approved a share repurchase program authorizing NASDAQ OMX to repurchase in the aggregate up to \$300 million of our outstanding common stock. In the third quarter of 2012, our board of directors authorized the repurchase of up to an additional \$300 million of our outstanding common stock. These purchases may be made from

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time to time at prevailing market prices in open market purchases, privately-negotiated transactions, block purchase techniques or otherwise, as determined by our management. The purchases are funded from existing cash balances. The share repurchase program may be suspended, modified or discontinued at any time.

During the fourth quarter of 2011, we repurchased 3,983,481 shares of our common stock at an average price of \$25.10, for an aggregate purchase price of \$100 million. During 2012, we repurchased 11,544,457 shares of our common stock at an average price of \$23.82, for an aggregate purchase price of \$275 million, completing the share repurchase program authorized in the fourth quarter of 2011. The shares repurchased under the share repurchase program are available for general corporate purposes. As of December 31, 2012, the remaining amount for share repurchases under the program authorized in the third quarter of 2012 was \$225 million.

Under the share repurchase program authorized by our board of directors during 2010, we were authorized to repurchase up to \$550 million of our outstanding common stock. During 2010, we repurchased 15,050,647 shares of our common stock at an average price of \$19.95, for an aggregate purchase price of \$300 million. In December 2010, our board of directors also approved the repurchase of 22,781,000 shares of our common stock from Borse Dubai for \$21.82 per share for an aggregate purchase price of approximately \$497 million. The share repurchase from Borse Dubai expanded, accelerated and completed this share repurchase program. The shares repurchased under the share repurchase program and from Borse Dubai are available for general corporate purposes.

### **Other Repurchases of Common Stock**

For the year ended December 31, 2012, we repurchased 766,260 shares of our common stock in settlement of employee tax withholding obligations due upon the vesting of restricted stock.

### **Preferred Stock**

Our certificate of incorporation authorizes the issuance of 30,000,000 shares of preferred stock, par value \$0.01 per share, issuable from time to time in one or more series. At December 31, 2012 and 2011, 1,600,000 shares of series A convertible preferred stock were issued and none were outstanding.

### **Cash Dividends on Common Stock**

During 2012, our board of directors declared the following cash dividends:

<u>Declaration Date</u>	<u>Dividend Per Common Share</u>	<u>Record Date</u>	<u>Total Amount<sup>(1)</sup> (in millions)</u>	<u>Payment Date</u>
April 23, 2012	\$ 0.13	June 15, 2012	\$ 22	June 29, 2012
July 25, 2012	\$ 0.13	September 14, 2012	\$ 21	September 28, 2012
October 24, 2012	\$ 0.13	December 14, 2012	\$ 22	December 28, 2012

<sup>(1)</sup> These amounts were recorded in retained earnings in the Consolidated Balance Sheets at December 31, 2012.

In January 2013, pursuant to delegated authority, the finance committee of the board of directors declared a regular quarterly cash dividend of \$0.13 per share on our outstanding common stock. The dividend is payable on March 28, 2013 to shareholders of record at the close of business on March 14, 2013. Future declarations of quarterly dividends and the establishment of future record and payment dates are subject to approval by the board of directors.

### **Accumulated Other Comprehensive Loss**

Accumulated other comprehensive loss is composed of unrealized holding gains and losses on available-for-sale investment securities, foreign currency translation adjustments and employee benefit plan adjustments.

The following table outlines the components of accumulated other comprehensive loss:

	<u>Unrealized Holding Gains on Available-For-Sale Investment Securities</u>	<u>Foreign Currency Translation Adjustments<sup>(1)</sup></u>	<u>Employee Benefit Plan Adjustments<sup>(2)</sup></u>	<u>Accumulated Other Comprehensive Loss</u>
Gross balance, December 31, 2011	\$ —	\$ (527)	\$ (33)	\$ (560)
Income taxes	1	195	14	210
Net balance, December 31, 2011	\$ 1	\$ (332)	\$ (19)	\$ (350)
Gross balance, December 31, 2012	\$ 4	\$ (265)	\$ (43)	\$ (304)
Income taxes	1	100	18	119
Net balance, December 31, 2012	\$ 5	\$ (165)	\$ (25)	\$ (185)

<sup>(1)</sup> Amounts include cumulative gains and losses on foreign currency translation adjustments from non-U.S. subsidiaries for which the functional currency is other than the U.S. dollar.

<sup>(2)</sup> Amounts primarily represent unrecognized net actuarial gains (losses) related to the NASDAQ OMX Benefit Plans.

## 14. Earnings Per Share

The following table sets forth the computation of basic and diluted earnings per share:

	Year Ended December 31,		
	2012	2011	2010
(in millions, except share and per share amounts)			
<b>Numerator:</b>			
Net income attributable to NASDAQ OMX	\$ 352	\$ 387	\$ 395
Accretion of series A convertible preferred stock	—	—	(1)
Net income attributable to common shareholders for basic and diluted earnings per share	<u>\$ 352</u>	<u>\$ 387</u>	<u>\$ 394</u>
<b>Denominator:</b>			
Weighted-average common shares outstanding for basic earnings per share <sup>(1)</sup>	168,254,653	176,331,819	202,975,623
<b>Weighted-average effect of dilutive securities:</b>			
Employee equity awards	4,317,577	3,644,946	3,504,550
3.75% convertible notes assumed converted into common stock	15,640	34,482	34,482
Weighted-average common shares outstanding for diluted earnings per share <sup>(1)</sup>	<u>172,587,870</u>	<u>180,011,247</u>	<u>206,514,655</u>
<b>Basic and diluted earnings per share:</b>			
Basic earnings per share	<u>\$ 2.09</u>	<u>\$ 2.20</u>	<u>\$ 1.94</u>
Diluted earnings per share	<u>\$ 2.04</u>	<u>\$ 2.15</u>	<u>\$ 1.91</u>

<sup>(1)</sup> The decrease in the weighted-average common shares outstanding for basic and diluted earnings per share primarily reflects the weighted-average impact of the share repurchase from Borse Dubai and other purchases related to our share repurchase programs made in 2012, 2011 and 2010. See “Share Repurchase Programs and Share Repurchase from Borse Dubai,” of Note 13, “NASDAQ OMX Stockholders’ Equity,” for further discussion.

Stock options to purchase 7,545,777 shares of common stock and 5,083,987 shares of restricted stock and PSUs were outstanding at December 31, 2012. For the year ended December 31, 2012, we included 4,313,316 of the outstanding stock options and 4,142,097 shares of restricted stock and PSUs in the computation of diluted earnings per share, on a weighted-average basis, as their inclusion was dilutive. The remaining stock options and shares of restricted stock and PSUs are antidilutive, and as such, they were properly excluded.

Stock options to purchase 9,924,035 shares of common stock, 4,686,513 shares of restricted stock and PSUs, and convertible notes convertible into 34,482 shares of common stock were outstanding at December 31, 2011. For the year ended December 31, 2011, we included 6,506,899 of the outstanding stock options and 4,053,698 shares of restricted stock and PSUs in the computation of diluted earnings per share, on a weighted-average basis, as their inclusion was dilutive. The remaining stock options and shares of restricted stock and PSUs are antidilutive, and as such, they were properly excluded.

Stock options to purchase 10,112,842 shares of common stock, 3,857,720 shares of restricted stock and PSUs, and convertible notes convertible into 34,482 shares of common stock were outstanding at December 31, 2010. For the year ended December 31, 2010, we included 4,873,543 of the outstanding stock options and 1,086,998 shares of restricted stock and PSUs in the computation of diluted earnings per share, on a weighted-average basis, as their inclusion was dilutive. The remaining stock options and shares of restricted stock and PSUs are antidilutive, and as such, they were properly excluded.

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The 2.50% convertible senior notes are accounted for under the treasury stock method as it is our intent and policy to settle the principal amount of the notes in cash. Based on the settlement structure of the 2.50% convertible senior notes, which permits 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 years ended December 31, 2012, 2011 and 2010, the conversion spread of our 2.50% convertible senior notes was out of the money, and as such, they were properly excluded from the computation of diluted earnings per share.

### 15. Fair Value of Financial Instruments

#### Fair Value Measurement—Definition and Hierarchy

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. Fair value measurement 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 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 as of December 31, 2012 and 2011.

	December 31, 2012			
	Total	Level 1	Level 2	Level 3
(in millions)				
<b>Financial Assets Measured at Fair Value on a Recurring Basis</b>				
Financial investments, at fair value <sup>(1)</sup>	\$ 223	\$ 223	\$ —	\$ —
Default fund investments <sup>(2)</sup>	175	175	—	—
Total	<u>\$ 398</u>	<u>\$ 398</u>	<u>\$ —</u>	<u>\$ —</u>
	December 31, 2011			
	Total	Level 1	Level 2	Level 3
(in millions)				
<b>Financial Assets Measured at Fair Value on a Recurring Basis</b>				
Derivative positions, at fair value <sup>(3)</sup>	\$1,566	\$ —	\$1,566	\$ —
Financial investments, at fair value <sup>(1)</sup>	279	279	—	—
Total	<u>\$1,845</u>	<u>\$ 279</u>	<u>\$1,566</u>	<u>\$ —</u>
<b>Financial Liabilities Measured at Fair Value on a Recurring Basis</b>				
Derivative positions, at fair value <sup>(3)</sup>	\$1,566	\$ —	\$1,566	\$ —
Total	<u>\$1,566</u>	<u>\$ —</u>	<u>\$1,566</u>	<u>\$ —</u>

<sup>(1)</sup> Primarily comprised of trading securities, mainly Swedish government debt securities, of \$201 million as of December 31, 2012 and \$261 million as of December 31, 2011. Of these securities, \$134 million as of December 31, 2012 and \$212 million as of December 31, 2011 are restricted assets to meet regulatory capital requirements primarily for clearing operations at NASDAQ OMX Nordic Clearing. This balance also includes our available-for-sale investment security in DFM of \$22 million as of December 31, 2012 and \$18 million as of December 31, 2011. See Note 6, "Investments," for further discussion of our trading investment securities and available-for-sale investment security.

<sup>(2)</sup> In March 2012, NASDAQ OMX Nordic Clearing implemented member sponsored default funds. Default fund contributions may include cash contributions which can be invested by NASDAQ OMX Nordic Clearing, in accordance with its investment policy, either in highly rated government debt securities or reverse repurchase agreements with highly rated government debt securities as collateral. As of December 31, 2012, \$175 million of cash contributions have been invested in highly rated government debt securities. See Note 16, "Clearing Operations," for further discussion of default fund contributions.

- (3) Prior to the new clearing structure, discussed in Note 16, “Clearing Operations,” these amounts represented net amounts associated with our clearing operations in the derivative markets with NASDAQ OMX Nordic Clearing. Receivables and payables attributable to outstanding derivative positions were netted to the extent that such a legal offset right existed and, at the same time, that it was NASDAQ OMX Nordic Clearing’s intention to settle these items. See “Derivative Positions, at Fair Value and Resale and Repurchase Agreements, at Contract Value Prior to March 2012,” of Note 16, “Clearing Operations,” for further discussion. The new clearing structure significantly changed the nature and extent of the risk of loss to NASDAQ OMX Nordic Clearing in the event of a member default. Since the risk of loss will now be shared amongst clearing members, beginning in March 2012, we no longer record these derivative positions in the Consolidated Balance Sheets.

### **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, restricted cash, receivables, net, certain other current assets, non-current restricted cash, accounts payable and accrued expenses, Section 31 fees payable to SEC, accrued personnel costs, and certain other current liabilities.

In addition, our investment in LCH is carried at cost. See “Cost Method Investments,” of Note 6, “Investments,” for further discussion.

We also consider our debt obligations to be financial instruments. The fair value of our debt, utilizing discounted cash flow analyses for our floating rate debt and prevailing market rates for our fixed rate debt, was \$2.1 billion at December 31, 2012 and \$2.2 billion at December 31, 2011. The discounted cash flow analyses are based on borrowing rates currently available to us for debt with similar terms and maturities. Our fixed rate and our floating rate debt is categorized as level 2 in the fair value hierarchy. For further discussion of our debt obligations, see Note 9, “Debt Obligations.”

## **16. Clearing Operations**

### **Nordic Clearing**

NASDAQ OMX Nordic Clearing is authorized and supervised as a European multi-asset clearinghouse by the SFSA and is authorized to conduct clearing operations in Norway by the Norwegian Ministry of Finance. The clearinghouse acts as the CCP for exchange and OTC trades in equity derivatives, fixed income derivatives, physical power, power derivatives, carbon derivatives, and resale and repurchase contracts.

Through our clearing operations in the financial markets, which include the resale and repurchase market, and the commodities markets, NASDAQ OMX Nordic Clearing is the legal counterparty for, and guarantees the fulfillment of, each contract cleared. These contracts are not used by NASDAQ OMX Nordic Clearing for the purpose of trading on its own behalf. As the legal counterparty of each transaction, NASDAQ OMX Nordic Clearing bears the counterparty risk between the purchaser and seller in the contract. In its guarantor role, NASDAQ OMX Nordic Clearing has precisely equal and offsetting claims to and from clearing members on opposite sides of each contract, standing as an intermediary on every contract cleared. In accordance with the rules and regulations of NASDAQ OMX Nordic Clearing, clearing members’ open positions are aggregated to create a single portfolio for which default fund and margin collateral requirements are calculated. See “Default Fund Contributions” and “Margin Collateral” below for further discussion of NASDAQ OMX Nordic Clearing’s default fund and margin requirements.

In anticipation of new regulations proposed by EMIR, NASDAQ OMX Nordic Clearing implemented three member sponsored default funds in March 2012: one related to financial markets, one related to commodities markets, and a mutualized fund. Under this new regulatory structure, NASDAQ OMX Nordic Clearing and its clearing members must contribute to the total regulatory capital related to the clearing operations of NASDAQ OMX Nordic Clearing. This structure applies an initial separation of default fund contributions for the financial and commodities markets in order to create a buffer for each market’s counterparty risks. Simultaneously, a mutualized default fund provides capital efficiencies to NASDAQ OMX Nordic Clearing with regard to total regulatory capital required. See “Default Fund Contributions” below for further discussion of NASDAQ OMX Nordic Clearing’s default fund. Power of assessment and a liability waterfall also have been implemented in anticipation of the new regulations. See “Power of Assessment” and “Liability Waterfall” below for further discussion. These new requirements ensure the alignment of risk between NASDAQ OMX Nordic Clearing and its clearing members.

Prior to March 2012, NASDAQ OMX Nordic Clearing did not maintain a default fund to which clearing members contributed capital and did not enforce loss sharing assessments amongst members. Therefore, in a default situation where the capital provided by the defaulting member was insufficient to cover its losses, only NASDAQ OMX Nordic Clearing’s own risk-bearing capital was at risk and not that of the non-defaulting members. See “Derivative Positions, at Fair Value and Resale and Repurchase Agreements, at Contract Value Prior to March 2012” below for further discussion.

### Default Fund Contributions

Contributions made to the default funds are proportional to the exposures of each clearing member. When a clearing member is active in both the financial and commodities markets, contributions must be made to both markets' default funds. Clearing members' eligible contributions may include cash and non-cash contributions. Cash contributions received are invested by NASDAQ OMX Nordic Clearing, in accordance with its investment policy, either in highly rated government debt securities or reverse repurchase agreements with highly rated government debt securities as collateral. Clearing members' cash contributions are included in default funds and margin deposits in the Consolidated Balance Sheets as both a current asset and a current liability. Non-cash contributions include highly rated government debt securities that must meet specific criteria approved by NASDAQ OMX Nordic Clearing. Non-cash contributions are pledged assets that are not recorded in the Consolidated Balance Sheets as NASDAQ OMX Nordic Clearing does not take legal ownership of these assets and the risks and rewards remain with the clearing members. These balances may fluctuate over time due to changes in the amount of deposits required and whether members choose to provide cash or non-cash contributions. Pursuant to clearing member agreements, we pay interest on cash deposits to clearing members. Assets pledged are held at a nominee account in NASDAQ OMX Nordic Clearing's name for the benefit of the clearing members and are immediately accessible by NASDAQ OMX Nordic Clearing in the event of a default.

As of December 31, 2012, clearing member default fund contributions were as follows:

	December 31, 2012		
	Cash Contributions <sup>(1)</sup>	Non-Cash Contributions (in millions)	Total Contributions
Default fund contributions	\$ 176	\$ 19	\$ 195

<sup>(1)</sup> As of December 31, 2012, in accordance with its investment policy, NASDAQ OMX Nordic Clearing has invested \$175 million of cash contributions in highly rated government debt securities. The remaining balance of \$1 million is held in cash.

In addition to clearing members' required contributions to the default funds, NASDAQ OMX Nordic Clearing is also required to contribute capital to the default funds as specified under its clearinghouse rules. As of December 31, 2012, NASDAQ OMX Nordic Clearing committed capital totaling \$113 million to the member sponsored default funds, in the form of government debt securities, which are recorded as financial investments, at fair value in the Consolidated Balance Sheets. The combined regulatory capital of the clearing members and NASDAQ OMX Nordic Clearing will serve to secure the obligations of a clearing member and may be used to cover losses sustained by a clearing member in the event of a default.

### Other Capital Contributions by NASDAQ OMX Nordic Clearing

NASDAQ OMX Nordic Clearing maintains a \$93 million credit facility which may be utilized in certain situations to satisfy regulatory requirements. As of December 31, 2012, NASDAQ OMX Nordic Clearing committed \$9 million of this credit facility to satisfy its regulatory requirements under its default fund structure, none of which was utilized.

### Margin Collateral

NASDAQ OMX Nordic Clearing requires all clearing members to provide collateral, which may consist of cash and eligible securities, in a pledged bank account and/or an on-demand guarantee, to guarantee performance on the clearing members' open positions, or initial margin. In addition, clearing members must also provide collateral to cover the daily margin call as needed, which is in addition to the initial margin. All collateral is maintained at a third-party custodian bank for the benefit of the clearing members and is immediately accessible by NASDAQ OMX Nordic Clearing in the event of a default. The pledged margin collateral is not recorded in our Consolidated Balance Sheets as all risks and rewards of collateral ownership, including interest, belong to the counterparty. Clearing members' pledged margin collateral was \$6.3 billion as of December 31, 2012 and \$5.0 billion as of December 31, 2011.

NASDAQ OMX Nordic Clearing marks to market all outstanding contracts at least daily, requiring payment from clearing members whose positions have lost value and making payments to clearing members whose positions have gained value. The mark-to-market process helps identify any clearing members that may not be able to satisfy their financial obligations in a timely manner allowing NASDAQ OMX Nordic Clearing the ability to mitigate the risk of a clearing member defaulting due to exceptionally large losses. In the event of a default, NASDAQ OMX Nordic Clearing can access the defaulting member's margin deposits to cover the defaulting member's losses.

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In the first half of 2013, NASDAQ OMX Nordic Clearing will implement a new collateral process. NASDAQ OMX Nordic Clearing will maintain all cash deposits related to margin collateral and will record these cash deposits in default funds and margin deposits in the Consolidated Balance Sheets as both a current asset and a current liability, as NASDAQ OMX Nordic Clearing will assume the risks and rewards of collateral ownership. In addition to cash, clearing members may also contribute eligible pledged assets consisting of highly rated government debt securities that must meet the specific criteria approved by NASDAQ OMX Nordic Clearing and/or an on-demand guarantee. These pledged assets will not be recorded in our Consolidated Balance Sheets as NASDAQ OMX Nordic Clearing will not take legal ownership of these assets as the risks and rewards will remain with the clearing members. Assets pledged will be held at a nominee account in NASDAQ OMX Nordic Clearing's name for the benefit of the clearing members and will be immediately accessible by NASDAQ OMX Nordic Clearing in the event of a default.

### **Regulatory Capital and Risk Management Calculations**

NASDAQ OMX Nordic Clearing manages risk through a comprehensive counterparty risk management framework, which is comprised of policies, procedures, standards and resources. The level of regulatory capital is determined in accordance with NASDAQ OMX Nordic Clearing's regulatory capital policy, as approved by the SFSA. Regulatory capital calculations are continuously updated through a proprietary capital-at-risk calculation model that establishes the appropriate level of capital.

As mentioned above, NASDAQ OMX Nordic Clearing is the legal counterparty for each contract traded and thereby guarantees the fulfillment of each contract. NASDAQ OMX Nordic Clearing accounts for this guarantee as a performance guarantee. We determine the fair value of the performance guarantee by considering daily settlement of contracts and other margining and default fund requirements, the risk management program, historical evidence of default payments, and the estimated probability of potential default payouts. The calculation is determined using proprietary risk management software that simulates gains and losses based on historical market prices, extreme but plausible market scenarios, volatility and other factors present at that point in time for those particular unsettled contracts. Based on this analysis, the estimated liability was nominal and no liability was recorded as of December 31, 2012.

The market value of derivative contracts outstanding prior to netting was as follows:

	<b>December 31, 2012</b>
	<b>(in millions)</b>
Commodity forwards and options <sup>(1) (2)</sup>	\$ 1,116
Fixed-income options and futures <sup>(2) (3)</sup>	182
Stock options and futures <sup>(2) (3)</sup>	173
Index options and futures <sup>(2) (3)</sup>	96
<b>Total</b>	<b>\$ 1,567</b>

<sup>(1)</sup> We determined the fair value of our forward contracts using standard valuation models that were based on market-based observable inputs including LIBOR rates and the spot price of the underlying instrument.

<sup>(2)</sup> We determined the fair value of our option contracts using standard valuation models that were based on market-based observable inputs including implied volatility, interest rates and the spot price of the underlying instrument.

<sup>(3)</sup> We determined the fair value of our futures contracts based upon quoted market prices and average quoted market yields.

The total number of derivative contracts cleared through NASDAQ OMX Nordic Clearing for the year ended December 31, 2012 was as follows:

	<b>Number of</b>
	<b>Cleared Contracts</b>
Commodity forwards and options <sup>(1)</sup>	879,737
Fixed-income options and futures	32,915,646
Stock options and futures	29,480,517
Index options and futures	42,262,577
<b>Total</b>	<b>105,538,477</b>

<sup>(1)</sup> The total volume in cleared power related to commodity contracts was 1,703 Terawatt hours (TWh).

The contract value of resale and repurchase agreements as of December 31, 2012 was \$5.5 billion and the total number of contracts cleared for the year ended December 31, 2012 was 3,601,969.

**Power of Assessment**

To further strengthen the contingent financial resources of the clearinghouse, NASDAQ OMX Nordic Clearing has power of assessment that provides the ability to collect additional funds from its clearing members to cover a defaulting member's remaining obligations up to the limits established under the terms of the clearinghouse rules. The power of assessment corresponds to 100% of the clearing member's aggregate contribution to the financial market's and commodities market's default funds.

**Liability Waterfall**

The liability waterfall is the priority order in which the capital resources would be utilized in the event of a default where the defaulting clearing member's collateral would not be sufficient to cover the cost to settle its portfolio. If a default occurs and the defaulting clearing member's collateral, including cash deposits and pledged assets, is depleted, then capital is utilized in the following amount and order:

- junior capital contributed by NASDAQ OMX Nordic Clearing, which totaled \$15 million at December 31, 2012;
- specific market default fund where the loss occurred, either financial or commodities market, which includes capital contributions of both the clearing members and NASDAQ OMX Nordic Clearing on a pro-rata basis;
- senior capital contributed by NASDAQ OMX Nordic Clearing, calculated in accordance with clearinghouse rules to be \$23 million at December 31, 2012; and
- mutualized default fund, which includes capital contributions of both the clearing members and NASDAQ OMX Nordic Clearing on a pro-rata basis.

If additional funds are needed after utilization of the mutualized default fund, then NASDAQ OMX Nordic Clearing will utilize its power of assessment and additional capital contributions will be required by non-defaulting members up to the limits established under the terms of the clearinghouse rules.

**Derivative Positions, at Fair Value and Resale and Repurchase Agreements, at Contract Value Prior to March 2012**

The new clearing structure, discussed above, significantly changed the nature and extent of the risk of loss to NASDAQ OMX Nordic Clearing in the event of a member default. Since the full risk of loss to NASDAQ OMX Nordic Clearing is now shared amongst clearing members, we no longer record derivative positions or resale and repurchase agreements in the Consolidated Balance Sheets.

Prior to the implementation of member sponsored default funds, NASDAQ OMX Nordic Clearing placed its own funds at risk and was the primary obligor that would bear the ultimate risk of counterparty default. As a result, the fair value of derivative contracts and the contract value of resale and repurchase agreements were reported gross in the Consolidated Balance Sheets as a receivable pertaining to the purchasing party and a payable pertaining to the selling party. Such receivables and payables attributable to outstanding derivative positions and resale and repurchase agreements were netted to the extent that such a legal offset right existed and, at the same time, that it was our intention to settle these items.

Our derivative positions, at fair value in the Consolidated Balance Sheets were \$1,566 million at December 31, 2011. The following table presents the fair value of our outstanding derivative positions at December 31, 2011 prior to netting:

	<u>December 31, 2011</u>	
	<u>Asset</u>	<u>Liability</u>
	(in millions)	
Commodity forwards and options <sup>(1) (2)</sup>	\$ 1,152	\$ 1,152
Fixed-income options and futures <sup>(2) (3)</sup>	272	272
Stock options and futures <sup>(2) (3)</sup>	197	197
Index options and futures <sup>(2) (3)</sup>	137	137
Total	<u>\$ 1,758</u>	<u>\$ 1,758</u>

<sup>(1)</sup> We determined the fair value of our forward contracts using standard valuation models that were based on market-based observable inputs including LIBOR rates and the spot price of the underlying instrument.

<sup>(2)</sup> We determined the fair value of our option contracts using standard valuation models that were based on market-based observable inputs including implied volatility, interest rates and the spot price of the underlying instrument.

<sup>(3)</sup> We determined the fair value of our futures contracts based upon quoted market prices and average quoted market yields.

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Our resale and repurchase agreements, at contract value in the Consolidated Balance Sheets were \$3,745 million at December 31, 2011. The resale and repurchase agreements were recorded at their contractual amounts plus interest which approximated fair value, as the fair value of these items was not materially sensitive to shifts in market interest rates primarily due to the short-term nature of these instruments. The resale and repurchase agreements generally mature in less than 30 days. For the margin collateral process, see “Margin Collateral” above.

### **NOS Clearing**

In July 2012, we acquired NOS Clearing. NOS Clearing is a leading Norway-based clearinghouse primarily for OTC traded derivatives for the freight market and seafood derivative market. NOS Clearing acts as the CCP with a clearinghouse license from the Norwegian Ministry of Finance and is under supervision of the Financial Supervisory Authority of Norway.

Through its clearing operations, NOS Clearing is the legal counterparty for, and guarantees the fulfillment of, each contract cleared. These contracts are not used by NOS Clearing for the purpose of trading on its own behalf. As the legal counterparty of each transaction, NOS Clearing bears the counterparty risk between the purchaser and seller in the contract. In its guarantor role, NOS Clearing has precisely equal and offsetting claims to and from clearing members on opposite sides of each contract, standing as an intermediary on every contract cleared. In accordance with the rules and regulations of NOS Clearing, clearing members’ open positions are aggregated to create a single portfolio for which margin collateral requirements are calculated. As of December 31, 2012, the market value of derivative contracts outstanding, prior to netting, was \$32 million. The total number of derivative contracts cleared through NOS Clearing for the year ended December 31, 2012 was 1,778,414.

NOS Clearing has implemented member sponsored default funds for its markets. Under this structure, NOS Clearing and its clearing members must contribute to the total regulatory capital related to the clearing operations of NOS Clearing. A liability waterfall has also been implemented, which helps to ensure the alignment of risk between NOS Clearing and its clearing members in the event of default.

As of December 31, 2012, NOS Clearing committed capital to the default funds in the form of cash totaling \$45 million. This committed capital is reflected as restricted cash in the Consolidated Balance Sheets. Clearing members’ pledged default fund contributions and margin collateral totaled \$406 million as of December 31, 2012 and is not recorded in our Consolidated Balance Sheets as all risks and rewards of collateral ownership, including interest, belong to the counterparty.

### **U.S. Clearing**

Similar to our clearing operations discussed above, NOCC, through riskless principal trading and clearing, is the legal counterparty for each customer position traded and NOCC thereby guarantees the fulfillment of each of their customer’s transactions.

We require market participants at NOCC to meet certain minimum financial standards to mitigate the risk that they become unable to satisfy their obligations and to provide collateral to cover the daily margin call as needed. Customer pledged cash collateral held by NOCC, which was \$33 million at December 31, 2012 and \$9 million at December 31, 2011, is included in default funds and margin deposits as both a current asset and current liability in the Consolidated Balance Sheets, as the risks and rewards of collateral ownership, including interest income, belongs to NOCC. Additionally, NOCC is the beneficiary of letters of credit from banks meeting certain rating standards, which are posted on behalf of market participants in lieu of posting cash collateral. The aggregate amount of letters of credit in which NOCC is the beneficiary was \$101 million at December 31, 2012 and \$81 million at December 31, 2011.

As of December 31, 2012 and 2011, NASDAQ OMX has contributed \$25 million to the NOCC guarantee fund which is recorded in non-current restricted cash in the Consolidated Balance Sheets.

In August 2012, we sold IDCG to LCH. See “2012 Divestiture,” of Note 4, “Acquisitions and Divestitures,” for further discussion. Prior to the sale of IDCG, we required market participants at International Derivatives Clearinghouse, LLC to meet certain minimum financial standards to mitigate the risk that they become unable to satisfy their obligations and to provide collateral to cover the daily margin call as needed. Clearing member cash contributed to IDCG’s guaranty fund was \$8 million at December 31, 2011 and is included in default funds and margin deposits as both a current asset and current liability in the Consolidated Balance Sheets, as the risks and rewards of collateral ownership, including interest income, belonged to IDCG. As of December 31, 2011, NASDAQ OMX had contributed \$72 million to the IDCG guarantee fund which was recorded in non-current restricted cash in the Consolidated Balance Sheets.

### **17. 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.

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As of December 31, 2012, future minimum lease payments under non-cancelable operating leases (net of sublease income) are as follows:

	Gross Lease Commitments	Sublease Income (in millions)	Net Lease Commitments
Year ending December 31:			
2013	\$ 76	\$ 5	\$ 71
2014	69	5	64
2015	67	3	64
2016	63	3	60
2017	59	1	58
Thereafter	142	10	132
Total future minimum lease payments	<u>\$ 476</u>	<u>\$ 27</u>	<u>\$ 449</u>

Rent expense for operating leases (net of sublease income of \$4 million in 2012 and 2011 and \$5 million in 2010) was \$83 million in 2012, \$87 million in 2011 and \$78 million in 2010.

## 18. Commitments, Contingencies and Guarantees

### Guarantees Issued and Credit Facilities Available

In addition to the default fund contributions and margin collateral pledged by clearing members discussed in Note 16, "Clearing Operations," we have obtained financial guarantees and credit facilities which are guaranteed by us through counter indemnities, to provide further liquidity and default protection related to our clearing businesses. Financial guarantees issued to us totaled \$7 million at December 31, 2012 and \$4 million at December 31, 2011. At December 31, 2012, credit facilities, which are available in multiple currencies, primarily Swedish Krona, totaled \$310 million (\$217 million in available liquidity and \$93 million to satisfy regulatory requirements), none of which was utilized. At December 31, 2011, these facilities totaled \$447 million (\$206 million in available liquidity and \$241 million to satisfy regulatory requirements), none of which was utilized.

We believe that the potential for us to be required to make payments under these arrangements is mitigated through the pledged collateral and our risk management policies. Accordingly, no contingent liability is recorded in the Consolidated Balance Sheets for these arrangements.

### Lease Commitments

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 lease agreements contain renewal options and escalation clauses based on increases in property taxes and building operating costs.

### Other Guarantees

We have provided other guarantees of \$18 million as of December 31, 2012 and \$17 million as of December 31, 2011. These guarantees are primarily related to obligations for our rental and leasing contracts. In addition, for certain Market Technology contracts, we have provided performance guarantees of \$5 million as of December 31, 2012 and \$6 million at December 31, 2011 related to the delivery of software technology and support services. We have received financial guarantees from various financial institutions to support the above guarantees.

We also have provided a \$25 million guarantee to our wholly-owned subsidiary, NOCC, to cover potential losses in the event of customer defaults, net of any collateral posted against such losses.

We believe that the potential for us to be required to make payments under these arrangements is unlikely. Accordingly, no contingent liability is recorded in the Consolidated Balance Sheets for the above guarantees.

### Voluntary Accommodation Program

In connection with the initial public offering by Facebook on May 18, 2012, systems issues were experienced at the opening of trading of Facebook shares. Certain of our members may have been disadvantaged by such systems issues, which have subsequently been remedied. We have announced a program for voluntary accommodations to qualifying members of up to \$62 million, for which a liability has not been recorded as this program is still subject to approval by the SEC.

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### **Escrow Agreements**

In connection with our acquisitions of FTEN, SMARTS, Glide Technologies, and the Index Business of Mergent, Inc., including Indxis, we entered into escrow agreements to secure the payments of post-closing adjustments and to ensure other closing conditions. At December 31, 2012, these escrow agreements provide for future payments of \$18 million and are included in other current liabilities and other non-current liabilities in the Consolidated Balance Sheets.

### **Brokerage Activities**

Our broker-dealer subsidiaries, 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 a clearinghouse or exchange, 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.

### **Litigation**

In 2012, we became a party to several legal and regulatory proceedings relating to the Facebook IPO that occurred on May 18, 2012. In our most recent Quarterly Report on Form 10-Q for the quarter ended September 30, 2012, we identified several putative class actions in which we were named as a defendant. All but one of those actions are putative national class actions and have been consolidated into a matter pending in the U.S. District Court for the Southern District of New York, under the caption *In re Facebook, Inc., IPO Securities and Derivative Litigation*, MDL No. 2389. Of the 10 prior actions consolidated under this caption, nine were brought by retail investors seeking damages for alleged negligence, while one was brought by professional proprietary trading firms for alleged violations of Rule 10b-5 promulgated under the Securities Exchange Act of 1934, as amended.

An additional putative class action lawsuit, *Zack v. The NASDAQ OMX Group, Inc. and The NASDAQ Stock Market LLC* (filed June 26, 2012; re-filed August 7, 2012), alleges negligence and seeks to represent only citizens of the state of New York. Four other lawsuits have been brought by individual investors (filed between June 18, 2012 and October 12, 2012). Those actions also assert claims for negligence, gross negligence, and/or fraud. The *Zack* action and the individual actions are not consolidated with the putative nationwide class actions, but are being coordinated with them in the Facebook action referenced above.

We also received a demand letter from a member organization, seeking indemnification for alleged losses associated with the Facebook IPO. No complaint has been filed in this matter.

We believe that these lawsuits and the demand are without merit and intend to defend them vigorously. As such, we have not recorded a reserve as it is not probable that a liability has been incurred and the amount of loss cannot be reasonably estimated as of the date of these consolidated financial statements.

In connection with the Facebook matter, the New York Regional Office of the SEC's Division of Enforcement is conducting an investigation. To date, we have been responding to requests for information, documentation, and witness interviews, and have been cooperating fully in the investigation. We are unable to predict the outcome of this investigation, or its potential impact on us.

Except as disclosed above, we are not currently a party to any litigation or proceeding that we believe could have a material adverse effect on our business, consolidated 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.

### **Tax Audits**

We are engaged in ongoing discussions and audits with taxing authorities on various tax matters, the resolutions of which are uncertain. Currently, there are matters that may lead to assessments, some of which may not be resolved for several years. Based on currently available information, we believe we have adequately provided for any assessments that could result from those proceedings where it is more likely than not that we will be assessed. We continuously review our positions as these matters progress.

### **19. Business Segments**

Prior to January 1, 2013, we managed, operated and provided our products and services in three business segments: Market Services, Issuer Services, and Market Technology.

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Our Market Services segment consists of our U.S. and European Transaction Services businesses, including Access Services, as well as our Market Data business. These businesses are interrelated because our Market Data business sells and distributes quote and trade information generated by our Transaction Services businesses to market participants and data distributors. Market Services also includes our Broker Services business, which offers technology and customized securities administration solutions to financial participants in the Nordic markets.

Our Issuer Services segment includes our Global Listing Services and Global Index Group businesses. The companies listed on The NASDAQ Stock Market and our Nordic and Baltic exchanges represent a diverse array of industries. This diversity of companies listed on our markets allows us to develop and license NASDAQ OMX branded indexes, associated derivatives, and financial products as part of our Global Index Group. The Global Listing Services business also includes our Corporate Solutions business, which generates revenues through the sale of our shareholder, directors, newswire, and other services.

Our Market Technology business is the world's leading technology solutions provider and partner to exchanges, clearing organizations and central securities depositories. Our technology business is also the sales channel for our complete global offering to other marketplaces. Market Technology provides technology solutions for trading, clearing, settlement and information dissemination, and also offers facility management integration, surveillance solutions, 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. These amounts include, but are not limited to, amounts related to restructuring actions, mergers, strategic initiatives, long-term asset impairment, and financing activities. See below for further discussion.

The following table presents certain information regarding these operating segments for the years ended December 31, 2012, 2011 and 2010.

	Market Services	Issuer Services	Market Technology	Corporate Items and Eliminations	Consolidated
	(in millions)				
<b>2012</b>					
Total revenues	\$ 2,560	\$ 375	\$ 184	\$ —	\$ 3,119
Cost of revenues	(1,456)	—	—	—	(1,456)
Revenues less transaction rebates, brokerage, clearance and exchange fees	1,104	375	184	—	1,663
Depreciation and amortization	82	11	11	—	104
Net interest expense	57	20	10	—	87
Income (loss) before income taxes	520	105	21	(98) <sup>(2)</sup>	548
Total assets <sup>(1)</sup>	7,100	881	330	821	9,132
Purchases of property and equipment	55	18	14	—	87
<b>2011</b>					
Total revenues	\$ 2,886	\$ 361	\$ 183	\$ —	\$ 3,430
Cost of revenues	(1,748)	—	—	—	(1,748)
Revenues less transaction rebates, brokerage, clearance and exchange fees	1,138	361	183	—	1,682
Depreciation and amortization	81	10	15	3	109
Net interest expense	73	24	11	—	108
Income (loss) before income taxes	519	118	19	(83) <sup>(3)</sup>	573
Total assets <sup>(1)</sup>	12,145	707	347	892	14,091
Purchases of property and equipment	58	14	14	2	88
<b>2010</b>					
Total revenues	\$ 2,700	\$ 338	\$ 152	\$ 1	\$ 3,191
Cost of revenues	(1,675)	—	—	—	(1,675)
Revenues less transaction rebates, brokerage, clearance and exchange fees	1,025	338	152	1	1,516
Depreciation and amortization	77	17	5	4	103
Net interest expense	63	21	9	—	93
Income (loss) before income taxes	450	119	11	(54) <sup>(4)</sup>	526
Total assets <sup>(1)</sup>	14,331	714	415	747	16,207
Purchases of property and equipment	29	4	7	2	42

<sup>(1)</sup> Total assets decreased \$5.0 billion at December 31, 2012 as compared to December 31, 2011 primarily due to our new clearing structure which significantly changed the nature and extent of the risk of loss to NASDAQ OMX Nordic Clearing in the event of a member default. As a result, we no longer record derivative positions or resale and repurchase agreements in the Consolidated Balance Sheet. Total assets decreased \$2.1 billion at December 31, 2011 as compared to December 31, 2010 primarily due to a decrease in open clearing contracts reflecting decreases in derivative positions, at fair value, partially offset by increases in resale agreements, at contract value within our Market Services segment. The decrease in derivative positions, at fair value reflected significant reductions in price levels within our commodities markets, fewer open positions and decreased volatility within our derivative markets, as well as currency rate fluctuations. The increase in resale agreements, at contract value was primarily due to the mix of contracts outstanding between our clearing members, which allowed us to net or offset less of these contracts against one another at December 31, 2011 compared to December 31, 2010, partially offset by lower volume and currency rate fluctuations.

<sup>(2)</sup> The 2012 corporate items and eliminations primarily include:

- Costs associated with restructuring charges of \$44 million. See Note 3, “Restructuring Charges,” for further discussion;
- Impairment charges related to acquired intangible assets of \$28 million. See “Intangible Asset Impairment Charges” of Note 5, “Goodwill and Purchased Intangible Assets,” for further discussion;
- A loss on sale of business of \$14 million. See “2012 Divestiture,” of Note 4, “Acquisitions and Divestitures,” for further discussion;
- An other-than-temporary impairment charge related to our equity method investment in EMCF of \$12 million. See “Equity Method Investments” of Note 6, “Investments,” for further discussion;
- Special legal expenses of \$7 million from the proposed voluntary accommodation program and other expenses related to the systems issues experienced at the time of the Facebook IPO; and
- Merger and strategic initiative costs of \$4 million, partially offset by;
- Income from open positions of \$11 million relating to the operations of the exchange;

<sup>(3)</sup> The 2011 corporate items and eliminations primarily include:

- Merger and strategic initiative costs of \$38 million primarily related to costs incurred for advisors, bank commitment fees, legal and other professional services related to our joint proposal to acquire NYSE Euronext, as well as costs related to our acquisition of Glide Technologies in October 2011;
- Debt extinguishment and refinancing charges of \$31 million. See “2.50% Convertible Senior Notes,” and “2011 Credit Facility,” of Note 9, “Debt Obligations,” for further discussion; and
- An asset impairment charge of \$18 million. See “Available-for-Sale Investment Security,” of Note 6, “Investments,” for further discussion.

<sup>(4)</sup> The 2010 corporate items and eliminations primarily include:

- Debt extinguishment and refinancing charges of \$40 million, which included the write-off of the remaining unamortized balance of debt issuance costs incurred in conjunction with our senior secured credit facilities in place as of December 31, 2009 of \$28 million, costs to terminate our float-to-fixed interest rate swaps previously designated as a cash flow hedge of \$9 million and other costs of \$3 million; and
- \$11 million related to loss on divestiture of businesses as a result of our decision to close the businesses of both NEURO (\$6 million) and Agora-X (\$5 million).

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.”

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### Geographic Data

The following table presents revenues and property and equipment, net by geographic area for 2012, 2011 and 2010. 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 millions)	
<b>2012:</b>		
United States	\$ 2,422	\$ 131
All other countries <sup>(1)</sup>	697	80
Total	<u>\$ 3,119</u>	<u>\$ 211</u>
<b>2011:</b>		
United States	\$ 2,699	\$ 125
All other countries <sup>(1)</sup>	731	68
Total	<u>\$ 3,430</u>	<u>\$ 193</u>
<b>2010:</b>		
United States	\$ 2,558	\$ 99
All other countries <sup>(1)</sup>	633	65
Total	<u>\$ 3,191</u>	<u>\$ 164</u>

<sup>(1)</sup> Property and equipment, net for all other countries primarily includes assets held in Sweden.

No single customer accounted for 10.0% or more of our revenues in 2012, 2011 and 2010.

As announced in January 2013, we realigned our reportable segments as a result of changes to the organizational structure of our businesses. See Note 20, "Subsequent Event," for further discussion.

### 20. Subsequent Event

#### Change in Reportable Segments

As announced in January 2013, we realigned our reportable segments as a result of changes to the organizational structure of our businesses.

Software products sold relating to Market Technology and Corporate Solutions, previously part of our Issuer Services segment, became the responsibility of one segment manager and will comprise our new Global Technology Solutions segment. Our Market Data products, previously part of our Market Services segment, and our Global Index Group business, previously part of our Issuer Services segment, became the responsibility of another segment manager and will comprise the new Global Information Services segment. Both segment managers report to our chief executive officer who is also considered our chief operating decision maker for financial reporting purposes.

**Schedule II—Valuation and Qualifying Accounts**  
**Three Years Ended December 31, 2012**  
**(in millions)**

	<u>Reserve for Bad Debts</u>		
	<u>2012</u>	<u>2011</u>	<u>2010</u>
Balance at beginning of period	\$ 3	\$ 3	\$ 3
Additions:			
Charges to income	6	4	5
Recoveries of amounts previously written-off	—	1	1
Deductions:			
Charges for which reserves were provided	(4)	(5)	(6)
Balance at end of period	<u>\$ 5</u>	<u>\$ 3</u>	<u>\$ 3</u>

## Exhibit Index

<u>Exhibit Number</u>	
2.1	Binding Offer Letter Agreement, dated as of December 12, 2012 between NASDAQ OMX and Thomson Reuters (Markets) LLC.
3.1	Restated Certificate of Incorporation of NASDAQ OMX (incorporated herein by reference to Exhibit 3.1 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2009 filed on August 7, 2009).
3.1.1	Certificate of Designation of Series A Convertible Preferred Stock of NASDAQ OMX (incorporated herein by reference to Exhibit 3.1.8 to the Current Report on Form 8-K filed on October 6, 2009).
3.2	By-Laws of NASDAQ OMX (incorporated herein by reference to Exhibit 3.2 to the Current Report on Form 8-K filed on February 14, 2013).
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	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).
4.3	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).
4.4	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).
4.5	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).
4.5.1	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 (incorporated herein by reference to Exhibit 4.10.1 to the Annual Report on Form 10-K for the year ended December 31, 2008 filed on February 26, 2009).
4.6	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).
4.6.1	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 (incorporated herein by reference to Exhibit 4.11.1 to the Annual Report on Form 10-K for the year ended December 31, 2008 filed on February 26, 2009).
4.7	Indenture, dated as of January 15, 2010, between NASDAQ OMX and Wells Fargo Bank, National Association, as Trustee (incorporated herein by reference to Exhibit 4.1 to the Current Report on Form 8-K filed on January 19, 2010).
4.8	First Supplemental Indenture, dated as of January 15, 2010, among NASDAQ OMX and Wells Fargo Bank, National Association, as Trustee (incorporated herein by reference to Exhibit 4.2 to the Current Report on Form 8-K filed on January 19, 2010).
4.9	Second Supplemental Indenture, dated as of December 17, 2010, among NASDAQ OMX and Wells Fargo Bank, National Association, as Trustee (incorporated herein by reference to Exhibit 4.1 to the Current Report on Form 8-K filed on December 21, 2010).
4.10	NASDAQ Stockholders' Agreement, dated as of December 16, 2010, between The NASDAQ OMX Group, Inc. and Investor AB (incorporated herein by reference to Exhibit 4.12 to the Annual Report on Form 10-K for the year ended December 31, 2010 filed on February 24, 2011).
10.1	Amended and Restated Board Compensation Policy, effective as of May 26, 2011 (incorporated herein by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2011 filed on August 4, 2011).*
10.2	The NASDAQ OMX Group, Inc. 2010 Executive Corporate Incentive Plan, effective as of January 1, 2010 (incorporated herein by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2010 filed on August 4, 2010).*

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<u>Exhibit Number</u>	
10.3	Form of NASDAQ OMX Non-Qualified Stock Option Award Certificate (incorporated herein by reference to Exhibit 10.3 to the Annual Report on Form 10-K for the year ended December 31, 2010 filed on February 24, 2011).*
10.4	Form of NASDAQ OMX Restricted Unit Award Certificate (employees) (incorporated herein by reference to Exhibit 10.4 to the Annual Report on Form 10-K for the year ended December 31, 2010 filed on February 24, 2011).*
10.5	Form of NASDAQ OMX Restricted Stock Unit Award Certificate (directors) (incorporated herein by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2012 filed on August 3, 2012).*
10.6	Form of NASDAQ OMX One-Year Performance Share Unit Agreement (incorporated herein by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2012 filed on August 3, 2012).*
10.7	Form of NASDAQ OMX Three-Year Performance Share Unit Agreement (incorporated herein by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2012 filed on August 3, 2012).*
10.8	Amended and Restated Supplemental Executive Retirement Plan, dated as of December 17, 2008 (incorporated herein by reference to Exhibit 10.6 to the Annual Report on Form 10-K for the year ended December 31, 2008 filed on February 26, 2009).*
10.8.1	Amendment No. 1 to Amended and Restated Supplemental Executive Retirement Plan, effective as of December 31, 2008 (incorporated herein by reference to Exhibit 10.6.1 to the Annual Report on Form 10-K for the year ended December 31, 2008 filed on February 26, 2009).*
10.9	The NASDAQ OMX Group, Inc. Supplemental Employer Retirement Contribution Plan, dated as of December 17, 2008 (incorporated herein by reference to Exhibit 10.7 to the Annual Report on Form 10-K for the year ended December 31, 2008 filed on February 26, 2009).*
10.10	Employment Agreement between NASDAQ OMX and Robert Greifeld, effective as of February 22, 2012 (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed on February 28, 2012).*
10.10.1	Memorandum of Understanding between NASDAQ OMX and Robert Greifeld, effective as of December 11, 2012.*
10.11	Nonqualified Stock Option Agreement between Nasdaq and Robert Greifeld reflecting December 13, 2006 grant (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).*
10.12	Nonqualified Stock Option Agreement between NASDAQ OMX and Robert Greifeld reflecting June 30, 2009 grant (incorporated herein by reference to Exhibit 10.11 to the Annual Report on Form 10-K for the year ended December 31, 2009 filed on February 18, 2010).*
10.13	2011 Performance Share Unit Agreement between NASDAQ OMX and Robert Greifeld (incorporated herein by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q for the quarter ended September 30, 2011 filed on November 4, 2011).*
10.14	Form of Amended and Restated Letter Agreement, effective as of December 31, 2008, between NASDAQ OMX and Certain Executive Officers (incorporated herein by reference to Exhibit 10.12 to the Annual Report on Form 10-K for the year ended December 31, 2008 filed on February 26, 2009).*
10.15	Employment Agreement between Nasdaq and Edward Knight, effective as of December 29, 2000 (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).*
10.15.1	First Amendment to Employment Agreement between Nasdaq and Edward Knight, effective February 1, 2002 (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).*
10.15.2	Second Amendment to Employment Agreement between NASDAQ OMX and Edward Knight, effective as of December 31, 2008 (incorporated herein by reference to Exhibit 10.13.2 to the Annual Report on Form 10-K for the year ended December 31, 2008 filed on February 26, 2009).*
10.15.3	Third Amendment to Employment Agreement between NASDAQ OMX and Edward Knight, effective as of February 22, 2012 (incorporated herein by reference to Exhibit 10.2 to the Current Report on Form 8-K filed on February 28, 2012).*

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<u>Exhibit Number</u>	
10.16	Employment Agreement, dated as of June 24, 2008, between OMX AB and Hans-Ole Jochumsen (incorporated herein by reference to Exhibit 10.18 to the Annual Report on Form 10-K for the year ended December 31, 2009 filed on February 18, 2010).*
10.17	Credit Agreement, dated as of September 19, 2011, among NASDAQ OMX, Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities, Inc., Nordea Bank AB (publ.), Merchant Banking, Skandinaviska Enskilda Banken AB (publ.) UBS Securities LLC and Wells Fargo Securities, LLC (incorporated herein by reference to Exhibit 4.1 to the Current Report on Form 8-K filed on September 22, 2011).
11	Statement regarding computation of per share earnings (incorporated herein by reference from Note 13 to the consolidated financial statements under Part II, Item 9 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 Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”).
31.2	Certification of Chief Financial Officer and Executive Vice President, Corporate Strategy 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.
101.INS	XBRL Instance Document**
101.SCH	XBRL Taxonomy Extension Schema
101.CAL	XBRL Taxonomy Extension Calculation Linkbase
101.DEF	Taxonomy Extension Definition Linkbase
101.LAB	XBRL Taxonomy Extension Label Linkbase
101.PRE	XBRL Taxonomy Extension Presentation Linkbase

\* Management contract or compensatory plan or arrangement.

\*\* The following materials from The NASDAQ OMX Group, Inc. Annual Report on Form 10-K for the year ended December 31, 2012, formatted in XBRL (eXtensible Business Reporting Language); (i) Consolidated Statements of Income for the years ended December 31, 2012, 2011 and 2010; (ii) Consolidated Balance Sheets at December 31, 2012 and December 31, 2011; (iii) Consolidated Statements of Comprehensive Income for the years ended December 31, 2012, 2011 and 2010; (iv) Consolidated Statements of Changes in Equity for the years ended December 31, 2012, 2011 and 2010; (v) Consolidated Statements of Cash Flows for the years ended December 31, 2012, 2011 and 2010; and (vi) notes to consolidated financial statements.



To: Thomson Reuters (Markets) LLC  
3 Times Square  
New York, NY 10036  
Attention: General Counsel, Financial & Risk

December 12, 2012

**STRICTLY PRIVATE AND CONFIDENTIAL**

**IRREVOCABLE BINDING OFFER: PURCHASE OF THE CORPORATE SERVICES BUSINESS OF THOMSON REUTERS**

Ladies and Gentlemen:

We refer to the proposed sale by Thomson Reuters (Markets) LLC (**TR** or **you**) and Thomson Reuters Global Resources (**TRGR**) and the other Sellers, of the Business to The NASDAQ OMX Group, Inc. (the **Acquiror Parent, we** or **us**) or Subsidiaries of the Acquiror Parent. Capitalized terms used in this letter agreement (this **Letter**), unless otherwise defined herein, have the meanings ascribed to them in the draft Asset Purchase Agreement, including the forms of agreements included as exhibits thereto and the related Disclosure Schedule (the **Draft Agreement**) in the form attached to this Letter as Annex 1. TR and Acquiror Parent are together referred to as the **Parties**.

**1 Acquiror Offer**

- 1.1 The Acquiror Parent hereby submits the following irrevocable and binding offer (this **Offer**) to, or to cause one or more of its Subsidiaries to, purchase (such purchasing entity or entities, the **Acquiror**) certain assets of the Business and to assume certain Liabilities on the terms and conditions set forth in the Draft Agreement, which Offer may be accepted by TR at its own discretion and option, subject to the terms of this Letter.
- 1.2 We hereby agree that we shall not have any rights whatsoever, whether on the basis of applicable Law or otherwise, to withdraw, in any way claim the unenforceability of or otherwise to terminate the Offer before the Offer Termination Time (as defined below) and hereby irrevocably waive any such rights.
- 1.3 On the date hereof, we have, and on the Closing Date the Acquiror will have, funds on hand or access to credit facilities sufficient to pay the Purchase Price and otherwise to consummate the transactions contemplated by the Draft Agreement.
- 1.4 For the purposes of this Letter, the term **Offer Termination Time** means the time at which the Offer shall expire, being 6:00 p.m., New York City time, on the date falling three calendar months after the date hereof; provided, however, that if by that time the Consultation Requirements (as defined in Article 2 below) have not yet been complied with, TR and the Acquiror shall each have the unilateral right (to be exercised by written notice issued to the other Party prior to the original Offer Termination Time) to extend the time by which the Offer shall expire to 6:00 p.m., New York City time, on the date falling two calendar months after the Offer Termination Time, in which case the term **Offer Termination Time** shall refer to the time to which the expiration of the Offer has been so extended. The period between the date hereof and the Offer Termination Time shall be referred to as the **Offer Period**.

## 2 Consultation Requirements

- 2.1 Annex 2 sets forth the employee consultation obligations that must be legally satisfied prior to the signing of the Draft Agreement (collectively, the **Consultation Requirements**).
- 2.2 TR shall, and shall cause its Affiliates to, as promptly as reasonably practicable after the date of this Offer initiate the process necessary to comply with the Consultation Requirements. TR shall, and shall cause its Affiliates to, use commercially reasonable efforts to take such steps as are necessary or desirable to satisfy the Consultation Requirements as promptly as reasonably practicable, including (a) calling all necessary meetings of the works councils and other applicable employee representative bodies detailed in Annex 2, (b) providing as promptly as reasonably practicable to the works councils and other applicable employee representative bodies all information and documentation reasonably necessary to carry out their consultation, and (c) ensuring that each meeting is conducted diligently.
- 2.3 Similarly, the Acquiror Parent shall cause its Affiliates to use commercially reasonable efforts to take such steps as are reasonably necessary or desirable to assist the Sellers to satisfy the Consultation Requirements as promptly as reasonably practicable. The Acquiror Parent shall cause its Affiliates to provide all reasonable assistance, cooperation and support in order to assist the Sellers to satisfy the Consultation Requirements, including (a) participating in meetings of the works councils and other applicable employee representative bodies when so requested and invited by such works councils and other applicable employee representative bodies and (b) providing in a timely manner to TR information and documentation reasonably relating to the current legal and organizational situation of the Acquiror and its Affiliates that the works councils and other applicable employee representative bodies reasonably request in connection therewith.
- 2.4 The Parties shall regularly consult and exchange information with each other as to the status of and progress with the steps contemplated by this Article 2.
- 2.5 In the event that the employee consultation process with the works councils identified in Annex 2 results in any suggestions or conditions relating to the terms of the transactions contemplated by the Offer being made by any such employee representative body, then, during the Offer Period, TR shall, and the Acquiror Parent shall cause the Acquiror to, discuss in good faith (without any binding obligation for any of the Parties or their Affiliates to agree to any changes) whether and to what extent such transactions may be altered to accommodate the relevant employee representative body.

## 3 Accepting the Offer

- 3.1 We acknowledge that you cannot accept the Offer or sign the Draft Agreement until all the Consultation Requirements have been complied with.
- 3.2 Accordingly, you will provide written notice to us once the Consultation Requirements have been complied with. Furthermore, if by written notice you thereafter accept the Offer prior to the Offer Termination Time (the **Offer Acceptance Notice**), then subject to any changes made pursuant to the provisions of Section 2.5 above, you will return to us a copy of the Draft Agreement signed by you and TRGR and we shall cause the Acquiror to countersign the Draft Agreement as promptly as practicable after its delivery. We acknowledge that acceptance of this Offer shall be evidenced by such Offer Acceptance Notice and TR's execution of the Draft Agreement.
- 3.3 If you do not deliver an Offer Acceptance Notice prior to the Offer Termination Time, the Offer shall lapse and cease to have effect but neither the lapsing of the Offer nor its ceasing to have effect shall affect any accrued rights or liabilities of any Party prior to such lapse or cessation.

#### 4 Additional Agreements

- 4.1 From the date hereof until the earlier of (a) the date of execution by the Parties of the Draft Agreement or (b) the Offer Termination Time (the earlier of such dates being the **Expiration Date**), except as required by applicable Law or as otherwise expressly contemplated by the Parties in writing, unless the Acquiror Parent or one of its Affiliates consents in writing and in advance (which consent shall not be unreasonably withheld or delayed), to the extent permitted by applicable Law (including the Consultation Requirements), TR shall, and shall cause the other Sellers to, comply in all respects with the covenants set forth in Section 5.1 (*Conduct of Business Prior to the Closing*), Section 5.2 (*Access to Information*), Section 5.5 (*Regulatory and Other Authorizations; Consents*), Section 5.15 (*Updates*), Section 5.16 (*Information Security*) and Section 6.1(a) (*Employee Matters*) in the Draft Agreement as if such provisions were set forth herein in their entirety *mutatis mutandis*; provided, however, that for the avoidance of doubt, references in such Sections to “this Agreement” shall instead refer to “this Letter,” references to “Closing Date” shall instead refer to “Expiration Date,” references to “party” or “parties” shall instead refer to TR and the Acquiror, and references to Articles or Sections in such provisions shall instead refer to the Articles and Sections of the Draft Agreement.
- 4.2 From and after the date of this Letter until the Expiration Date, TR shall have the right, but not the obligation, to update and amend the Disclosure Schedule. Any such update or amendment shall be deemed to have amended the Disclosure Schedule and to have qualified the relevant Section of the Draft Agreement; provided, however, that any such update or amendment shall be disregarded for purposes of Section 8.2(a)(i) and Section 10.1(a)(i) of the Draft Agreement. All references in the Draft Agreement to particular Sections of the Disclosure Schedule, or to the Disclosure Schedule generally, shall after any such amendment or supplement include the Disclosure Schedule as amended or supplemented.

#### 5 Non-Execution Payment

In the event that by the Offer Termination Time, TR has not accepted the Offer and executed the Draft Agreement, and the Acquiror Parent and its Affiliates are not in material breach of their obligations set forth in Sections 2.3, 2.4 and 2.5 of this Letter, then TR shall promptly, but in no event later than five Business Days after the receipt of an invoice therefor, reimburse the Acquiror Parent for all of its costs and expenses (including fees and expenses of third-party advisors, reimbursed expenses of employees of the Acquiror Parent and its Subsidiaries, as well as a proportionate allocation for overhead expenses) incurred by the Acquiror Parent and its Subsidiaries on or prior to the Offer Termination Time in connection with the transactions contemplated by the Draft Agreement, which amount shall not be greater than 1% of the Purchase Price (the **Non-Execution Payment**) in cash by wire transfer of immediately available funds to a bank account designated by the Acquiror Parent. Such payment shall be in U.S. dollars.

#### 6 Exclusivity

- 6.1 From the date hereof until the earlier of (i) the delivery of the Acceptance Notice and a Draft Agreement duly executed by TR and TRGR and (ii) 10 months from the date hereof, TR shall not, and shall cause its Affiliates and its and their respective Representatives not to, directly or indirectly:
- (a) continue, enter into or otherwise participate in discussions, communications or negotiations concerning the sale, transfer or other disposition to any Person (other than the Acquiror Parent or its Affiliates) of the Business or any part thereof, whether directly or indirectly (via a sale of stock or assets or any other economic transfer arrangement) (an **Alternative Transaction**), or provide information concerning the Business in connection with any Alternative Transaction to, or solicit any offer for an Alternative Transaction from, any other Person, or otherwise take any other action to encourage or facilitate any Alternative Transaction, including approving any

Alternative Transaction or entering into an agreement with any Person other than the Acquiror or an Affiliate of the Acquiror for the sale of the Business; or

(b) commit or agree to do any of those things (whether or not conditional on termination of the arrangements set forth herein).

6.2 TR shall, and shall cause its Affiliates and its and their respective Representatives to (i) promptly request each person that has executed a confidentiality agreement with TR or one of its Affiliates prior to the date hereof in connection with a process relating to one or more proposals with respect to the acquisition of the Business or any part thereof, whether directly or indirectly (via a sale of stock or assets or any other economic transfer arrangement) to return or destroy all confidential information heretofore furnished to such person or its Representatives relating to such process by or on behalf of TR or one of its Affiliates, and (ii) inform any Person that seeks to participate in discussions, communications or negotiations with TR, one of its Affiliates or its or their respective Representatives regarding an Alternative Transaction of the existence of the obligations set forth in this Section 6.

6.3 In the event that TR breaches its obligations set forth in this Section 6, then upon the occurrence of the earliest of (i) the announcement of a proposed Alternative Transaction, (ii) the adoption of any agreement relating to any Alternative Transaction, or (iii) the consummation of an Alternative Transaction, TR shall promptly, but in no event later than five Business Days following the occurrence of the earliest of such events described in clauses (i) to (iii), pay the Acquiror Parent, as liquidated damages, an amount equal to 3% of the Purchase Price (the **Liquidated Damages**), in cash by wire transfer of immediately available funds to a bank account designated by the Acquiror Parent. Such payment shall be in U.S. dollars.

Each Party acknowledges that the amount of Liquidated Damages set out in this Section 6 is a payment of liquidated damages that is a genuine pre-estimate of the damages that the Acquiror Parent will suffer or incur as a result of TR's breach of its obligations set forth in this Section 6 (including the loss of business reputation and the loss of opportunity and benefit in respect of the Business), giving rise to such damages and is not a penalty. TR irrevocably waives any right it may have to raise as a defense that any such liquidated damages are excessive or punitive.

## 7 **Announcements**

No Party or any Affiliate or Representative of such Party shall issue or cause the publication of any press release or public announcement or otherwise communicate with any news media in respect of this Letter or the transactions contemplated by this Letter without the prior written consent of the other Party (which consent shall not be unreasonably withheld or delayed), except (a) as may be required by Law or stock exchange rules, in which case the Party required to publish such press release or public announcement shall allow the other Party a reasonable opportunity to comment on such press release or public announcement in advance of such publication and (b) in relation to the disclosures and announcements reasonably required in connection with the Consultation Requirements, in which case the Party required to make such disclosures shall inform the other Party of such disclosures; provided, however, that in each case, the disclosing Party shall use reasonable efforts in such case to protect the confidentiality of the relevant information.

## 8 **Confidentiality**

The terms of the Confidentiality Agreement are incorporated into this Letter by reference.

## 9 General Provisions

- 9.1 The provisions of Sections 11.3 (*Notices*), 11.5 (*Severability*), 11.6 (*Entire Agreement*), 11.7 (*Assignment*), 11.8 (*No Third-Party Beneficiaries*), 11.9 (*Amendment*), 11.16 (*Rules of Construction*), 11.17 (*Counterparts*) and 11.19 (*Waiver*) of the Draft Agreement shall be deemed to be incorporated into this Letter *mutatis mutandis*; provided, however, that for the avoidance of doubt, references in such Sections to “this Agreement” shall instead refer to “this Letter,” references to “party” or “parties” shall instead refer to TR and the Acquiror, and references to Articles or Sections in such provisions shall instead refer to the Articles and Sections of the Draft Agreement.
- 9.2 TR acknowledges and agrees that the agreements contained in Sections 5 and 6 are an integral part of the transactions contemplated hereby and that, without these rights, the Acquiror Parent would not enter into the agreements set forth in this Letter; accordingly, if TR fails to promptly pay the amount due pursuant to Section 5 or Section 6, and in order to obtain such payment, the Acquiror Parent commences an Action that results in a judgment against TR for the Non-Execution Payment or any portion thereof or the Liquidated Damages, TR shall pay to the Acquiror Parent its costs and expenses (including attorneys’ fees) in connection with such Action, together with interest on the amount of the fee at the Interest Rate in effect on the date such payment was required to be made through the date of payment.

## 10 Governing Law and Jurisdiction

- 10.1 This Letter (and any claims or disputes arising out of or related hereto or to the transactions contemplated hereby and thereby or to the inducement of any party to enter herein and therein, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall in all respects be governed by, and construed in accordance with, the Laws of the State of New York, including all matters of construction, validity and performance, in each case without reference to any conflict of Law rules that might lead to the application of the Laws of any other jurisdiction.
- 10.2 Each of TR and the Acquiror Parent agrees that any Dispute shall be resolved only in the Courts of the State of New York sitting in the Borough of Manhattan of The City of New York or the United States District Court sitting in the Borough of Manhattan of The City of New York and the appellate courts having jurisdiction of appeals in such courts (the **New York Courts**). In that context, and without limiting the generality of the foregoing, each of TR and the Acquiror Parent by this Letter irrevocably and unconditionally:
- (a) submits for itself and its property in any Action relating to this Letter, or for recognition and enforcement of any judgment in respect thereof, to the exclusive jurisdiction of the New York Courts, and agrees that all claims in respect of any such Action shall be heard and determined in the New York Courts;
  - (b) consents that any such Action may and shall be brought in the New York Courts and waives any objection that it may now or hereafter have to the venue or jurisdiction of any such Action in the New York Courts or that such Action was brought in an inconvenient court and agrees not to plead or claim the same;
  - (c) agrees that service of process in any such Action may be effected by mailing a copy of such process by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address as provided in Section 11.3 of the Draft Agreement; and
  - (d) agrees that nothing in this Letter shall affect the right to effect service of process in any other manner permitted by the Laws of the State of New York.

- 10.3 The Parties hereby acknowledge and agree that the failure of any Party to perform its agreements and covenants hereunder, including its failure to take all actions as are necessary on its part to consummate the transactions contemplated hereby, may cause irreparable injury to the other Party, for which damages, even if available, may not be an adequate remedy. Accordingly, each Party hereby consents to the issuance of temporary, preliminary and permanent injunctive relief by the New York Courts to compel performance of such party's obligations, or to prevent breaches or threatened breaches of this Letter, and to the granting by the New York Courts of the remedy of specific performance of its obligations hereunder, without, in any such case, the requirement to post any bond or other undertaking, in addition to any other rights or remedies available hereunder or at law or in equity.
- 10.4 EACH PARTY HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LETTER OR ANY TRANSACTION CONTEMPLATED HEREBY. EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS LETTER BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.4.

*[remainder of page intentionally left blank]*

Yours faithfully,

THE NASDAQ OMX GROUP, INC.

By /s/ Lee Shavel

Name: Lee Shavel

Title: CFO & EVP Corporate Strategy

ACKNOWLEDGED AND AGREED:

THOMSON REUTERS (MARKETS) LLC

By /s/ John Bellizzi

Name: John Bellizzi

Title: Authorized Signatory

**DRAFT AGREEMENT**

Please see attached.

**ASSET PURCHASE AGREEMENT**

**DATED AS OF \_\_\_\_\_, 201\_\_**

**between**

**THOMSON REUTERS (MARKETS) LLC,  
THOMSON REUTERS GLOBAL RESOURCES,  
THOMSON REUTERS CORPORATION  
(solely with respect to Section 11.14)**

**and**

**[ACQUIROR]**

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**BETWEEN:**

- (1) **THOMSON REUTERS (MARKETS) LLC**, a Delaware limited liability company (**TRM**),
- (2) **THOMSON REUTERS GLOBAL RESOURCES**, an unlimited company organized under the Laws of the Republic of Ireland (**TRGR** and, collectively with TRM, **TR**),
- (3) **THOMSON REUTERS CORPORATION**, a corporation under the Laws of the Province of Ontario, Canada (solely with respect to Section 11.14) (**Parent Guarantor**), and
- (4) [—], a [—] (the **Acquiror**).

**PRELIMINARY STATEMENTS**

- (A) TR is an Affiliate of each entity identified as an asset seller in Section 1.1(a) of the Disclosure Schedule, which together with TR comprise the **Sellers**.
- (B) The Sellers through their Corporate Services business unit provide (i) investor relations business services including investor relations desktop solutions, investor relations advisory services (including investor targeting services) and investor relations webhosting, (ii) public relations business services including a self-service press release publishing platform, a media contacts database, media monitoring and analytic tools and a public relations workflow dashboard, and (iii) multimedia webcasting and video communications solutions (collectively, the **Business**).
- (C) On December [—], 2012 (the **Offer Letter Date**), an offer letter was entered into between TRM and the [Acquiror] pursuant to which among other things the [Acquiror] made an irrevocable and binding offer to purchase the Business (the **Offer Letter**).<sup>1</sup>
- (D) TRM delivered the Offer Acceptance Notice (as defined in the Offer Letter) to the [Acquiror] on [—], 201\_\_, accepting the offer set out in the Offer Letter.
- (E) TR wishes to sell, and to cause to be sold by the other Sellers, to the Acquiror and the Acquiror Designees, and the Acquiror wishes to purchase, and to cause to be purchased by the Acquiror Designees, from TR and the other Sellers, certain of the assets of the Sellers, in each case, upon the terms and subject to the conditions set forth in this Agreement. In addition, the Acquiror wishes to assume, and to cause to be assumed by the Acquiror Designees, and TR wishes to have the Acquiror and the Acquiror Designees assume, certain liabilities of the Sellers, upon the terms and subject to the conditions set forth in this Agreement.

<sup>1</sup> NOTE TO DRAFT: If the Acquiror is a Subsidiary of The NASDAQ OMX Group, Inc., then The NASDAQ OMX Group, Inc. will execute this Agreement solely to provide a parent guarantee in accordance with Section 11.14 and Section 11.14 shall be revised accordingly.

**NOW, THEREFORE**, in consideration for the premises and mutual covenants, representations, warranties and agreements hereinafter set forth, the parties to this Agreement hereby agree as follows:

## 1. DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings specified in Exhibit 1 to, or elsewhere in, this Agreement.

## 2. PURCHASE AND SALE

### 2.1 Purchase and Sale of Assets

- (a) Transferred Assets. On the terms and subject to the conditions set forth in this Agreement and subject to the exclusions set forth in Section 2.1(b), at the Closing, TR shall and shall cause the other Sellers to sell, convey, assign, transfer and deliver to the Acquiror or an Acquiror Designee, free and clear of all Liens, except Permitted Liens, and the Acquiror shall, or shall (if designated in writing by the Acquiror at least 15 Business Days prior to the Closing) cause an Acquiror Designee to, purchase, acquire and accept from the Sellers, all of the following assets, properties and rights that are owned by the Sellers as the same shall exist on the Closing Date (collectively, the **Transferred Assets**):
- (i) subject to Section 2.2, the Transferred Contracts;
  - (ii) subject to Section 2.2, all rights under Intellectual Property and Software licenses from third parties listed in Section 2.1(a)(ii) of the Disclosure Schedule (the **Assumed IP Licenses**);
  - (iii) all right, title and interest in the Intellectual Property listed in Section 2.1(a)(iii) of the Disclosure Schedule to the extent owned by any of the Sellers (the **Business Intellectual Property**);
  - (iv) all right, title and interest in the Software listed in Section 2.1(a)(iv) of the Disclosure Schedule to the extent owned by any of the Sellers (the **Business Software**);
  - (v) all Prepaid Expenses Related to the Business;
  - (vi) all claims, causes of action, defenses, rights of recovery and rights of setoff or reimbursement of any kind against third parties (and rights under and pursuant to all warranties, representations and guarantees made by suppliers and contractors), relating to the Transferred Assets or any Assumed Liability, including rights to recover past, present and future damages in connection therewith;
  - (vii) all lists of, and currently available contact information for, current and prospective customers and clients, and current subscribers, vendors and suppliers, in each case Related to the Business;
  - (viii) all sales, marketing and other promotional information, literature, manuals, marketing studies and other materials and files Related to the Business;
  - (ix) (A) all of the Sellers' right, title and interest in the leases listed in Section 2.1(a)(ix) of the Disclosure Schedule (the **Assumed Leases**), pursuant to which a Seller holds a leasehold estate in any land, buildings, structures, improvements, fixtures or other interest in real property under any Assumed Lease (the **Assumed Leased Real Property**) and (B) all Leasehold Improvements located on any Assumed Leased Real Property;

- (x) all Furniture and Equipment;
  - (xi) all books, records, customer and other reports, files and papers, correspondence and other documents (including all reasonably accessible correspondence with past, present or prospective customers, clients, subscribers, vendors and suppliers), invoices, whether in hard copy or computer or other electronic format, including manuals and data, in each case that are Related to the Business and copies of any information relating to Taxes imposed on the Business (but excluding any Tax Returns with respect to income or similar Taxes and Tax Returns that do not relate solely to the Transferred Assets or the Business), in each case other than (A) any books, records or other materials originals of which the Sellers are required by Law to retain (in which case copies of which, to the extent permitted by Law, will be made available to the Acquiror at the Acquiror's reasonable request), (B) personnel, medical and employment records for employees and former employees of the Business other than Transferred Employee Records and (C) to the extent that they are not Related to the Business, any books, records or other materials that are located in a facility of the Business but that are not Related to the Business;
  - (xii) all Transferred Employee Records;
  - (xiii) all non-disclosure or confidentiality, non-compete or non-solicitation agreements to the extent Related to the Business; and
  - (xiv) all goodwill that is Related to the Business.
- (b) **Excluded Assets.** Notwithstanding any other provision of this Agreement, the Acquiror and TR expressly understand and agree that the following assets and properties of the Sellers (the **Excluded Assets**) shall be retained by the Sellers and their Affiliates, and shall be excluded from the Transferred Assets:
- (i) all (A) cash and cash equivalents on hand or held by any bank or other third Person and (B) other than Prepaid Expenses Related to the Business, all Current Assets Related to the Business, including, for the avoidance of doubt, any Prepaid Expenses related to Excluded Assets;
  - (ii) without prejudice to Section 5.6, any and all rights to the TR Name and TR Marks, including those rights under the Transferred Contracts and Assumed IP Licenses that grant rights to use the same;
  - (iii) employee benefit plans, programs, arrangements and agreements (including any retirement benefit and post-retirement health benefit plans, programs, arrangements and agreements) sponsored or maintained by the Sellers or their respective Affiliates, and any trusts and other assets related thereto, but not including any plan, program, arrangement or agreement transferred to the Acquiror by operation of Law or as expressly assumed pursuant to Article 6 (including collective bargaining agreements relating to the Business and employment agreements and retention agreements with employees or former employees of the Business that transfer to the Acquiror by operation of Law or as expressly assumed pursuant to Article 6), and any trusts and other assets related thereto;

- (iv) all policies of insurance and interests in insurance pools and programs (**Insurance Arrangements**), including any right to make any claim thereunder;
- (v) all claims, causes of action, defenses, rights of recovery and rights of setoff or reimbursement of any kind against third parties (and rights under and pursuant to all warranties, representations and guarantees made by suppliers or contractors), not relating to the Transferred Assets or any Assumed Liability, including rights to recover past, present and future damages in connection therewith, as well as any books, records and privileged information to the extent relating thereto;
- (vi) all Intellectual Property owned by the Sellers and their Affiliates that is (A) Intellectual Property listed in Section 2.1(b)(vi) of the Disclosure Schedule and (B) TR Intellectual Property (as defined in the Patent License Agreement) that is subject to the Patent License Agreement;
- (vii) all Software owned by the Sellers and their Affiliates that is (A) Software listed in Section 2.1(b)(vii) of the Disclosure Schedule and (B) Software that is subject to the Transition Services Agreement, the Content and Platform Services Agreement or the Multimedia Solutions Distribution Rights Agreement;
- (viii) the Excluded Contracts and any other interest in Contracts other than the Transferred Contracts, Assumed Leases and the Assumed IP Licenses;
- (ix) all personnel, employment and medical records that are not Transferred Employee Records;
- (x) all of Sellers' right, title and interest in the assets listed in Section 2.1(b)(x) of the Disclosure Schedule;
- (xi) all owned real property and other right, title and interests therein including all buildings, structures, improvements and fixtures located thereon and all easements and other rights and interests appurtenant thereto (the **Owned Real Property**);
- (xii) all Permits;
- (xiii) all ownership interests of any Seller in any Person;
- (xiv) all minute books, organizational documents, stock registers and such other books and records of any Seller as pertain to ownership, organization or existence of such Seller; and
- (xv) any other assets, properties, rights, contracts and claims of the Sellers that are not Related to the Business, wherever located, whether tangible or intangible, real, personal or mixed, including books and records referred to in Section 2.1(a)(xi)(C).

- (c) **Assumed Liabilities.** On the terms and subject to the conditions set forth in this Agreement, the Acquiror hereby agrees that, effective at the time of the Closing, the Acquiror or an Acquiror Designee shall assume, pursuant to one or more Assignment and Assumption Agreements, and thereafter shall pay, discharge and perform in accordance with their terms, all of the following and only the following Liabilities of the Sellers (the **Assumed Liabilities**):
- (i) all Specified Current Liabilities in the amounts and to the extent shown on the Final Closing Statement;
  - (ii) all Liabilities arising under any of the Transferred Contracts, Assumed Leases and Assumed IP Licenses other than Liabilities attributable to any failure by any Seller to comply with the terms thereof on or prior to the Closing;
  - (iii) all Liabilities set forth in Section 2.1(c)(iii) of the Disclosure Schedule;
  - (iv) all Taxes for taxable periods (or portions thereof) beginning after the Closing Date with respect to the Transferred Assets and the Business and 50% of all Transfer Taxes; and
  - (v) all Liabilities arising from or relating to the employment, termination of employment or employment practices with respect to the Transferred Employees expressly assumed by the Acquiror or an Acquiror Designee as set forth in Article 6 or Section 7 of Exhibit 11, including the post-closing Liabilities specified in Section 7 of Exhibit 11.
- (d) **Excluded Liabilities.** Notwithstanding any other provision of this Agreement, the Acquiror shall not assume or agree to pay or discharge any Liability not expressly set forth in Section 2.1(c) (collectively, the **Excluded Liabilities**), including the following Liabilities:
- (i) any Debt;
  - (ii) any Liability set forth in Section 2.1(d)(ii) of the Disclosure Schedule;
  - (iii) any Current Liabilities (other than Specified Current Liabilities);
  - (iv) any Liability to the extent relating to or arising out of assets or businesses of any of the Sellers or any of their respective Affiliates that are not Related to the Business;
  - (v) any Liabilities arising from the conduct of the Business or ownership of the Transferred Assets prior to the Closing Date (other than Assumed Liabilities), including, any Liability arising from or relating to the employment, termination of employment or employment practices with respect to the Business or any Employee prior to the Closing Date (other than any such Liability that is a Specified Current Liability);
  - (vi) any Liability in respect of the Transferred Assets or the Business for Taxes (x) by reason of transferee or successor liability, or otherwise by operation of Law or by contract, in each case, that relate to events or transactions with respect to a Seller that occur on or prior to the Closing Date, and (y) as a result of the non-compliance with “bulk sales,” “bulk transfer” or similar Laws by Sellers in respect of the transactions effectuated pursuant to this Agreement; and
  - (vii) any Taxes of the Sellers and their Affiliates for any taxable period other than with respect to the Transferred Assets and the Business, all Taxes for taxable periods (or portions thereof) ending on or before the Closing Date with respect to the Transferred Assets and the Business and 50% of all Transfer Taxes.

## 2.2 Assignment of Certain Transferred Assets

Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not require the Sellers to assign or transfer any Transferred Asset described in Sections 2.1(a)(i), (ii), (ix) and (xiii) if an attempted assignment or transfer thereof, without the consent of a third party, would constitute a breach or other contravention thereof or would in any way adversely affect the rights of the Acquiror or a Seller (in its capacity as the party to such Transferred Asset) (as applicable) thereto or thereunder until such time as such consent has been received. Subject to Section 5.5(g), TR shall, and shall cause each of the other Sellers to, use its commercially reasonable efforts to endeavor during the period beginning on the date hereof and ending on the date that is 360 days following the Closing Date to obtain any such consent necessary for the transfer or assignment of any such Transferred Asset to the Acquiror or an Acquiror Designee. For so long as any such consent has not been obtained, or for so long as an attempted transfer or assignment thereof would be ineffective or would adversely affect the rights of a Seller (in its capacity as the party to such Transferred Asset) (as applicable) thereto or thereunder so that the Acquiror would not in fact receive all the rights under such Transferred Asset, TR shall, and shall cause the other Sellers to, and the Acquiror shall, or shall cause an Acquiror Designee to, subject to Section 5.5(g), cooperate in a mutually agreeable arrangement under which the Acquiror or an Acquiror Designee would obtain and enjoy the benefits and assume the obligations and bear the economic burdens associated with such Transferred Asset, in accordance with this Agreement, including subcontracting, sublicensing or subleasing to the Acquiror or an Acquiror Designee, and under which TR shall, and shall cause the other Sellers to, cause the rights and benefits of such Transferred Assets to be enjoyed by the Acquiror or an Acquiror Designee and would enforce for the benefit of the Acquiror or an Acquiror Designee at the Acquiror's cost and expense any and all of their rights against a third party associated with such Transferred Asset (collectively, **Third Party Rights**), and TR shall, and shall cause the other Sellers to, promptly pay to the Acquiror when received all monies received by them under any such Third Party Rights.

## 2.3 Closing

On (a) the first date that is both (i) five or more Business Days following the satisfaction or waiver of the conditions set forth in Sections 8.1 and 8.2 (other than conditions with respect to actions the respective parties will take at the Closing itself) and (ii) a calendar month-end for TR, or (b) such other date as TR and the Acquiror may mutually agree in writing, the sale and purchase of the Transferred Assets and the assumption of the Assumed Liabilities contemplated by this Agreement shall take place at a closing (the **Closing**) that will be held at the offices of Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020, or such other place as TR and the Acquiror may agree in writing, the date on which the Closing takes place being the **Closing Date**.

## 2.4 Purchase Price

The **Purchase Price** for the Transferred Assets and the non-competition and non-solicitation obligations set forth in the Non-Competition and Non-Solicitation Agreement shall be an amount in cash equal to \$390,000,000 (three hundred and ninety million dollars), as adjusted in accordance with this Article 2.

## 2.5 Closing Payment

- (a) Not less than three Business Days prior to the anticipated Closing Date, TR shall provide the Acquiror with a statement of estimated Specified Current Liabilities less Prepaid Expenses as of the Closing Date (the **Estimated Closing Statement**) in the form attached hereto as Exhibit 2, which shall be contained in a notice (the **Closing Notice**) that sets forth (i) TR's determination of the Closing Payment and (ii) the account or accounts to which the Acquiror shall, or shall cause an Acquiror Designee to, transfer funds pursuant to Section 2.7. The Estimated Closing Statement shall be prepared in accordance with the Transaction Accounting Principles applied consistently with their application in connection with the preparation of the Reference Statement of Transferred Assets and shall otherwise contain all the same line items as the Reference Statement of Transferred Assets.
- (b) During the period after the delivery of the Estimated Closing Statement and prior to the Closing Date, TR shall provide the Acquiror and its independent accountants with commercially reasonable access to review TR's work papers relating to the Estimated Closing Statement and to discuss the foregoing with the relevant employees of the Sellers, in each case, during normal business hours. The Acquiror shall have an opportunity to review the Estimated Closing Statement and TR shall cooperate with the Acquiror in good faith to mutually agree upon the Estimated Closing Statement in the event the Acquiror disputes any item proposed to be set forth on such Estimated Closing Statement delivered by the Acquiror; provided, however, if TR and the Acquiror are not able to reach mutual agreement prior to the Closing Date, the Estimated Closing Statement provided by TR to the Acquiror shall be binding only for purposes of the adjustment to the Purchase Price pursuant to Section 2.5(c) with respect to the Estimated Closing Statement.
- (c) The **Closing Payment** shall be the amount specified in the Closing Notice or such other amount upon which the parties may agree pursuant to Section 2.5(b) and shall be equal to the Purchase Price minus the amount by which estimated Specified Current Liabilities less Prepaid Expenses as of the Closing Date as set forth in the Estimated Closing Statement is greater than \$0 or plus the amount by which estimated Specified Current Liabilities less Prepaid Expenses as of the Closing Date as set forth in the Estimated Closing Statement is less than \$0.

## 2.6 Closing Deliveries by TR

At the Closing, TR shall deliver or cause to be delivered to the Acquiror:

- (a) duly executed counterparts of each of the Ancillary Agreements to be delivered pursuant to Section 8.2(d);
- (b) a receipt for the Closing Payment;
- (c) a duly executed instrument of assignment assigning each of the Assumed Leases;
- (d) a certificate signed by a duly authorized executive officer of TR certifying the fulfillment of the conditions set forth in Section 8.2(a);
- (e) a certificate conforming to the requirements of Treasury Regulation Section 1.1445-2(b)(2) with respect to each Seller that is a U.S. Person; and

- (f) such other deeds, bills of sale, endorsements, consents, assignments and other good and sufficient instruments of conveyance and assignment as the parties and their respective counsel shall deem reasonably necessary for the assumption of the Assumed Liabilities or to vest in the Acquiror or the Acquiror Designees, as applicable, all Sellers' right, title and interest in, to and under the Transferred Assets.

## 2.7 Closing Deliveries by the Acquiror

At the Closing, the Acquiror shall deliver to TR:

- (a) the Closing Payment (including on behalf of and as agent for the Acquiror Designees), as specified in Section 2.5(c), by wire transfer of immediately available funds, to a single account of TRGR (including on behalf of and as agent for the other Sellers) as directed by TR in the Closing Notice;
- (b) duly executed counterparts for each of the Ancillary Agreements to be delivered pursuant to Section 8.1(d);
- (c) the first installments of the Content Charges, each as specified in the Content and Platform Services Agreement, by wire transfer of immediately available funds, to an account or accounts as directed by TR in the Closing Notice;
- (d) a receipt for the Transferred Assets; and
- (e) a certificate signed by a duly authorized executive officer of the Acquiror certifying the fulfillment of the conditions set forth in Section 8.1(a).

## 2.8 Post-Closing Statements

- (a) Within 45 Business Days after the Closing Date, the Acquiror shall prepare and deliver to TR a statement of Specified Current Liabilities less Prepaid Expenses as of the Closing Date (the **Initial Closing Statement**). The Initial Closing Statement shall be prepared in accordance with the Transaction Accounting Principles applied consistently with their application in connection with the preparation of the Reference Statement of Transferred Assets and the Estimated Closing Statement and shall otherwise contain all the same line items as the Reference Statement of Transferred Assets.
- (b) During the 20-Business Day period immediately following TR's receipt of the Initial Closing Statement (the **Review Period**), the Acquiror shall provide TR and its Representatives with reasonable access to review the Acquiror's work papers relating to the Initial Closing Statement and to discuss the foregoing with the employees of the Business, in each case, during normal business hours. In connection with TR's review of the Initial Closing Statement, the Acquiror shall cause the Business and its employees to assist TR and its independent accountants in the review of the Initial Closing Statement and shall provide TR and its independent accountants access at all reasonable times to the personnel, properties, books and records of the Business for such purpose.
- (c) The Acquiror agrees that, following the Closing through the date that the Final Closing Statement becomes final and binding, it will maintain records in a manner that is not inconsistent with the past practice of the Business (or TR or any of its Affiliates with respect to the Business) to the extent required to meet the Acquiror's obligations set forth in Section 2.8(b). TR and the Acquiror acknowledge that (i) the sole purpose of the determination of Specified Current

Liabilities less Prepaid Expenses is to adjust the Closing Payment so as to reflect change resulting only from the operation of the Business and (ii) such change can be measured properly only if the calculation is done using the Transaction Accounting Principles applied on a consistent basis (whether or not the application of different principles, practices, methodologies or policies would be consistent with IFRS or otherwise).

## 2.9 Reconciliation of Post-Closing Statements

- (a) TR shall notify the Acquiror in writing (the **Notice of Disagreement**) prior to the expiration of the Review Period if TR disagrees with the Initial Closing Statement. The Notice of Disagreement shall set forth in reasonable detail the basis for such dispute, the amounts involved and TR's determination of the amount of Specified Current Liabilities less Prepaid Expenses as of the Closing Date. If no Notice of Disagreement is received by the Acquiror prior to the expiration of the Review Period, then the Initial Closing Statement shall be deemed to have been accepted by TR and shall become final and binding upon the parties in accordance with Section 2.9(c).
- (b) During the 20 Business Days immediately following the delivery of a Notice of Disagreement (the **Consultation Period**), TR and the Acquiror shall seek in good faith to resolve any differences that they may have with respect to the matters specified in the Notice of Disagreement.
- (c) If at the end of the Consultation Period TR and the Acquiror have been unable to resolve any differences that they may have with respect to the matters specified in the Notice of Disagreement, TR and the Acquiror shall submit all matters that remain in dispute with respect to the Notice of Disagreement (along with a copy of the Initial Closing Statement marked to indicate those line items that are not in dispute) to [—], or if such firm declines to act in such capacity, by such other firm of independent accountants having no material relationship with any party hereof and reasonably acceptable to both TR and the Acquiror (the **Independent Firm**). TR and the Acquiror shall instruct the Independent Firm to make a final determination within 30 Business Days after such submission, which determination shall be binding on the parties to this Agreement, in a manner consistent with the Transaction Accounting Principles applied consistently with their application in connection with the preparation of the Reference Statement of Transferred Assets, the appropriate amount of each of the line items in the Initial Closing Statement as to which TR and the Acquiror disagree as set out in the Notice of Disagreement. With respect to each disputed line item, such determination, if not in accordance with the position of either TR or the Acquiror, shall not be in excess of the higher, nor less than the lower, of the amounts advocated by the Acquiror in the Notice of Disagreement or by TR in the Initial Closing Statement with respect to such disputed line item. During such determination period, the Independent Firm also shall be instructed to (A) prepare a statement of Specified Current Liabilities less Prepaid Expenses as of the Closing Date based upon all of the line items not disputed by the parties and the line items determined by the Independent Firm in accordance with the foregoing provisions and (B) determine the amount of Specified Current Liabilities less Prepaid Expenses reflected on such statement. The statement of Specified Current Liabilities less Prepaid Expenses that is final and binding on the parties, as determined either through agreement of the parties pursuant to Section 2.9(a) or 2.9(b) or through the action of the Independent Firm pursuant to this Section 2.9(c), is referred to as the **Final Closing Statement**.

- (d) The cost of the Independent Firm's review and determination shall be shared equally by TR on the one hand and the Acquiror on the other hand. During the review by the Independent Firm, the Acquiror and TR and their accountants will each make available to the Independent Firm interviews with such individuals, and such information, books and records and work papers, as may be reasonably required by the Independent Firm to fulfill its obligations under Section 2.9(c); provided, however, that the accountants of TR or the Acquiror shall not be obliged to make any work papers available to the Independent Firm or to the other party except in accordance with such accountants' normal disclosure procedures and then only after such firm has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such accountants. In acting under this Agreement, the Independent Firm shall act as experts in accounting and not as arbitrators.

## 2.10 Post-Closing Adjustment

The **Final Adjustment** shall be equal to (a) the amount of the Post-Closing Adjustment, if the Post-Closing Adjustment is equal to or greater than \$100,000 (positive or negative), or (b) \$0, if the Post-Closing Adjustment is less than \$100,000 (positive or negative). If the Final Adjustment is a negative amount, then the Acquiror shall, or shall cause an Acquiror Designee to, pay in cash to TR (for its own account and as agent for the account of the other Sellers) the amount of the Final Adjustment. If the Final Adjustment is a positive amount, then TR (for its own account and as agent for the account of the other Sellers) shall pay in cash to the Acquiror the absolute value of the amount of the Final Adjustment. Any such payment shall be made within three Business Days after the Final Closing Statement becomes such, together with interest thereon at the Interest Rate calculated and payable in cash in accordance with Section 2.12(a) from the Closing Date until the date of payment. For purposes of this Agreement, **Post-Closing Adjustment** means the absolute value of the amount of Specified Current Liabilities less Prepaid Expenses set forth in the Final Closing Statement minus the absolute value of the amount of estimated Specified Current Liabilities less Prepaid Expenses set forth in the Estimated Closing Statement.

## 2.11 Accounts Receivable and Payable

- (a) TR shall have the right to, and may permit the other Sellers to, bill all Unbilled Revenue and collect all trade receivables invoiced by any Seller in respect of products provided or services performed by the Business on or before the Closing Date (collectively, the **Pre-Closing Accounts Receivable**), in each case, in the ordinary course of business consistent with past practice. The Acquiror shall, and shall cause its Affiliates to, assist the Sellers in collecting such Pre-Closing Accounts Receivable.
- (b) The Acquiror shall, and shall cause its Affiliates to, pay in cash to TR (for its own account and as agent for the account of the other Sellers) an amount equal to any Pre-Closing Accounts Receivable or Unbilled Revenue paid to or received by the Acquiror or any its Affiliates within three Business Days of receipt (less any Taxes imposed on Acquiror or its Affiliates pursuant to a requirement under applicable Tax Law that Acquiror or an Affiliate include such payment in income (to the extent not fully offset by deductions with respect to the corresponding payment to TR). Any payment received by the Acquiror (or any of its Affiliates) from or on behalf of a Person owing any Pre-Closing Accounts Receivable or Unbilled Revenue who also owes amounts to the Acquiror or any of its Affiliates shall be deemed (unless otherwise directed by such Person) to be a payment in discharge of the earliest undischarged obligation due from such Person to a Seller or the Acquiror or its Affiliates. TR may request in writing that the Acquiror include Unbilled Revenue in an invoice issued to a customer of the Business by the Acquiror or its Affiliates after Closing for administrative efficiency or other reasons so long as such Unbilled Revenue does not represent a majority of the products delivered or services performed by the Business since the last invoice issued by the Business to such customer.

- (c) TR shall, and shall cause the other Sellers to, discharge the trade accounts payable of the Business in respect of property or services purchased or consumed in the ordinary course of business (the **Accounts Payable**) on or before the Closing Date within 30 days after the Closing Date. The Acquiror shall be responsible for discharging all Accounts Payable incurred after the Closing Date.

## 2.12 Payments and Computations

- (a) Except for the payment of the Closing Payment (which shall be paid at the Closing), each party shall make each payment due to another party to this Agreement not later than 11:00 a.m., New York City time, on the day when due. All payments shall be paid in U.S. dollars by wire transfer in immediately available funds to the account or accounts designated by the party receiving such payment. All computations of interest shall be made on the basis of a year of 365 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. Whenever any payment under this Agreement shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall be included in the computation of, and payment of, interest.
- (b) In the event the Acquiror determines that any portion of the Purchase Price would be subject to deduction or withholding under applicable Tax Law, the Acquiror shall promptly notify TR of such determination, but in no event less than 20 days prior to the Closing Date. During the five-day period following the delivery of such notice, TR shall review such determination and shall notify the Acquiror of any disagreement with such determination. TR and the Acquiror shall endeavor in good faith to resolve any such disputes and to minimize any amounts that the Acquiror is required to deduct or withhold pursuant to such applicable Tax Law; provided, that if TR and the Acquiror cannot resolve any disputes within 10 days, the Independent Firm shall resolve any such disputes within 5 days, and the principles of Section 2.9(d) shall apply with respect to the determination by the Independent Firm. If the Acquiror or the applicable Acquiror Designee will deduct or withhold on any portion of the Purchase Price pursuant to the terms of this Section 2.12(b), (i) such deducted or withheld amounts shall be remitted by the Acquiror or such Acquiror Designee to the applicable Governmental Authority, (ii) such deducted or withheld amounts shall be treated for all purposes as having been paid by the Acquiror or such Acquiror Designee to the applicable Seller; provided, that if the Acquiror Designee is not organized in the United States, Switzerland, Ireland, Luxembourg, The Netherlands or any other jurisdiction in which one or more of the Sellers is organized or the Transferred Assets are located, the Purchase Price shall be increased by such amount as is required to ensure that TR receives the same net amount as it would have received had no such amounts been required to be withheld or deducted and (iii) TR and the Acquiror shall agree on an allocation of a portion of the Purchase Price to the acquisition that is subject to such deduction or withholding.

### 2.13 Deferred Closing

- (a) Notwithstanding anything to the contrary contained in this Agreement, the conveyance, assignment, transfer, delivery and acceptance of the Transferred Assets (the **Deferred Assets**) located in the jurisdictions listed in Schedule 2.13(a) (the **Deferred Closing Countries**), and the assumption of the Assumed Liabilities (the **Deferred Liabilities**) relating to the Business conducted in the Deferred Closing Countries or relating to such Deferred Assets may but shall not be required to occur on the Closing Date.
- (b) The conveyance, assignment, transfer, delivery and acceptance of the Deferred Assets, and the assumption of the Deferred Liabilities with respect to a Deferred Closing Country shall take place at the Acquiror's option at the Closing or a closing on a date not more than six months after the Closing Date that is (a) the first date that is both (i) five or more Business Days following the Acquiror's written notice to TR that it is prepared to consummate such conveyance, assignment, transfer, delivery and acceptance of the Deferred Assets and the assumption of the Deferred Liabilities in a Deferred Closing Country and (ii) a calendar month-end for TR, or (b) such other date as TR and the Acquiror may mutually agree in writing (each such closing, a **Deferred Closing**) to be held at the offices of Allen & Overy LLP, 1221 Avenue of the Americas, New York, New York 10020, or such other place as TR and the Acquiror may agree in writing (each day on which a Deferred Closing takes place, being a **Deferred Closing Date**).
- (c) Subject to Section 5.14(b), at each Deferred Closing, TR and the Acquiror shall, and shall cause their respective Affiliates to, execute and deliver such documents and instruments, as may be reasonably necessary to transfer the Deferred Assets and Deferred Liabilities in such Deferred Closing Country.
- (d) For the avoidance of doubt, there shall be no conditions required to be satisfied or waived prior to a Deferred Closing in order to consummate the transactions contemplated by this Section 2.13 with respect to a Deferred Closing Country.
- (e) Unless the context otherwise clearly requires, references in this Agreement to the "Closing" or "Closing Date" shall, with respect to any Deferred Asset or Deferred Liability, be deemed to refer to the applicable Deferred Closing or Deferred Closing Date, respectively.

### 3. REPRESENTATIONS AND WARRANTIES OF TR

TR hereby represents and warrants to the Acquiror that, except as set forth in the Disclosure Schedule:

#### 3.1 Incorporation, Qualification and Authority of the Sellers

Each of the Sellers is a corporation or other organization duly incorporated or organized, validly existing and, to the extent legally applicable, in good standing under the Laws of its jurisdiction of incorporation or organization and has all necessary corporate or other power to enter into, consummate the transactions contemplated by, and carry out its obligations under, the Transaction Agreements to which it is a party. Each of the Sellers has the corporate or other power and authority to operate its business with respect to the Transferred Assets and the Business as conducted, and as proposed to be conducted, by the Sellers, and is duly qualified as a foreign corporation or other organization to do business, and, to the extent legally applicable, is in good standing, in each jurisdiction where the character of its owned, operated or leased properties or the nature of its activities makes such qualification material to the Transferred Assets, except for jurisdictions where the failure to be so qualified or in good

standing has not had or would not reasonably be expected to have a Material Adverse Effect. The execution and delivery by the Sellers of the Transaction Agreements to which they are parties and the consummation by the Sellers of the transactions contemplated by, and the performance by the Sellers of their obligations under, the Transaction Agreements have been (or, in the case of a Seller other than TR, will be prior to Closing) duly authorized by all requisite corporate action on the part of the Sellers. This Agreement has been, and upon execution and delivery the other Ancillary Agreements to which they are parties will be, duly executed and delivered by the Seller party thereto, and (assuming due authorization, execution and delivery by the Acquiror) this Agreement constitutes, and upon execution and delivery the other Ancillary Agreements will constitute, legal, valid and binding obligations of the Seller party thereto, enforceable against the Seller party thereto in accordance with their terms, subject to the effect of any applicable Laws relating to bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance, or similar Laws relating to or affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

### 3.2 No Conflict

Provided that all consents, approvals, authorizations and other actions described in [Section 3.3](#) have been obtained or taken, except as otherwise provided in this [Article 3](#) and except as may result from any facts or circumstances relating to the Acquiror or its Affiliates, the execution, delivery and performance by the Sellers of the Transaction Agreements and the consummation by the Sellers of the transactions contemplated by the Transaction Agreements do not and will not (a) violate or conflict with the Certificate of Incorporation or Bylaws or similar organizational documents of any of the Sellers, (b) conflict with or violate any Law or Governmental Order applicable to the Sellers, the Transferred Assets or the Business or (c) conflict with, result in any breach of, or constitute a default (or event that, with the giving of notice or lapse of time, or both, could become a default) under, require any consent under, result in the creation of any Lien upon any of the Transferred Assets, or give to any Person any rights of termination, acceleration or cancellation of, any Transferred Asset except, in the case of clause (c), as would not have, individually or in the aggregate, a Material Adverse Effect.

### 3.3 Consents and Approvals

The execution and delivery by the Sellers of the Transaction Agreements do not, and the performance by the Sellers of, and the consummation by the Sellers of the transactions contemplated by, the Transaction Agreements will not, require any consent, approval or authorization, or any filing with or notification to, any Governmental Authority, except (a) in connection, or in compliance with, the notification and waiting period requirements of the HSR Act and applicable filings or approvals under non-U.S. antitrust and competition Laws, (b) where the failure to obtain such consent, approval or authorization, or to make such filing or notification, would not prevent or materially delay the consummation by the Sellers of the transactions contemplated by, or the performance by the Sellers of any of their material obligations under, the Transaction Agreements, or (c) as may be necessary as a result of any facts or circumstances relating to the Acquiror or its Affiliates.

### 3.4 Financial Statements

- (a) [Section 3.4\(a\)](#) of the Disclosure Schedule sets forth (i) the unaudited combined statement of the net assets of the Business at September 30, 2012 (the **Reference Statement of Net Assets**), December 31, 2011 and December 31, 2010, (ii) the unaudited combined statement of the Transferred Assets and Assumed Liabilities at September 30, 2012 (the **Reference Statement of Transferred Assets**), and (iii) the unaudited summary statement of operating results of the Business for the

nine months ended September 30, 2012 and the years ended December 31, 2011 and 2010 ((i) and (iii) collectively, the **Existing Financial Statements** and, together with the Reference Statement of Transferred Assets, the **Financial Statements**). Except as may be indicated in the notes thereto, if any, the Financial Statements have been prepared in all material respects in accordance with the Transaction Accounting Principles. The Existing Financial Statements present fairly in all material respects in accordance with the Transaction Accounting Principles the financial condition and the results of operations of the Business at their respective dates and for the periods covered by such statements, and the Reference Statement of Transferred Assets is derived from the Reference Statement of Net Assets and adjusted solely to exclude the Excluded Assets and the Excluded Liabilities.

- (b) There are no material Liabilities of the Business (whether accrued, absolute, contingent or otherwise) required under the Transaction Accounting Principles to be reflected in the Financial Statements that are not reflected therein, other than Liabilities for Taxes and Liabilities incurred in the ordinary course of business consistent with past practice since the date of the Reference Statement of Net Assets.

### **3.5 Absence of Certain Changes or Events**

Except as contemplated by this Agreement and except as set forth in Section 3.5 of the Disclosure Schedule, from the date of the Reference Statement of Net Assets, (a) the Sellers conducted the Business in the ordinary course consistent with past practice, and (b) there has not occurred any change, event, or occurrence that has had, individually or in the aggregate, a Material Adverse Effect.

### **3.6 Absence of Litigation**

Except as set forth in Section 3.6 of the Disclosure Schedule and other than litigation directly arising after the Offer Letter Date out of the public announcement of the transactions contemplated by this Agreement, there is no material Action pending or, to the Knowledge of TR, threatened against the Sellers (in respect of the Business, the Transferred Assets or the Assumed Liabilities).

### **3.7 Compliance with Laws**

None of the Sellers is in violation in any material respect of any Law or Governmental Order applicable to the conduct of the Business by it or by which any Transferred Asset is bound or affected. This Section 3.7 does not relate to any matter that is the subject of a separate representation or warranty in any Transaction Agreement.

### **3.8 Governmental Licenses and Permits**

The Sellers hold all material licenses, permits, orders, approvals or authorizations issued by a Governmental Authority (collectively, **Permits**), Related to the Business or otherwise necessary for the conduct of the Business, and the Sellers have conducted and continue to conduct the Business pursuant to and in compliance in all material respects with the terms of all such material Permits.

### 3.9 Sufficiency of, and Title to, the Assets

- (a) Except for the Excluded Assets described in Sections 2.1(b)(i), (ii), (iii), (iv), (vii)(A) and (xiii), and except as set forth in Section 3.9 of the Disclosure Schedule, the Transferred Assets, the services and content to be provided to the Acquiror pursuant to the Transition Services Agreement and the Content and Platform Services Agreement, and the rights to be provided under the Patent License Agreement, the Content and Platform Services Agreement and the Multimedia Solutions Distribution Rights Agreement, will, taking into account all Third Party Rights, constitute all of the assets necessary to conduct the Business in all material respects as currently conducted by the Sellers. Except as conducted through the operations of the Business, none of the Sellers or any of their Affiliates is engaging in the Covered Business (as defined in the Non-Competition and Non-Solicitation Agreement). At all times since the date of the Reference Statement of Net Assets, the Sellers have caused the Transferred Assets to be maintained in all material respects in accordance with good business practices consistent with past practice, and all the Transferred Assets are suitable in all material respects for the purposes for which they are used.
- (b) In connection with the operation of the Business as currently conducted by the Sellers, the Sellers have, sole and exclusive, good, valid and marketable title, or the legal right or license to use, or a valid leasehold interest in, all the Transferred Assets free and clear of all Liens except for Permitted Liens. Following the consummation of the transactions contemplated by this Agreement, including the execution of the Bill of Sale and Assignment and Assumption Agreement and the Foreign Implementing Agreements, subject to Section 2.2, the Acquiror and its Affiliates will own, with good, valid and marketable title, or lease, under valid and subsisting leases, or have the legal right or license to use, or otherwise acquire the interests of the Sellers in, the Transferred Assets, free and clear of all Liens except Permitted Liens, except for Liens created by or through the Acquiror or any of its Affiliates.

### 3.10 Real Property

- (a) Section 3.10(a)(i) of the Disclosure Schedule sets forth the address of each Assumed Leased Real Property, and a true and complete list of all Assumed Leases for each such Assumed Leased Real Property, and Section 3.10(a)(ii) of the Disclosure Schedule sets forth the leases (**Subleased Leases**) and the address of the properties listed in Exhibit 9 (each, a **Subleased Real Property** and together with the Assumed Leased Real Property, the **Leased Real Property**), and a true and complete list in all material respects of all Subleased Leases (except amendments, supplements, exhibits, schedules, extensions, and ancillary documents relating to any such lease or other agreement where the contents of such amendments, supplements, exhibits, schedules, extensions, and ancillary documents do not materially affect such lease or other agreement) for each such Subleased Real Property. Sellers have made available to the Acquiror copies of each such Assumed Lease and Subleased Lease (except, with respect to any such Subleased Lease, amendments, supplements, exhibits, schedules, extensions, and ancillary documents relating to any such lease or other agreement where the contents of such amendments, supplements, exhibits, schedules, extensions, and ancillary documents do not materially affect such lease or other agreement). Each Assumed Lease is legal, valid, binding, enforceable and in full force and effect, and each Subleased Lease is, legal, valid, binding, enforceable and in full force and effect, subject in each case to the proper authorization and execution by the other parties thereto and the effect of any applicable Laws relating to bankruptcy or similar Laws affecting creditor's rights generally. No Seller is in breach or default under such Assumed Lease or Subleased Lease, and to the Knowledge of TR, no event has occurred or circumstance exists that, with the delivery of notice, the passage of time or both, would constitute a material breach or default.

- (b) Each of the Leased Real Property is in good condition and repair and has been maintained in the ordinary course of business consistent with past practice.
- (c) The relevant Seller has a good and valid leasehold interest in, and the right to quiet enjoyment of, the Leased Real Property and good and marketable title to all structures, improvements and fixtures located on any Leased Real Property that are owned by any Seller, regardless of whether title to such buildings, structures, improvements or fixtures are subject to reversion to the landlord or other third party upon the expiration or termination of the Assumed Lease or Subleased Lease for such Leased Real Property (the **Leasehold Improvements**), free and clear of all Liens, except Permitted Liens. There is no sublease, license or other use or occupancy agreement in place with respect to any Leased Real Property except the Transition Services Agreement and the Subleases and as otherwise contemplated by this Agreement, and other than the right of the Acquiror pursuant to this Agreement, there are no outstanding options, rights of first offer or rights of first refusal to purchase any such Leasehold Improvements or any portion thereof or interest therein.
- (d) The Transferred Assets do not include any Owned Real Property.

### 3.11 Intellectual Property

- (a) Except as set forth in Section 3.11(a) of the Disclosure Schedule, (i) since January 1, 2010, none of the Sellers has received any written claim or notice from any Person that the operation of the Business by any of the Sellers infringes upon any Intellectual Property of any third party, including any indemnity claims brought by Sellers' customers and (ii) there are no infringement suits, actions or proceedings pending or, to the Knowledge of TR, threatened against the Sellers alleging that the Business infringes upon any Intellectual Property of any third party. To the Knowledge of TR, the operation of the Business by any of the Sellers as currently conducted by the Sellers, and as has been conducted since January 1, 2010 does not infringe upon the Intellectual Property of any Person.
- (b) Collectively, the Business Intellectual Property, the Business Software, the rights to be conveyed via the Assumed IP Licenses and the rights to be conveyed pursuant to the Patent License Agreement, the Content and Platform Services Agreement and the Multimedia Solutions Distribution Rights Agreement constitute all material Intellectual Property and Software owned by or licensed to the Sellers and in use by, or otherwise necessary to the operation of, the Business as currently conducted by the Sellers, other than the TR Name and the TR Marks.
- (c) Section 3.11(c) of the Disclosure Schedule sets forth a complete and accurate list of all registered Business Intellectual Property, including pending applications therefor, as of the Offer Letter Date. To the Knowledge of TR, each item of such registered Business Intellectual Property is valid and enforceable and is subsisting and has not lapsed or been cancelled and renewal fees due have been paid.
- (d) To the Knowledge of TR, no Person is engaging in any activity that infringes the Business Intellectual Property.

- (e) All software, systems, servers, computers, hardware, firmware, middleware, networks, data communications lines, routers, hubs, switches and other information technology equipment used in the operation of the Business by any of the Sellers (collectively, the **Business IT Assets**) are adequate for, and operate and perform in all material respects in accordance with their documentation and functional specifications and otherwise as required in connection with, the operation of the Business as currently conducted by the Sellers. The Business IT Assets have not materially malfunctioned or failed within the past three years and, to the Knowledge of TR, do not contain any viruses, worms, trojan horses, bugs, faults or other devices, errors, contaminants or effects that are reasonably likely to (i) significantly disrupt or materially and adversely affect the functionality of any Business IT Assets or other software or systems, or (ii) enable or assist any person to access without authorization any Business IT Assets. Sellers have implemented reasonable backup, security, software for testing viruses, worms, trojan horses, bugs, faults or other devices, errors or other contaminants and disaster recovery technology consistent with industry practices, and, to the Knowledge of TR, no person has gained unauthorized access to any Business IT Assets.
- (f) Sellers have taken commercially reasonable measures to maintain the confidentiality of all confidential information used in the Business as currently conducted by the Sellers.
- (g) To the Knowledge of TR, none of the Business Software that is distributed to end users and customers of the Business with any commercial product of the Business, is incorporated into or subject to any requirement that it be licensed pursuant to an Open Source Software license, or that the source code for such Business Software be delivered, disclosed, licensed or otherwise made available to any third party, pursuant to an Open Source Software license.

### 3.12 Environmental Matters

- (a) Except for any matters that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (i) the Business is not in violation of applicable Environmental Laws and (ii) the Sellers have obtained all Environmental Permits that are required for the conduct of the Business as conducted, or as proposed to be conducted, by the Sellers, and are not in violation of any such Environmental Permits.
- (b) There are no material Actions pending or, to the Knowledge of TR, threatened against the Sellers that any of them may be in violation of any Environmental Law or any Environmental Permit or may have any Liability under any Environmental Law, in each case, in respect of the Business or the Transferred Assets.
- (c) Notwithstanding anything in this Agreement to the contrary, the only representations and warranties in this Agreement concerning environmental and health and safety matters are set forth in this Section 3.12.

### 3.13 Material Contracts

- (a) Section 3.13(a) of the Disclosure Schedule lists, as of the Offer Letter Date, all of the following Transferred Contracts (such Transferred Contracts, whether listed or required to be listed, the **Material Contracts**):
  - (i) any Transferred Contract concerning the establishment or operation of a partnership, strategic alliance, joint venture, or limited liability company or other similar agreement or arrangement;

- (ii) any employee collective bargaining Contract with any union, staff association, works council or other agency or representative body certified or otherwise recognized for the purposes of bargaining collectively or any representatives elected for the purposes of any notification or consultation in connection with the matters contemplated by this Agreement;
  - (iii) any Transferred Contract that limits or purports to limit the ability of any Seller to engage in any business with any Person or to compete in any line of business or with any Person or in any geographic area or during any period of time;
  - (iv) any Transferred Contract that contains most favored nation or similar provisions in favor of any customer or other counterparty to any Seller;
  - (v) any Transferred Contract that obligates any Seller to purchase or otherwise obtain any product or service exclusively from a single party or sell any product or service exclusively to a single party;
  - (vi) the material Assumed IP Licenses (except for commercial off-the-shelf software licenses, shrink-wrap or click-wrap license agreements);
  - (vii) any Contract creating or granting a material Lien (other than Permitted Liens) on any Transferred Asset, other than purchase money security interests in connection with the acquisition of equipment in the ordinary course of business consistent with past practice; and
  - (viii) any other Transferred Contract under which any Seller is either required to pay or entitled to receive an amount in excess of \$250,000 in any one fiscal year or contemplates or involves consideration or payments in excess of \$250,000 after the Offer Letter Date.
- (b) TR has delivered to the Acquiror true and complete copies (except amendments, supplements, exhibits, schedules, and ancillary documents relating to a particular Material Contract, where the contents of such amendment, supplement, exhibits, schedules and ancillary documents do not materially affect such Material Contract) of each written Material Contract, and a description of each oral Material Contract (if any). Each Material Contract is a legal, valid and binding obligation of one of the Sellers and, to the Knowledge of TR, each other party to such Material Contract, and is in full force and effect and enforceable against one of the Sellers and, to the Knowledge of TR, each such other party in accordance with its terms subject, in each case, to the effect of any applicable Laws relating to bankruptcy, reorganization, insolvency, moratorium or fraudulent conveyance, or similar Laws relating to or affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), and none of the Sellers nor, to the Knowledge of TR, any other party to a Material Contract, is in material default or material breach of a Material Contract, and, to the Knowledge of TR, there does not exist any event, condition or omission that would constitute such a material breach or material default (whether by lapse of time or notice or both).

### 3.14 Employee Benefits Matters

- (a) Section 3.14(a) of the Disclosure Schedule sets forth a list, as of the Offer Letter Date, of all material U.S. Employee Plans and all material Non-U.S. Employee Plans (together, the **Employee Plans**). Except as set forth in Section 3.14(a) of the Disclosure Schedule, the Sellers have made available to the Acquiror prior to the Offer Letter Date a true and complete copy of each material U.S. Employee Plan and each material Non-U.S. Employee Plan, including a copy of (if applicable) (i) each summary plan description and summary of material modifications, and (ii) the most recently received IRS determination letter.
- (b) None of the U.S. Employee Plans is a multiemployer plan (within the meaning of Section 3(37) or 4001(a)(3) of ERISA) or a single employer plan (within the meaning of Section 4001(a)(15) of ERISA).
- (c) Each U.S. Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS that it is so qualified, and each related trust that is intended to be exempt from federal income Tax pursuant to Section 501(a) of the Code has received a determination letter from the IRS that it is so exempt, and to the Knowledge of TR, no fact or event has occurred since the date of such determination letter that would reasonably be expected to adversely affect such qualification or exemption, as the case may be.
- (d) The consummation of the transactions contemplated by this Agreement, whether alone or together with any other event, will not entitle any Employee to severance pay or any other payment or accelerate the time of payment or vesting, or increase the amount of compensation, due to any Employee, or limit or restrict the right of the Sellers or, after the consummation of the transactions contemplated hereby, the Acquiror or any Acquiror Designee, to merge, amend or terminate any of the Employee Plans. None of the U.S. Employee Plans in effect immediately prior to the Closing will result separately or in the aggregate (including, without limitation, as a result of this Agreement or the transactions contemplated hereby) in the payment to any U.S. Transferred Employee of any “excess parachute payment” within the meaning of Section 280G of the Code, which will cause the loss of any Tax deduction for which the Acquiror is otherwise eligible.
- (e) The terms of each Employee Plan comply in all material respects with applicable Laws, and each such Employee Plan has been operated in all material respects in accordance with applicable Laws and the terms of the Employee Plan.
- (f) None of the Sellers has any obligation to gross-up, indemnify or otherwise reimburse any Person for any income, excise or other Tax incurred by such Person pursuant to any applicable federal, state, local or non-U.S. Law related to the collection and payment of Taxes with respect to which the Acquiror will have any liability.
- (g) With respect to each material Non-U.S. Employee Plan and, to the Knowledge of TR, with respect to each non-material Non-U.S. Employee Plan;
  - (i) all material employer and employee contributions to each Non-U.S. Employee Plan required by Law or by the terms of such Non-U.S. Employee Plan or pursuant to any other contractual obligation (including contributions to all mandatory provident fund or other statutory schemes) have been made, or, if applicable, accrued, in accordance with normal accounting practices, in each case in a timely manner;

- (ii) there are no material unfunded liabilities under any Non-U.S. Employee Plan that are not otherwise accrued in accordance with normal accounting practices;
- (iii) except as required by applicable Law, there has been no amendment to, written interpretation of or announcement (whether or not written) by any of the Sellers or any of their Affiliates relating to, or change in employee participation or coverage under, any Non-U.S. Employee Plan that would materially increase the expense of maintaining such Non-U.S. Employee Plan above the level of expense incurred in respect thereof for the most recent fiscal year ended prior to the Offer Letter Date; and
- (iv) each Non-U.S. Employee Plan required to be registered has been registered and has been maintained in all material respects in good standing with applicable regulatory authorities.

### 3.15 Employment and Labor Matters

- (a) No U.S. Employees are covered by a collective bargaining or other similar labor agreement. With respect to any Employee, and other than as set forth in Section 3.15(a) of the Disclosure Schedule, (i) there is no material labor strike, dispute, slowdown, lockout or stoppage pending or, to the Knowledge of TR, threatened against any Seller, and there has been no labor strike, dispute, slowdown, lockout or stoppage since January 1, 2010; (ii) there is no material unfair labor practice charge or complaint against any Seller pending or, to the Knowledge of TR, threatened before the National Labor Relations Board or other Governmental Authority; (iii) there is no pending or, to the Knowledge of TR, threatened material claim or material charge against any Seller before the U.S. Equal Employment Opportunity Commission, or any other Governmental Authority under any Law relating to discrimination with respect to employees or employment practices or with respect to breaches of any such statute, regulation or ordinance (iv) there has been no material grievance since January 1, 2010 or material arbitration since January 1, 2010 arising out of any collective bargaining agreement or other grievance procedure and (v) to the Knowledge of TR, none of the Sellers or any of their Affiliates has misclassified any U.S. Employee as an independent contractor, temporary employee, or leased employee (each, a **Contingent Worker**) and no Contingent Worker has been improperly excluded from any Employee Plan. Each of the Sellers and their respective Affiliates have in all material respects paid in full or adequately accrued for, all wages, salaries, commissions, bonuses, benefits and other compensation due to be paid to or on behalf of such Employees and no material claim with respect to payment of wages, salary or overtime pay has been asserted, or is now pending or, to the Knowledge of TR, threatened before any Governmental Authority, with respect to current or former employees of the Business.
- (b) With respect to all Employees, each Seller is in compliance in all material respects with all Laws relating to the employment of labor, including those related to wages, hours, collective bargaining and the payment and withholding of Taxes.
- (c) Section 3.15(c) of the Disclosure Schedule lists those individuals who, as of December 4, 2012, are engaged in the Business in the United States as interns or in temporary work assignments (each, a **Temporary Worker**).
- (d) Section 3.15(d) of the Disclosure Schedule lists the applicable collective bargaining or other similar labor agreements and works council and locations with respect to the Non-U.S. Employees. Sellers have complied in all material respects in undertaking any required consent of, consultation with or the rendering of formal advice by, any labor or trade union, works council or any other employee representative body.

- (e) Except as set forth in Section 3.15(e) of the Disclosure Schedule, there is not in existence any written or unwritten contract of employment between any Seller and an employee of the Business that cannot be terminated by 12 months' notice or less without giving rise to a claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal).

### 3.16 Taxes

- (a) All material Tax Returns required to be filed with any Governmental Authority with respect to the Transferred Assets or the Business have been timely filed, the Sellers have timely paid all Taxes shown as due and payable on such Tax Returns (insofar as they relate to the Transferred Assets or the Business), and all such Tax Returns (insofar as they relate to the Transferred Assets or the Business) are correct and complete in all material respects.
- (b) No material claims are being asserted in writing or, to the Knowledge of TR, threatened, and no investigations, non-routine audits, proceedings or other actions are currently pending with respect to any non-income Taxes with respect to the Transferred Assets or the Business. No material claim has been made in writing within the last six years by a Governmental Authority in a jurisdiction where a Seller does not file Tax Returns that such Seller (with respect to or in relation to any Transferred Asset or the Business) is or may be subject to taxation by that jurisdiction.
- (c) Each Seller (with respect to or in relation to any Transferred Asset or the Business) has deducted, withheld and paid to the appropriate Governmental Authority all material Taxes required to be deducted, withheld or paid. No Tax liens (other than Permitted Liens) with respect to the Transferred Assets have been filed. The Transferred Assets held by non-U.S. Sellers do not constitute U.S. real property interests within the meaning of Section 897 of the Code.
- (d) No Seller has entered into an agreement with a Governmental Authority that will affect Taxes with respect to or in relation to any Transferred Asset or the Business after the Closing Date.
- (e) All documents required to be stamped pursuant to any applicable non-U.S. Law (other than those which have ceased to have any legal effect) to which a Seller is a party and which relate to the Transferred Assets in the enforcement of which the Acquiror or any Affiliate may be interested have been duly stamped or adjudicated as not subject to stamp duty (as the case may be).
- (f) None of the Transferred Assets is a capital item, the input tax on which could be subject to adjustment in accordance with the provisions of Part XV of the Value Added Tax Regulations 1995 of the United Kingdom (or any similar provision of state, local or foreign law).
- (g) The only representations and warranties in this Agreement concerning Tax matters are set forth in Section 3.14 and this Section 3.16.

### **3.17 Certain Business Practices**

None of TR or its Affiliates in their conduct of the Business, or to the Knowledge of TR, any of their respective directors, officers, agents or employees engaged in the Business has, in respect of the Business, made any unlawful payment to foreign or domestic government officials or employees or violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, or any other federal, foreign, or state anti-corruption or anti-bribery Law or requirement applicable to any Seller or the Business.

### **3.18 Brokers**

Except for fees and expenses of J.P. Morgan Securities LLC (the **TR Banker**), in connection with their rendering of investment banking advice to TR and its Affiliates, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from TR or any of its Affiliates in connection with the sale of the Business based upon arrangements made by or on behalf of TR or any of its Affiliates. TR is solely responsible for the investment advisory fees and expenses of the TR Banker.

### **3.19 No Other Representations or Warranties**

Except for the representations and warranties contained in this Article 3 (as modified by the Disclosure Schedule), neither TR nor any other Person makes any other express or implied representation or warranty with respect to TR, the other Sellers, the Business, the Transferred Assets, the Assumed Liabilities, the Employees or the transactions contemplated by this Agreement, and TR disclaims any other representations or warranties, whether made by TR, any other Seller or any of their respective officers, directors, employees, agents or other Representatives. Except for the representations and warranties contained in this Article 3 (as modified by the Disclosure Schedule), TR (a) expressly disclaims any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Transferred Assets (including any implied or expressed warranty of merchantability, satisfactory quality, or fitness for a particular purpose) or the Business and (b) hereby disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to the Acquiror or its Affiliates or Representatives (including any opinion, information, projection, or advice that may have been or may be provided to the Acquiror by any director, officer, employee, agent, consultant, or other Representative of any Seller). Without limiting the generality of the foregoing, no Seller makes any representations or warranties to the Acquiror regarding the probable success or profitability of the Business.

## **4. REPRESENTATIONS AND WARRANTIES OF THE ACQUIROR**

The Acquiror hereby represents and warrants to TR that:

### **4.1 Incorporation and Authority of the Acquiror**

The Acquiror is a corporation or other organization duly incorporated or organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization and has all necessary corporate or other power to enter into the Transaction Agreements and to consummate the transactions contemplated by, and to carry out its obligations under, the Transaction Agreements. The execution and delivery of the Transaction Agreements by the Acquiror, the consummation by the Acquiror of the transactions contemplated by, and the performance by the Acquiror of its obligations under, the Transaction Agreements have been (or will be prior to Closing) duly authorized by all requisite corporate action on the part of the Acquiror. This Agreement has been, and upon execution and delivery the other Ancillary Agreements will be, duly executed and delivered

by the Acquiror, and (assuming due authorization, execution and delivery by the Sellers, as applicable) this Agreement constitutes, and upon execution and delivery the other Ancillary Agreements will constitute, legal, valid and binding obligations of the Acquiror enforceable against the Acquiror in accordance with their terms, subject to the effect of any applicable Laws relating to bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance, or similar Laws relating to or affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

#### **4.2 Qualification of the Acquiror**

The Acquiror has the corporate or other appropriate power and authority to operate its business as now conducted. The Acquiror is duly qualified as a foreign corporation or other organization to do business and, to the extent legally applicable, is in good standing in each jurisdiction where the character of its owned, operated or leased properties or the nature of its activities makes such qualification necessary, except for jurisdictions where the failure to be so qualified or in good standing would not materially impair or delay the ability of the Acquiror to consummate the transactions contemplated by, or perform its obligations under, the Transaction Agreements.

#### **4.3 No Conflict**

Provided that all consents, approvals, authorizations and other actions described in Section 4.4 have been obtained or taken, except as otherwise provided in this Article 4 and except as may result from any facts or circumstances relating to the Sellers, the execution, delivery and performance by the Acquiror of, and the consummation by the Acquiror of the transactions contemplated by, the Transaction Agreements do not and will not (a) violate or conflict with the Certificate of Incorporation or Bylaws or similar organizational documents of the Acquiror, (b) conflict with or violate any Law or Governmental Order applicable to the Acquiror or (c) result in any breach of, or constitute a default (or event that with the giving of notice or lapse of time, or both, would become a default) under, or give to any Person any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Lien on any of the assets or properties of the Acquiror pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other material instrument to which the Acquiror or any of its Subsidiaries is a party or by which any of such assets or properties is bound or affected, except, in the case of clause (c), any such conflicts, violations, breaches, defaults, rights or Liens as would not materially impair or delay the ability of the Acquiror to consummate the transactions contemplated by, or perform its obligations under, the Transaction Agreements.

#### **4.4 Consents and Approvals**

The execution and delivery by the Acquiror of the Transaction Agreements do not, and the performance by the Acquiror of, and the consummation by the Acquiror of the transactions contemplated by, the Transaction Agreements will not, require any consent, approval or authorization, or any filing with or notification to, any Governmental Authority, except (a) in connection, or in compliance, with the notification and waiting period requirements of the HSR Act and applicable filings or approvals under non-U.S. antitrust and competition Laws, (b) where the failure to obtain such consent, approval or authorization or to make such filing or notification, would not prevent or materially delay the Acquiror from consummating the transactions contemplated by, or performing any of its material obligations under the Transaction Agreements, or (c) as may be necessary as a result of any facts or circumstances relating to the Sellers or their Affiliates.

#### **4.5 Absence of Restraint**

To the best knowledge of the Acquiror, subject to the receipt of, and except for matters related to the ability to obtain, the consents, approvals and authorizations described in Section 4.4, there exist no facts or circumstances that would reasonably be expected to materially impair or delay the ability of the Acquiror to consummate the transactions contemplated by, or to perform its obligations under, the Transaction Agreements.

#### **4.6 Financial Ability**

On the Offer Letter Date, the Acquiror had, and on the Closing Date the Acquiror will have, funds on hand or access to credit facilities sufficient to pay the Purchase Price and otherwise to consummate the transactions contemplated hereby.

#### **4.7 Brokers**

Except for Barclays Capital Inc. and Merrill Lynch, Pierce, Fenner & Smith Inc. (the **Acquiror's Bankers**), no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Acquiror. The Acquiror is solely responsible for the fees and expenses of the Acquiror's Bankers.

#### **4.8 No Other Representations or Warranties**

Except for the representations and warranties contained in this Article 4, and other than any representations or warranties contained in any Ancillary Agreement, neither the Acquiror nor any other Person makes any other express or implied representation or warranty with respect to the Acquiror, its Affiliates or the transactions contemplated by this Agreement, and the Acquiror disclaims any other representations or warranties, whether made by the Acquiror, any of its Affiliates or any of their respective officers, directors, employees, agents or other Representatives.

### **5. ADDITIONAL AGREEMENTS**

#### **5.1 Conduct of Business Prior to the Closing**

Except as required by applicable Law or as otherwise expressly contemplated by or necessary to effectuate the Transaction Agreements, and except for matters identified in Section 5.1 of the Disclosure Schedule, from the date of this Agreement through the Closing, unless the Acquiror otherwise consents in writing (including by email from any of the individuals set forth in Section 5.1 of the Disclosure Schedule) and in advance (which consent shall not be unreasonably withheld or delayed), TR will, and will cause the other Sellers to (a) conduct the Business in all material respects in the ordinary course consistent with past practice, (b) use commercially reasonable efforts to preserve intact in all material respects the Transferred Assets and the business organization of the Business, (c) use commercially reasonable efforts to preserve the goodwill and relationships with Employees, customers, suppliers, licensees and licensors and others having business dealings with the Business, and (d) with respect solely to the Business, the Transferred Assets and the Assumed Liabilities, not do any of the following:

- (i) grant any Lien (other than a Permitted Lien) on any Transferred Asset (whether tangible or intangible);

- (ii) sell, transfer, lease, sublease or otherwise dispose of any Transferred Assets having a value in excess of \$50,000 individually or \$250,000 in the aggregate other than to the extent reasonably necessary to provide a service in the ordinary course of business consistent with past practice;
- (iii) transfer or permit to be transferred any Employee, or offer any Employee the opportunity to transfer, to another business unit of any Seller or any of their Affiliates or terminate the employment of any Employee other than for cause;
- (iv) settle or compromise any material claims of any of the Sellers (to the extent comprising an Assumed Liability), other than settlements of any claims by or against any Seller solely for money damages and would not have any adverse impact on the conduct of the Business by the Acquiror after the Closing;
- (v) fail to exercise any rights of renewal with respect to any Leased Real Property that by its terms would otherwise expire;
- (vi) cancel or terminate other than in the ordinary course of business consistent with past practice any Transferred Contract or agreement other than immaterial agreements which if entered into prior to the Offer Letter Date would be a Transferred Contract;
- (vii) enter into any non-compete or exclusivity agreements or any agreements containing provisions that would limit the rights of any Seller or the Acquiror to conduct the operations of the Business as conducted on the Offer Letter Date in any geographic area or line of business;
- (viii) in any material respect (A) grant any increase, or announce or promise any increase, in the wages, salaries, bonuses, or incentives payable to any Employee, (B) establish or increase or promise to increase any benefits under any Employee Plan, or (C) grant any rights to retention, severance or termination pay to, or enter into any new (or amend any existing) employment, retention, severance or other agreement or arrangement, except, in any case, (1) as required by Law or any contract, (2) general increases in wages, salaries, bonuses and incentives that are applicable to the covered employees of the Business and the Sellers generally and that are in the ordinary course consistent with the past practice of the Business (including, for the avoidance of doubt, any year-end merit increase in accordance with TR's "Annual Performance Merit Review"), (3) changes to benefits that are applicable to the covered employees of the Business and the Sellers generally and that are in the ordinary course consistent with past practice or (4) short-term sales incentive campaigns consistent with past practice of the Business;
- (ix) make any change in any method of accounting or accounting practice or policy or internal control procedures used by the Sellers (as it relates to the Business) in the preparation of its financial statements, other than such changes as are required by IFRS or applicable Law or otherwise applying generally to TR;

- (x) fail to make any filings or renewals, or to pay any filing fees, necessary to maintain or protect any registered Business Intellectual Property or any Intellectual Property that is subject to the Patent License Agreement;
- (xi) except where such action would not have an adverse Tax consequence on Acquiror or its Affiliates or as required by applicable Tax Law, (i) change or revoke any Tax election, or change or adopt any Tax accounting method, (ii) settle or otherwise compromise any claim relating to Taxes, (iii) enter into any closing agreement or similar agreement relating to Taxes or (iv) amend any Tax Return or file a claim for a refund of Taxes; or
- (xii) enter into any legally binding commitment or otherwise agree to take any of the actions specified in this Section 5.1(d).

## 5.2 Access to Information

- (a) From the date of this Agreement until the Closing Date, upon reasonable prior notice, and except as determined in good faith to be necessary to (i) ensure compliance with any applicable Law, or (ii) preserve any applicable legal privilege (including the attorney-client privilege), TR shall, and shall cause each of the other Sellers to, (i) afford the Representatives of the Acquiror reasonable access, during normal business hours, to the properties, books and records of the Business and (ii) furnish to the Representatives of the Acquiror such additional financial and operating data and other information regarding the Business as the Acquiror may from time to time reasonably request for purposes of preparing to operate the Business following the Closing; provided, however, that such investigation shall not unreasonably interfere with any of the businesses, personnel or operations of TR, the Sellers, or any of their Affiliates; and provided, further, that the auditors and accountants of TR, the other Sellers, or any of their Affiliates shall not be obliged to make any work papers available to any Person except in accordance with such auditors' and accountants' normal disclosure procedures and then only after such Person has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such auditors or accountants. If reasonably requested by TR, the Acquiror shall enter into a customary joint defense agreement with TR and the other Sellers with respect to any information to be provided to the Acquiror pursuant to this Section 5.2(a). TR shall not be required to provide access to personnel (other than personnel supervising the Acquiror's review), and to the extent prohibited by Law, personnel records, or any records containing medical information relating to any employees of TR or any of its Affiliates. Notwithstanding the foregoing, the Acquiror shall not (A) conduct, without the prior written consent of TR (not to be unreasonably withheld or delayed), any environmental or health or safety assessment or investigation, including any sampling or other intrusive investigation of air, surface water, groundwater, soil or anything else, at or in connection with any property or operations associated or affiliated in any way with the Business, Transferred Assets or TR or (B) contact, without the prior written consent of TR, sales representatives, suppliers, customers, competitors or others involved with the Business. Notwithstanding the foregoing, TR shall not be required to disclose any information if such disclosure would be reasonably likely to contravene any binding agreement; provided, that TR shall, and shall cause the other Sellers to, use commercially reasonable efforts to put in place an arrangement to permit such disclosure without violating such agreement.

- (b) In addition to the provisions of Section 5.3, for five years after the Closing Date (or if a longer period is required by applicable Law, such longer period), in connection with the preparation of financial statements, U.S. Securities and Exchange Commission reporting obligations, or fulfilling any other legal obligations or to effectuate the transactions contemplated hereby upon reasonable prior notice, and except as determined in good faith to be necessary to (i) ensure compliance with any applicable Law, or (ii) preserve any applicable legal privilege (including the attorney-client privilege), the Acquiror shall, and shall cause each of its Affiliates and Representatives to (A) afford the Representatives of TR and its Affiliates reasonable access, during normal business hours, to the properties, books and records of the Acquiror and its Affiliates in respect of the Business and the Transferred Assets prior to the Closing Date, (B) furnish to the Representatives of TR and its Affiliates such additional financial and other information regarding the Business and the Transferred Assets that is necessary to TR in its preparation of financial statements, or fulfilling U.S. Securities and Exchange Commission reporting obligations, or any other obligations or to effectuate the transactions contemplated hereby and (C) make reasonably available subject to the reimbursement by TR of the out of pocket expenses of the Acquiror and its Affiliates to the Representatives of TR and its Affiliates those employees of the Acquiror and its Affiliates whose assistance, expertise, testimony, notes and recollections or presence may be necessary to assist TR in connection with its inquiries for any of the purposes referred to above, including the presence of such persons as witnesses in hearings or trials for such purposes; provided, however, that such investigation shall not unreasonably interfere with the business or operations of the Acquiror or any of its Affiliates; and provided, further, that the auditors and accountants of the Acquiror or its Affiliates shall not be obligated to make any work papers available to any Person except in accordance with such auditors' and accountants' normal disclosure procedures and then only after such Person has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such auditors or accountants. If so reasonably requested by the Acquiror, TR shall enter into a customary joint defense agreement with the Acquiror and its Affiliates with respect to any information to be provided to TR pursuant to this Section 5.2(b). The Acquiror shall not be required to provide access to personnel (other than personnel supervising TR's review), and to the extent prohibited by Law, personnel records, or any records containing medical information relating to any employees of the Acquiror or any of its Affiliates. Notwithstanding the foregoing, the Acquiror shall not be required to disclose any information if such disclosure would be reasonably likely to contravene any binding agreement; provided, that the Acquiror shall use commercially reasonable efforts to put in place an arrangement to permit such disclosure without violating such agreement.
- (c) Notwithstanding anything in this Agreement to the contrary, TR shall not be required, prior to the satisfaction of the condition set forth in Section 8.2(b), to disclose, or cause or seek to cause the disclosure of, to the Acquiror or its Affiliates or Representatives (or provide access to any properties, books or records of TR or any of its Affiliates that would reasonably be expected to result in the disclosure to such persons or others of) any confidential information relating to trade secrets, proprietary know-how, processes or patent, trademark, trade name, service mark or copyright applications or product development plans, nor shall TR be required to permit or cause or seek to cause others to permit the Acquiror or its Affiliates or Representatives to have access to or to copy or remove from the properties of TR or any of its Affiliates any documents, drawings or other materials that might reveal any such confidential information; provided, that, in the event that the Acquiror reasonably requests access to, or the opportunity to copy, any such information, TR shall consider such request in good faith and provide access to, or the opportunity to copy, such information as TR shall determine in its sole discretion (subject to applicable Law).

### 5.3 Preservation of Books and Records

The Sellers and their Affiliates shall have the right to retain copies of all books and records of the Business relating to periods ending on or prior to the Closing Date. The Acquiror agrees that it shall preserve and keep, or cause to be preserved and kept, all original books and records in respect of the Business in the possession of the Acquiror or its Affiliates for the longer of (a) any applicable statute of limitations and (b) a period of six years from the Closing Date. During such six-year or longer period, the Acquiror shall, or shall cause an Acquiror Designee to, provide the Representatives of TR, upon reasonable notice and for any reasonable business purpose, reasonable access during normal business hours to examine, inspect and copy (at TR's expense) such books and records. During such six-year or longer period, the Acquiror shall provide, or cause to be provided to, TR or its Affiliates, such original books and records of the Business as TR or its Affiliates shall reasonably request in connection with any Action to which TR or any of its Affiliates are parties or in connection with the requirements of any Law applicable to TR or any of its Affiliates. TR or its Affiliates, as applicable, shall return such original books and records to the Acquiror or such Affiliate as soon as such books and records are no longer needed in connection with the circumstances described in the immediately preceding sentence. After such six-year or longer period, before the Acquiror or any Affiliate shall dispose of any of such books and records, the Acquiror shall give at least 30 days' prior written notice of such intention to dispose to TR, and TR or any of its Affiliates shall be given an opportunity, at their cost and expense, to remove and retain all or any part of such books and records as it may elect. If so requested by the Acquiror, each Seller or its Affiliate shall enter into a customary joint defense agreement with the Acquiror or such Affiliate with respect to any information to be provided to such Seller or its Affiliate pursuant to this Section 5.3.

### 5.4 Confidentiality

The terms of the nondisclosure agreement dated August 3, 2012 (the **Confidentiality Agreement**) between the Acquiror and TR are incorporated into this Agreement by reference and shall continue in full force and effect until the Closing, at which time the confidentiality obligations under the Confidentiality Agreement shall terminate; provided, however, that the Acquiror's confidentiality obligations shall terminate only in respect of that portion of the Confidential Information (as defined in the Confidentiality Agreement) exclusively relating to the Business. If, for any reason, the sale of the Transferred Assets is not consummated, the Confidentiality Agreement shall continue in full force and effect in accordance with its terms.

### 5.5 Regulatory and Other Authorizations; Consents

- (a) The Acquiror shall use its reasonable best efforts to (i) promptly obtain all authorizations, consents, orders and approvals of all Governmental Authorities that may be, or become, necessary for its execution and delivery of, performance of its obligations pursuant to, and consummation of the transactions contemplated by, the Transaction Agreements, (ii) take all such actions as may be requested by any such regulatory body or official to obtain such authorizations, consents, orders and approvals and (iii) avoid the entry of, or to effect the dissolution of, any decree, order, judgment, injunction, temporary restraining order or other order in any suit or proceeding, that would otherwise have the effect of preventing or materially delaying the consummation of the transactions contemplated by this Agreement. Each party shall cooperate with the reasonable requests of the other party in seeking promptly to obtain all such authorizations, consents, orders and approvals.

- (b) TR and the Acquiror each agrees to make or cause to be made an appropriate filing of a notification and report form pursuant to the HSR Act with respect to the transactions contemplated by this Agreement as promptly as practicable after the Offer Letter Date, request early termination of the applicable waiting period under the HSR Act and to supply or file as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act. In addition, each party agrees to make promptly any filing that may be required with respect to the transactions contemplated by this Agreement under any other antitrust or competition Law or by any other antitrust or competition Governmental Authority and to supply as promptly as practicable any additional information and documentary material that may be requested pursuant to such filings. The Acquiror shall not agree to any voluntary extension or delay of any statutory waiting period or withdraw its Notification and Report Form pursuant to the HSR Act unless the Acquiror first consults and reasonably considers the views of TR. The Acquiror shall have responsibility for all filing fees associated with the HSR Act filings and any other similar filings required in any other jurisdictions. In the event that the parties receive a request for additional information or documentary material in response to the HSR Act filing or any filing required by any other antitrust or competition Law or by any other antitrust or competition authority (a **Second Request**), the parties shall use their respective reasonable best efforts to respond to such Second Request as promptly as possible and the Acquiror shall consult and reasonably consider the views of TR during the entire Second Request review process.
- (c) Each party to this Agreement shall, subject to applicable Law and except as prohibited by any applicable Representative of any applicable Governmental Authority, promptly notify the other parties of any oral or written communication it receives from any Governmental Authority relating to the matters that are the subject of this Agreement and any antitrust or competition Law, including the HSR Act, permit the other parties to review in advance any communication proposed to be made by such party to any such Governmental Authority and shall provide the other parties with copies of all correspondence, filings or other communications between them or any of their Representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, subject to Section 5.2(b). No party to this Agreement shall agree to participate in any meeting with any Governmental Authority in respect of any such filings, investigation or other inquiry unless it consults with the other parties in advance and, to the extent permitted by such Governmental Authority, gives the other parties the opportunity to attend and participate at such meeting. Subject to the Confidentiality Agreement and to Section 5.2(b), the parties to this Agreement will coordinate and cooperate with each other in exchanging such information and providing such assistance as the other parties may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods under the HSR Act or other antitrust or competition Laws.
- (d) Without limitation of the covenants set forth in Sections 5.5(a), 5.5(b) and 5.5(c), each party shall use its reasonable best efforts to obtain the expiration or early termination under the HSR Act or any clearance required under other antitrust or competition Law or by any other antitrust or competition authority (**Antitrust Clearance**) for the consummation of the transactions contemplated by the Transaction Agreements.

- (e) Notwithstanding anything to the contrary in this Agreement, the obligation of the Acquiror to use “reasonable best efforts” pursuant to Sections 5.5(a) through (d) shall not require the Acquiror or any of its Affiliates (i) to defend through litigation any claim asserted in court by any Governmental Authority in order to avoid entry of, or to have vacated or terminated, any decree, order or judgment (whether temporary, preliminary or permanent) that would prevent the Closing from occurring as promptly as practicable; or (ii) to make any proposal, negotiation, commitment to or effectuation of a consent decree providing for the licensing or divestiture of any assets of, or the termination or material modification of any Contracts of, either the Acquiror or its Affiliates or TR or its Affiliates (with respect to the Business) or agree to any modification of any Transaction Agreement or otherwise affecting the conduct of the Business after consummation of the transactions contemplated by the Transaction Agreements.
- (f) Each party to this Agreement agrees to cooperate from the date hereof in obtaining any other third party consents and approvals that may be required in connection with the transactions contemplated by the Transaction Agreements; provided, however, that (i) TR shall not be required to compensate any third party, commence or participate in litigation or offer or grant any accommodation (financial or otherwise) to any third party to obtain any such consent or approval and (ii) the obligations of the parties to consummate the transactions contemplated by this Agreement are not conditioned upon the consents and approvals referred to in this Section 5.5(f).
- (g) TR shall, and shall cause the other Sellers to, use commercially reasonable efforts at the expense of the Acquiror to assist the Acquiror and its Affiliates with (i) obtaining the appropriate Permits and other regulatory approvals required for the Business, whether local or foreign, (ii) establishing the entities to receive the Deferred Assets and the Deferred Liabilities. Notwithstanding the foregoing, in no event shall the assistance obtaining such Permits and regulatory approvals provided hereunder be deemed to constitute, or be relied upon by the Acquiror or any of its Affiliates as constituting, the rendering of legal advice or legal services.

## **5.6 Termination of Rights to the TR Name and TR Marks**

- (a) For a period of 180 days following the Closing Date, TR hereby grants to the Acquiror, and the Acquiror hereby accepts a limited, irrevocable, non-exclusive license to use the TR Name and TR Marks, solely in connection with the Business and solely on those materials and signage that contain the TR Name and TR Marks at the Closing (and only to the extent so marked). On or prior to the date that is 180 days following the Closing Date, the Acquiror and its Affiliates (i) shall cease and discontinue all uses of the TR Name and TR Marks and (ii) complete the removal of the TR Name and TR Marks from all signage on the websites and at the offices of the Business. Existing supplies of stationery, pre-printed promotional materials and business cards that contain the TR Name and TR Marks may be used for up to 180 days after Closing to permit the Acquiror to distribute new material without the TR Name and TR Marks. The Acquiror and its Affiliates shall not affix any of the TR Name and TR Marks to any written materials or products not bearing such marks on the Closing Date. The Acquiror shall take commercially reasonable efforts to ensure that other third party users of any of the TR Name and TR Marks, whose rights terminate on or after the Closing pursuant to this Section 5.6, shall cease the use of the TR Name and TR Marks. The Acquiror agrees to display the TR Name and Marks in exactly the same format in which they are displayed at Closing together with such other words as TR may specify, consistent with prudent trademark protection practices, and, to the extent necessary for reasonable trademark protection, to display the following legend on all

promotional materials where the TR Name and Marks are used: “\_\_\_\_\_” is a registered trademark used under license,” or such other similar language as may be required by TR. Upon termination of the limited license in this Section 5.6, the Acquiror shall and shall ensure its Affiliates shall cease all use of the TR Name and Marks. TR may terminate the rights provided pursuant to this Section 5.6(a) by giving the Acquiror written notice of termination if the Acquiror fails to comply with the provisions set forth in this Section 5.6(a) and fails to cure such non-compliance within twenty (20) days of notice of such non-compliance.

- (b) TR hereby grants to the Acquiror, and the Acquiror hereby accepts a limited, irrevocable, non-exclusive license to use the TR Name and TR Marks, solely in connection with the Business Software to the extent and only to the extent that the TR Name and TR Marks are already embedded in the Business Software as of the Closing; provided, however, that (i) with regard to any material update, enhancement or modification of the current version of the Business Software, this license shall not apply to the extent the TR Name and TR Marks would be visible to users in the course of their use of the portion of the Business Software to the extent it was materially updated, enhanced or modified; (ii) this license shall not apply to any future release of a new version of the Business Software; and (iii) this license shall expire in all respects 180 days after the Closing Date (other than with respect to references to the TR Name and TR Marks that are visible to users in the course of their use of the Business Software, which portion of this license shall expire 60 days after the Closing Date).
- (c) The Acquiror shall ensure that the goods and the services used with or supplied by the Acquiror under or by reference to any of the TR Name and the TR Marks in the operation of the Business after the Closing are of at least the same quality as the corresponding goods and the services provided by the Business prior to the Closing. Any and all goodwill generated by the use of the TR Name and TR Marks under this Section 5.6 shall inure solely to the benefit of Sellers. In any event, the Acquiror shall not and shall cause the Business not to, use the TR Name and TR Marks in any manner that may damage or tarnish the reputation of the Sellers or the goodwill associated with the TR Name and TR Marks.
- (d) The Acquiror, for itself and its Affiliates, agrees that from and after the Closing Date the Acquiror and its Affiliates (i) except as expressly permitted pursuant to Section 5.6(a) and (b) above, will not expressly, or by implication, do business as or represent themselves as TR or its Affiliates, (ii) with respect to products sold or disposed of by them after the Closing Date, will inform in writing to the transferees of such products that such products are those of the Acquiror and its Affiliates and not those of TR and its Affiliates and (iii) no later than 60 days following the Closing, shall approach the counterparties to the Contracts set forth in Section 5.6(d)(iii) of the Disclosure Schedule under which a Seller licenses any of the TR Name or TR Marks, and shall negotiate for the replacement of such license of the TR Name or TR Marks with a license of the names or marks of the Acquiror or any of its Affiliates within 180 days after the Closing Date.
- (e) The Acquiror, for itself and its Affiliates, acknowledges and agrees that neither the Acquiror nor any of its Affiliates shall have any rights in any of the TR Name and TR Marks and neither the Acquiror nor any of its Affiliates shall contest the ownership or validity of any rights of TR or any of its Affiliates in or to any of the TR Name and TR Marks.

- (f) The Acquiror, for itself and its Affiliates, agrees that the Sellers shall have no responsibility for claims by third parties arising out of, or relating to, the use by the Business of any TR Name and TR Marks after the Closing. In addition to any and all other available remedies, the Acquiror shall indemnify and hold harmless TR, each other Seller, and their respective officers, directors, employees, agents, successors and assigns, from and against any and all such claims that may arise out of the use of the TR Name and TR Marks by the Acquiror, other than such claims that the TR Name and TR Marks infringe the Intellectual Property rights of any third party or in violation of or outside the scope permitted by this [Section 5.6](#).

#### **5.7 Patent License Agreement**

At the Closing, TR and the Acquiror shall, or shall cause their respective Affiliates to, enter into a license agreement in the form set forth in [Exhibit 5](#) (the **Patent License Agreement**).

#### **5.8 Content and Platform Services Agreement**

At the Closing, TRM and the Acquiror shall enter into a content and platform services agreement substantially in the form set forth in [Exhibit 6](#) (the **Content and Platform Services Agreement**).

#### **5.9 Transition Services Agreement**

At the Closing, TRM and the Acquiror shall, or shall cause their respective Affiliates to, enter into a transition services agreement in customary form to be negotiated in good faith by the parties and containing substantially the terms and conditions in the form set forth in [Exhibit 7](#) and such other terms and conditions as shall be agreed to by the parties prior to the Closing (the **Transition Services Agreement**).

#### **5.10 Multimedia Solutions Distribution Rights Agreement**

At the Closing, TRM and the Acquiror shall, or shall cause their respective Affiliates to, enter into a multimedia solutions distribution rights agreement to be negotiated in good faith by the parties, including with respect to the terms and conditions set forth in the term sheets set forth in [Exhibit 8](#) and such other terms and conditions as shall be agreed to by the parties prior to the Closing (the **Multimedia Solutions Distribution Rights Agreement**).

#### **5.11 Subleases**

At the Closing, TR shall, or shall cause another Seller to, and the Acquiror shall or shall cause an Acquiror Designee to, enter into separate subleases with respect to each of the locations as described in [Exhibit 9](#), each in customary form to be negotiated in good faith by the parties and containing the terms and conditions set forth in the term sheet set forth in [Exhibit 9](#) and such other terms and conditions as shall be agreed to by the parties prior to the Closing (together, the **Subleases**).

#### **5.12 Non-Competition and Non-Solicitation Agreement**

At the Closing, TRM shall, and the Acquiror shall cause Acquiror Parent to, enter into a non-competition and non-solicitation agreement in the form set forth in [Exhibit 10](#) (the **Non-Competition and Non-Solicitation Agreement**).

### 5.13 Intellectual Property Assignment Agreement

At the Closing, TR shall, or shall cause another Seller to, and the Acquiror shall, or shall cause an Acquiror Designee to, enter into an Intellectual Property assignment agreement in customary form to be negotiated in good faith by the parties and containing such terms and conditions as shall be agreed to by the parties prior to the Closing (the **Intellectual Property Assignment Agreement**).

### 5.14 Further Action

- (a) Subject to, and not in limitation of, Section 5.5, each of TR and the Acquiror (a) shall execute and deliver, or shall cause to be executed and delivered, such documents and other papers and shall take, or shall cause to be taken, such further actions as may be reasonably required to carry out the provisions of the Transaction Agreements and give effect to the transactions contemplated by the Transaction Agreements, (b) shall refrain from taking any actions that would reasonably be expected to impair, delay or impede the Closing and (c) without limiting the foregoing, shall use its reasonable best efforts to cause all of the conditions to the obligations of the other party to consummate the transactions contemplated by this Agreement to be met on or prior to the Outside Date.
- (b) TR shall, and shall cause the other Sellers to, and the Acquiror shall, and shall cause the other Acquiror Designees to, execute, as applicable, such deeds, instruments of transfer, assignment, and conveyance, powers of attorney and other certificates, forms, and instruments as are reasonably sufficient and effective to convey, transfer and assign to the Acquiror or the Acquiror Designees, as applicable, all right, title and interest in and to the Transferred Assets and the Assumed Liabilities in the relevant non-U.S. jurisdictions (the **Foreign Implementing Agreements**), all such items to be duly executed, delivered, notarized and apostilled as necessary. Any Foreign Implementing Agreement shall not expand or limit the rights and obligations of the Sellers or the Acquiror beyond those provided for in this Agreement, and the Foreign Implementing Agreements shall not provide for any additional rights or obligations of TR or the Acquiror that are not provided for in this Agreement. The parties shall cooperate in the preparation of any such Foreign Implementing Agreements. In the event of any conflict between the terms of any such Foreign Implementing Agreements and this Agreement, the terms of this Agreement shall control. TR shall not, and shall cause the other Sellers not to, and the Acquiror shall not, and shall cause the other Acquiror Designees not to, bring any claim or exercise any right or benefit arising under such Foreign Implementing Agreements or resulting therefrom. Notwithstanding the foregoing, (i) TR shall indemnify and hold harmless the Acquiror and the Acquiror Designees and (ii) the Acquiror shall indemnify and hold harmless TR and the other Sellers, in each case, from and against any and all such claims or such exercises of rights or benefits under such Foreign Implementing Agreement.
- (c) If, after the Closing Date, TR or its Affiliates receive any funds that are the property of the Acquiror or its Affiliates, TR shall, or shall cause one of its Affiliates to, remit any such funds promptly to the Acquiror or such Affiliate. If, after the Closing Date, the Acquiror or its Affiliates receive any funds that are the property of TR or its Affiliates, the Acquiror shall, or shall cause one of its Affiliates to, remit any such funds promptly to TR or such Affiliate.
- (d) If, after the Closing Date, TR or the Acquiror identifies any Transferred Asset that was not previously assigned or otherwise transferred by TR or another Seller to the Acquiror or an Acquiror Designee, then TR shall, or shall arrange for another Seller to, as applicable, promptly assign and transfer the applicable Transferred Asset to the Acquiror or such Acquiror Designee for no additional consideration, subject to the terms and conditions of this Agreement.

- (e) If, after the Closing Date, TR or the Acquiror identifies any Excluded Asset that was transferred to the Acquiror or an Acquiror Designee on or after the Closing Date, the Acquiror shall (or shall cause such Acquiror Designee holding such Excluded Asset to), promptly assign and transfer such Excluded Asset to TR or another Seller, as designated by TR, for no consideration.

#### **5.15 Updates**

- (a) TR shall, as promptly as reasonably practicable, inform the Acquiror upon TR or any other Seller obtaining knowledge of the occurrence, or failure to occur, of any event that, to the Knowledge of TR, would be reasonably likely to give rise to any representation or warranty of TR contained in Article 3 to cease to be true and correct in any material respect or cause any of the conditions set forth in Article 8 not to be satisfied.
- (b) The parties shall negotiate in good faith as promptly as practicable after the Offer Letter Date mutually agreeable language describing the concepts currently attached as Annex B to the Non-Competition and Non-Solicitation Agreement.

#### **5.16 Information Security**

TR shall, and shall cause its Affiliates to, comply with the Information Security Procedures.

#### **5.17 Non-Assertion**

With respect to any Software (including any underlying know-how or trade secret) created by an Employee during the two years following the Closing (**New Software**), there will (a) be a presumption (as between TR and its Affiliates and the Acquiror and its Affiliates) that such Employee has not copied any Software owned by TR or any of its Affiliates on or prior to the Closing Date (other than Business Software), but instead the presumption shall be that such Employee has used only their own personal generalized know-how in the creation of such New Software; and (b) TR shall not and shall ensure that its Affiliates shall not assert any claim that any such Employee unconsciously copied any Software owned by TR or any of its Affiliates (other than Business Software) in the creation of any such New Software.

#### **5.18 Investigation**

THE ACQUIROR ACKNOWLEDGES AND AGREES THAT IT (A) HAS MADE ITS OWN INQUIRY AND INVESTIGATION INTO, AND, BASED THEREON, HAS FORMED AN INDEPENDENT JUDGMENT CONCERNING, THE TRANSFERRED ASSETS, THE BUSINESS, AND THE ASSUMED LIABILITIES, AND (B) HAS BEEN FURNISHED WITH, OR GIVEN ADEQUATE ACCESS TO, SUCH INFORMATION ABOUT THE TRANSFERRED ASSETS, THE BUSINESS, THE ASSUMED LIABILITIES AND ANY OTHER RIGHTS OR OBLIGATIONS TO BE TRANSFERRED HEREUNDER OR PURSUANT HERETO, AS IT HAS REQUESTED. THE ACQUIROR FURTHER ACKNOWLEDGES AND AGREES THAT (I) THE ONLY REPRESENTATIONS, WARRANTIES AND COVENANTS MADE BY TR ARE THE REPRESENTATIONS, WARRANTIES AND COVENANTS MADE IN THIS AGREEMENT AND THE ANCILLARY AGREEMENTS AND THE ACQUIROR HAS NOT RELIED UPON ANY OTHER REPRESENTATIONS OR OTHER INFORMATION MADE OR SUPPLIED BY OR ON BEHALF OF TR OR BY ANY AFFILIATE OR REPRESENTATIVE OF

TR, INCLUDING ANY INFORMATION PROVIDED BY TR BANKER OR MANAGEMENT PRESENTATIONS, AND THAT THE ACQUIROR WILL NOT HAVE ANY RIGHT OR REMEDY ARISING OUT OF ANY SUCH REPRESENTATION OR OTHER INFORMATION, AND (II) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE ANCILLARY AGREEMENTS, THE ACQUIROR SHALL ACQUIRE THE TRANSFERRED ASSETS, THE BUSINESS AND THE ASSUMED LIABILITIES WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR CONFORMANCE TO MODELS OR SAMPLES OF MATERIALS, IN AN "AS IS" CONDITION AND ON A "WHERE IS" BASIS.

## 6. EMPLOYEE MATTERS

### 6.1 Employee Matters

- (a) As soon as reasonably practicable but no later than 10 days following the execution of this Agreement, and subject to applicable data privacy rules and other applicable Law, TR shall, or shall cause the other Sellers to, provide to the Acquiror a preliminary version of Appendix I to this Agreement setting out a list of Employees employed by the Business, current as of the date of this Agreement, with their job title, date of hire, job grade, employment status (full time, part-time, temporary, leave of absence, disability leave or seasonal) and primary work location and separately identifying each individual employed primarily in (or, in the case of any expatriate Employee, whose home country is) the United States. TR shall, and shall cause the other Sellers to, promptly update Appendix I to this Agreement, but no later than 10 days prior to the anticipated Closing Date, to reflect changes current as of a date that is no earlier than the date that is 17 days prior to the anticipated Closing Date, on account of (a) new hires added in the ordinary course of business prior to the Closing Date for open positions; (b) attrition among the Employees; (c) non-material changes intended to correct good faith errors or omissions by the Sellers in determining which Employees are primarily dedicated to the Business; (d) an Employee rejecting a transfer or offer of employment, where permitted; and (e) other changes mutually agreed by the parties hereto. TR shall, and shall cause the other Sellers to, promptly update Section 3.15(c) of the Disclosure Schedule, but no later than 10 days prior to the anticipated Closing Date, to reflect changes to the disclosure required pursuant to Section 3.15(c) of this Agreement, which update shall be current as of a date that is no earlier than the date that is 17 days prior to the anticipated Closing Date. The Sellers shall provide to the Acquiror a final version of Appendix I and Section 3.15(c) of the Disclosure Schedule to this Agreement no later than 30 days following the Closing Date, setting forth all of the Transferred Employees and the Temporary Workers, respectively, in each case as of the Closing Date.
- (b) No later than 30 days prior to the anticipated Closing Date, the Acquiror shall, or shall cause an Acquiror Designee to, offer employment (provided, that any such "offer" shall not imply any right to continue in employment with the Acquiror or its Affiliates for any period of time following the Closing Date) to all U.S. Employees effective as of the Closing Date (or such later date as an inactive employee on an authorized leave of absence becomes eligible to return to employment) on the terms and conditions set forth herein below or in Schedule 6.1(b). Any such U.S. Employee who accepts the Acquiror's or Acquiror Designee's offer of employment and becomes an employee of the Acquiror or an Acquiror Designee as of the Closing Date shall be referred to herein as a **U.S. Transferred Employee**. For at least one year following the Closing Date, the Acquiror shall provide or cause to be provided to all U.S. Transferred Employees so long as such U.S. Transferred Employee remains employed by the Acquiror or an Affiliate of the Acquiror and without limiting the right of the Acquiror

or its Affiliates to terminate any U.S. Transferred Employee's employment after the Closing Date (subject to the Acquiror's or its Affiliates' obligations under this Agreement): (i) a salary or wage level, and commission and bonus opportunity at least equal to the salary or wage level, and commission and bonus opportunity to which each such U.S. Transferred Employee was entitled immediately prior to the Closing Date, and (ii) benefits and other material terms and conditions of employment that are at least equivalent, in the aggregate, to the benefits and other material terms and conditions of employment disclosed in Section 3.14(a) of the Disclosure Schedule. Nothing in this Section 6.1 shall entitle any employee of the Business to employment with the Acquiror or an Acquiror Designee and shall not change any such U.S. Transferred Employee's status of "at will" employment nor prevent the Acquiror or its Affiliates from terminating any Transferred Employee's employment following the Closing Date (subject to the Acquiror's or its Affiliates' obligations under this Agreement). Notwithstanding anything contained herein to the contrary, to the extent the Acquiror or its Affiliates are obligated under the provisions of this Article 6 to make an offer of employment by a specified date prior to the Closing Date to an Employee of the Business and are precluded from doing so as a result of a particular item of information being excluded from the schedules to this Agreement pursuant to applicable data privacy rules and other applicable Law, or otherwise, the Acquiror and its Affiliates shall make such offer as promptly as practicable after such information is made available to the Acquiror and its Affiliates to comply in good faith with their obligations hereunder; it being understood that such delayed offer shall not constitute a breach of the Acquiror's or its Affiliates' obligations hereunder, including the obligation to make an offer of employment by the applicable specified date.

- (c) As of the Closing Date, the Acquiror shall, or shall cause an Acquiror Designee to, assume and be responsible for all salary, bonus, benefit and other employment-related Liabilities of the Seller with respect to the U.S. Transferred Employees that accrue or arise after the Closing Date.
- (d) As of the Closing Date, the Acquiror shall, or shall cause an Acquiror Designee to, offer each Temporary Worker who (immediately prior to the Closing) is rendering services to the Business, the opportunity to continue to work for the Acquiror for the remaining period of time such Temporary Worker was scheduled to work for Sellers if the Business had not been sold to the Acquiror as contemplated hereby.
- (e) With respect to each benefit or compensation plan, program, arrangement, policy or practice sponsored or maintained by the Acquiror or its Affiliates, the Acquiror shall grant, or cause to be granted to all U.S. Transferred Employees from and after the Closing Date credit for purposes of participation and vesting (but not benefit accrual purposes, except that such service credit shall be granted for purposes of determining paid time-off, short-term disability and severance pay amounts) for all service with TR or any of its Affiliates, and their respective predecessors prior to the Closing Date to the same extent service was recognized under the comparable U.S. Employee Plan in which such U.S. Transferred Employee participated immediately prior to the Closing, except where such crediting of service would result in the duplication of benefits. Following the Closing Date, (i) the Acquiror shall ensure that no limitations or exclusions as to pre-existing conditions, evidence of insurability or good health, waiting periods or actively-at-work exclusions or other limitations or restrictions on coverage are applicable to any U.S. Transferred Employees or their dependents or beneficiaries under any welfare benefit plans in which such employees may be eligible to participate, except to the extent applicable under the analogous U.S. Employee Plan immediately prior to Closing Date and (ii) the Acquiror shall ensure that any costs or expenses incurred by

U.S. Transferred Employees (and their dependents or beneficiaries) up to (and including) the Closing Date shall be taken into account for purposes of satisfying applicable deductible, co-payment, coinsurance, maximum out-of-pocket provisions and like adjustments or limitations on coverage under any such welfare benefit plans; provided, that the Acquiror's third-party plan administrator receives sufficient information within 90 days following the Closing Date in order to provide credit for such deductibles and out-of-pocket expenses.

- (f) With respect to (i) any U.S. Employee or Non-U.S. Employee who does not accept the Acquiror's offer of employment made in accordance with Section 6.1(b) or Exhibits 11 and 12 (as applicable), (ii) any Non-U.S. Employee who continues in employment automatically by operation of Law under Exhibit 11 but who withholds consent or objects to the transfer under applicable Law and thus refuses to become an employee of the Acquiror or its Affiliates as of the Closing Date and (iii) any Non-U.S. Excluded Employee, and who, in the case of each of (i), (ii) and (iii) above, is either not offered continued alternate employment by TR or any of its Affiliates or, if so offered, does not accept alternate employment with TR or its Affiliates and whose employment relationship with TR and its Affiliates terminates within ninety (90) days of the Closing Date, the cost of any severance or termination compensation and benefits (collectively, **Severance Payments**) required by applicable Law or contract to be paid by the Sellers to or in respect of such individuals shall be allocated between the Sellers, on the one hand, and the Acquiror, on the other hand, as provided herein and, to the extent allocated to the Acquiror, shall be reimbursed promptly (and, in any event, within 30 days) to the applicable Seller following receipt by the Acquiror of a written statement from the applicable Seller detailing the payments made. The Acquiror shall bear the first \$1,000,000 of such Severance Payments and any amount of Severance Payments in excess of such \$1,000,000 shall be allocated 50% to the Sellers and 50% to the Acquiror. For the avoidance of doubt, the parties agree that none of the following Liabilities shall constitute Severance Payments subject to the foregoing cost-sharing mechanism and that the following Liabilities shall remain the exclusive obligations of TR or its Affiliates: (v) any Liability related to any U.S. Employee or Non-U.S. Employee who voluntarily resigns between the execution of this Agreement and the Closing Date; (w) any salary, benefits, compensation, tax or other payments, costs or charges related to the continued employment following the Closing by TR or its Affiliates of any Non-U.S. Employee who does not become a Non-U.S. Transferred Employee; (x) any Severance Payment made to a Non-U.S. Employee who does not become a Non-U.S. Transferred Employee within ninety (90) days after the Closing Date; (y) any statutory termination payment owing to any Non-U.S. Employee who (1) becomes a Non-U.S. Transferred Employee, (2) without limiting the generality of clause (v) hereinabove, resigns voluntarily, (3) does not accept the Acquiror's offer of employment made in accordance with Exhibit 11 and 12, or (4) remains employed with TR or its Affiliates following the Closing Date; and (z) all legal and other fees and costs incurred by TR or its Affiliates in connection with any of the foregoing. The Acquiror and its Affiliates shall be solely responsible for all Liabilities in respect of (l) any U.S. Employee or Non-U.S. Employee who does not receive an offer of employment under, or an offer of employment in accordance with, Section 6.1(b) or Exhibit 11 and 12 (as applicable), or any Non-U.S. Employee who continues in employment automatically by operation of Law under Exhibit 11 but who withholds consent or objects to the transfer under applicable Law and thus refuses to become an employee of the Acquiror or its Affiliates as of the Closing Date because his terms and conditions of employment following the Closing Date would not have Corresponding Provisions, (m) the termination of employment of any Transferred Employee following the Closing for any reason, and (n) all legal and other fees and costs incurred by Acquiror and its Affiliates in connection with any of the foregoing.

## 6.2 Cessation of Participation in Seller Plans

Effective as of the Closing, except as otherwise provided in the Transition Services Agreement, U.S. Transferred Employees shall cease their participation in all of TR's employee benefit plans and compensation arrangements. TR will vest the U.S. Transferred Employees in their accrued unvested benefits and compensation as of the Closing and will pay the U.S. Transferred Employees in accordance with the respective terms of the applicable TR plans and arrangements.

## 6.3 Accrued Vacation

Except to the extent prohibited by Law, the Acquiror shall honor all accrued vacation of each U.S. Transferred Employee that has accrued as of the Closing Date in accordance with the vacation policy set forth in Section 3.14(a) of the Disclosure Schedule, which shall be used by each U.S. Transferred Employee in accordance with the Acquiror's vacation policy as generally in effect from time to time for all of its employees.

## 6.4 Bonuses; Retention Bonuses

- (a) As of the Closing Date, the Acquiror shall, or shall cause its applicable Affiliate to, establish for the calendar year in which the Closing Date occurs an annual incentive and commission plan for U.S. Transferred Employees (the **Acquiror Bonus Plan**) that affords each U.S. Transferred Employee with a bonus and commission opportunity in accordance with Section 6.1(b). The Acquiror or its applicable Affiliate shall be responsible for paying full year bonuses and commissions for the calendar year in which the Closing Date occurs to the U.S. Transferred Employees under the Acquiror Bonus Plan to the extent such U.S. Transferred Employee achieves such U.S. Transferred Employee's applicable performance criteria pursuant to his or her target award as determined by the Acquiror or its applicable Affiliate. The Acquiror and their Affiliates shall have no obligation to make any payments or reimbursements with respect to any portion of any annual bonuses or commissions relating to any period of time prior to December 31, 2012.
- (b) The Acquiror shall pay any remaining unpaid portion of all retention bonuses due to any U.S. Transferred Employee who is a party to a retention agreement with any Seller or one of their Affiliates (each, a **Retention Agreement**). Such payments shall be made on the delivery date specified under the relevant Retention Agreement (the **Retention Bonus Delivery Date**) and in individual amounts notified by TR or one of its Affiliates to the Acquiror no later than 15 days prior to the Retention Bonus Delivery Date. On the Retention Bonus Delivery Date, except as provided in Section 6.4(c), TR or one of its Affiliates shall pay to the Acquiror an amount equal to the aggregate of all such retention bonus payments (including any

- (c) In the event that any U.S. Transferred Employee who is a party to a Retention Agreement does not remain in continuous employment with the Acquiror or one of its Affiliates through the Retention Bonus Delivery Date to the extent required by such Retention Agreement, such U.S. Transferred Employee shall not be entitled to receive any payment of his or her retention bonus under Section 6.4(b) and any and all amounts paid by Sellers to the Acquiror in respect of such former U.S. Transferred Employee shall promptly be refunded by the Acquiror to Sellers, including any amount paid in respect of any employment taxes related to such bonus payments.
- (d) The Acquiror shall ensure that the payment of any retention bonus pursuant to this Section 6.4 is conditioned upon the U.S. Transferred Employee executing and delivering a release of claims against Sellers, the Acquiror and their respective Affiliates.

## **6.5 Severance Benefits**

Notwithstanding anything to the contrary in the Agreement, the Acquiror shall, or shall cause its Affiliates to, provide severance benefits to any U.S. Transferred Employee who is laid off or terminated during the 12-month period following the Closing Date in an amount that is equal to the greater of (i) the severance benefits (including pay and continued health coverage) that the employee would have been entitled to pursuant to and under circumstances consistent with the terms of the applicable U.S. Employee Plan as in effect on the Closing Date or (ii) the severance benefits provided under the severance arrangements of the Acquiror and its Affiliates applicable to similarly situated employees, and to be calculated, however, on the basis of the employee's compensation and service at the time of the layoff or other termination. The Acquiror shall ensure that any payments of severance are made subject to the U.S. Business Employee executing and delivering a release of claims against Sellers, the Acquiror and their respective Affiliates.

## **6.6 Flexible Spending Arrangements**

To the extent that any U.S. Transferred Employee maintains an account under any U.S. Employee Plan that is a Code Section 125 medical flexible spending account plan (the **TR FSA**) as of the Closing Date, the Acquiror shall establish a Code Section 125 medical flexible spending account plan (the **Acquiror FSA**) and provide such U.S. Transferred Employee, for the remaining portion of the calendar year in which the Closing occurs, with coverage under such the Acquiror FSA at the same level as the coverage provided under the TR FSA. Each U.S. Transferred Employee shall be treated as if his participation in the Acquiror FSA had been continuous from the beginning of the plan year in which the Closing Date occurs and each existing salary reduction election under the TR FSA shall be taken into account for the remainder of the plan year, as if made under the Acquiror FSA. The Acquiror FSA shall provide reimbursement for expenses incurred by U.S. Transferred Employees at any time during the plan year in which the Closing Date occurs (including claims incurred before the Closing), up to the amount of such U.S. Transferred Employees' elections and reduced by amounts previously reimbursed by the TR FSA. This Section 6.6 shall be interpreted and administered in a manner consistent with Rev. Rul. 2002-32, 2002-1 C.B. 1069 (June 6, 2002). If, as of the Closing Date, the amount of contributions made by U.S. Transferred Employees to the TR FSA for the plan year in which the Closing Date occurs exceeds the amount reimbursed to such U.S. Transferred Employees under the TR FSA for such plan year, upon the Closing Date, TR shall pay to the Acquiror for deposit into the Acquiror FSA an amount equal to the amount of such excess. If, as of the Closing Date, the amount reimbursed to such U.S. Transferred Employees under the TR FSA for the plan year in which the Closing Date occurs exceeds the amount of contributions made by U.S. Transferred Employees to the TR FSA for such plan year, as of the last day of the plan year, the Acquiror shall pay to TR an amount up to the amount of such excess for each such U.S. Transferred Employee based upon the amount received in contributions from the U.S. Transferred Employee following the Closing Date in the plan year in which the Closing Date occurs.

## 6.7 WARN Act

The Acquiror shall be solely responsible for any Liability under the WARN Act to any U.S. Transferred Employee who is found to have suffered an “employment loss” under the WARN Act on or after the Closing, and any and all other Liabilities, including reasonable attorneys’ fees, arising out of or resulting from any such employment loss or the Acquiror’s failure to employ (or offer employment to as required under this [Article 6](#)) employees in the Business or serve sufficient notice pursuant to the WARN Act (such Liabilities, **WARN Act Liabilities**). The Sellers shall be responsible for any such obligation arising or accruing solely as a result of events occurring prior to the Closing. The parties hereto agree to cooperate in good faith to determine whether any notification may be required under the WARN Act as a result of the transactions contemplated by this Agreement.

## 6.8 COBRA

The Sellers shall be responsible for the administration of and shall retain any and all obligations and Liabilities for COBRA continuation coverage with respect to the Transferred Employees and their dependents and beneficiaries for “qualifying events” occurring prior to and including the date on which the Transferred Employee becomes a Transferred Employee (for purposes of clarity, to the extent such Transferred Employees are covered under an employee benefit plan providing for such COBRA continuation benefits), and the Acquiror shall be responsible for all obligations and Liabilities for COBRA continuation coverage for Transferred Employees and their dependents and beneficiaries with respect to “qualifying events” occurring after the date on which the Transferred Employee becomes a Transferred Employee (for purposes of clarity, to the extent such Transferred Employees are covered under an employee benefit plan providing for COBRA continuation benefits). The Sellers shall retain any and all obligations and liabilities for COBRA continuation coverage for all Employees of the Business (and their dependents and beneficiaries) who are not Transferred Employees.

## 6.9 Savings Plan

The Acquiror shall take all action necessary to permit the Acquiror’s tax-qualified employee savings plan(s) maintained in the United States to accept rollover contributions of “eligible rollover distributions” (within the meaning of Section 402(c)(4) of the Code) made to the U.S. Transferred Employees from TR’s tax-qualified employee savings plan (the **TR Savings Plan**), including accepting rollover of any then outstanding loans made to the U.S. Transferred Employees from their respective accounts under the TR Savings Plan.

## 6.10 Non-U.S. Employees

The treatment of Non-U.S. Employees and, to the extent applicable, benefits provided by TR or its Affiliates to or on behalf of such employees, shall be respectively governed by [Exhibits 11](#) and [12](#).

## 6.11 No Third-Party Rights

The parties acknowledge and agree that all provisions contained in this [Article 6](#) and [Exhibits 11](#) and [12](#) are included for the sole benefit of the respective parties to this Agreement and shall not create any right in any other Person, including any Employee, Transferred Employee, Non-U.S. Excluded Employee or other employee, former employee, or participant in any employee benefit plan, policy or arrangement

maintained by the Sellers or any of their respective Affiliates or any beneficiary thereof, and shall not constitute an amendment of any Employee Plan or impose any obligations on the Acquiror under any Employee Plan.

## 7. TAX MATTERS

### 7.1 Transfer Taxes

- (a) TR and the Acquiror shall cooperate in timely making all filings, returns, reports and forms as may be required in connection with the payment of Transfer Taxes. Each party shall execute and deliver all instruments and certificates reasonably necessary to enable the other to comply with any filing requirements relating to any such Transfer Taxes.
- (b) The Acquiror and TR shall each be responsible for and pay 50% of all Transfer Taxes; provided, however, that Acquiror and its Affiliates and each Seller and its Affiliates shall use commercially reasonable efforts to avail itself of any available exemptions from any such Transfer Taxes and to cooperate with the other parties in providing any information and documentation that may be necessary to obtain such exemption.

### 7.2 Allocations

- (a) The Purchase Price and the Assumed Liabilities shall be allocated in accordance with this Section 7.2 (together with any amounts payable in respect of VAT pursuant to Section 7.5). Any payment made under or in connection with this Agreement shall be treated, to the extent permissible under applicable Law, as an adjustment of the consideration paid by the Acquiror or an Acquiror Designee for the Transferred Assets to which the payment relates.
- (b) Following the execution of this Agreement, TR and the Acquiror shall cooperate in good faith to determine (i) the value of any Transferred Asset that will need to be determined separately for any Transfer Tax, withholding or VAT, (ii) allocations of the Purchase Price and the Assumed Liabilities among Sellers and (iii) the non-competition and non-solicitation obligations set forth in the Non-Competition and Non-Solicitation Agreement. If any disputes between TR and the Acquiror remain as of 15 Business Days prior to the Closing Date, each of the Acquiror and TR shall have the sole and absolute discretion to use its own allocations with respect to the disputed items for its financial and tax reporting purposes.
- (c) To the extent an allocation to a Seller was agreed upon pursuant to Section 7.2(b), was not already determined pursuant to Section 7.2(b) and is required by applicable Tax Law, within 90 days after the Closing Date, the Acquiror shall provide to TR a copy of its proposed further allocation of the Purchase Price and the Assumed Liabilities among the Transferred Assets sold by such Seller. If within 20 days after the Acquiror delivers the proposed further allocation, TR notifies the Acquiror in writing of any objection to the proposed further allocation (specifying in reasonable detail the nature and basis of such objection), TR and the Acquiror shall cooperate in good faith to resolve the objection. If any disputes remain after 20 days of TR's delivery of any objections, each of Acquiror and TR shall have the sole and absolute discretion to use its own allocations with respect to the disputed items for its financial and tax reporting purposes. Any subsequent adjustments to the Purchase Price shall be allocated in a manner consistent with any prior allocations made pursuant to this Section 7.2; provided, that any adjustment to the Purchase Price pursuant to Section 2.8 shall be allocated to the relevant Seller.

- (d) With respect to any agreed upon allocations pursuant to this Section 7.2, TR and Acquiror agree that (i) neither TR nor Acquiror nor their respective Affiliates shall take a position on any Tax Return, before any Governmental Authority or in any judicial proceeding that is inconsistent with the allocation determined pursuant to this Section 7.2 unless specifically required pursuant to a final determination; (ii) they shall cooperate with each other in connection with the preparation, execution and filing of any Tax Returns related to such allocation; and (iii) they shall promptly notify each other regarding any challenge to such allocation.

### **7.3 Payment of Taxes**

- (a) TR and its Affiliates shall timely prepare and file, or cause to be filed, all non-income Tax Returns (excluding Transfer Tax Returns) with respect to the Transferred Assets or the Business for taxable periods ending on or prior to the Closing Date.
- (b) For any real property, personal property, intangible property or other Taxes imposed on a periodic basis with respect to the Transferred Assets or the Business, Acquiror and its Affiliates shall timely prepare and file, or cause to be filed, all Tax Returns (excluding Transfer Tax Returns) for taxable periods that begin on or before and end after the Closing Date. Any such Tax Return required to be filed by Acquiror pursuant to this Section 7.3(b) shall be provided to TR for TR's review and comments no later than 20 days prior to the due date (including extensions obtained) of such Tax Return, and together with an allocation of Taxes to the portion of the taxable period ending on the Closing Date in accordance with Section 7.3(c). Acquiror agrees to reflect on any such Tax Return any reasonable comments provided by TR in writing no later than 10 days after TR's receipt of such Tax Return. Acquiror and its Affiliates shall timely pay all Taxes shown as due on such Tax Returns. No later than 3 days prior to the due date (including extensions obtained) of the applicable Tax Return, TR shall pay to Acquiror the amount of Taxes shown as due on such Tax Return that are allocated to the portion of the taxable period ending on the Closing Date in accordance with Section 7.3(c).
- (c) With respect to taxable periods that begin on or before and end after the Closing Date, the amount of Taxes with respect to the Transferred Assets or the Business (other than Transfer Taxes) that relates the portion of the taxable period ending on the Closing Date will be determined based on an interim closing of the books on and including the Closing Date.

### **7.4 Cooperation**

TR and Acquiror agree to furnish or cause to be furnished to each other such information and assistance relating to the Transferred Assets and the Business for taxable periods ending on or prior to or that include the Closing Date as is reasonably requested for the filing of any Tax Returns, determining the liability for Taxes or with respect to any audit or proceeding relating to any Tax; provided, that neither TR nor its Affiliates shall be required to provide any Tax Returns or other documents or information (i) relating to income Taxes or (ii) that do not relate solely to non-income Taxes with respect to the Transferred Assets or the Business.

### **7.5 Value Added Tax**

- (a) Each amount stated as payable by the Acquiror (or an Acquiror Designee) under or pursuant to this agreement is exclusive of VAT (if any).

- (b) The Sellers and the Acquiror (i) intend that, so far as possible, the sale of the Business (or any part thereof) under this Agreement is treated as neither a supply of goods nor a supply of services or as otherwise being Tax-free for VAT purposes and, where relevant, that the sale of the Business (or any part thereof) shall be treated as a transfer of a going concern for VAT purposes under the relevant local Law and (ii) shall cooperate and take reasonable steps to achieve such treatment including, in the case of the Acquiror, (A) ensuring that the Acquiror (or the relevant Acquiror Designee, as applicable) is registered for VAT in the relevant jurisdiction not later than Closing and (B) providing such warranties or entering into such documents as are reasonably required by the Sellers to support such treatment in the relevant jurisdiction. Without prejudice to the foregoing provisions, the Sellers and the Acquiror shall cooperate in good faith to agree as soon as practicable, whether or not and the extent to which the sale of the Business (or any part thereof) under this Agreement is properly to be treated as being Tax-free and/or as a transfer of a going concern for VAT purposes depending, among other things, where relevant, on the location of the entity which acquires the relevant part of the Business. Where and to the extent the Sellers and the Acquiror are unable to agree on any such matters within 15 Business Days prior to the Closing Date, the Sellers shall make the final determination; provided, that, if the Acquiror so requests in respect of any jurisdiction where the VAT in question is more than US\$50,000, the Seller is able to demonstrate that it has received advice from an internationally recognized third party Tax adviser to support the treatment it has proposed. The Sellers and the Acquiror shall provide to each other, and to their advisors, as applicable, such information and assistance in relation to the Business and the Acquiror's proposed transaction structure as is reasonably available and reasonably required in order to make such determinations, and shall keep one another promptly updated as to any changes to information previously provided.
- (c) If any VAT is determined in accordance with the procedures set forth in Section 7.5(b) to be payable on any supply in connection with the sale of the Business (or any part thereof) under this Agreement and TR or an Affiliate of TR is required to account for such VAT to the relevant Governmental Authority, the Acquiror shall pay, or shall cause its Affiliates to pay, to TR in addition to the price and at the same time as payment of the price an amount equal to such VAT and, where applicable, TR shall, or shall cause its Affiliates to, issue to the Acquiror or the relevant Acquiror Designee a proper VAT invoice in respect of such VAT at Closing.
- (d) If a supply of the Business (or any part thereof) under this Agreement made by a Seller was originally regarded as VAT exempt or otherwise not subject to VAT and the relevant Governmental Authority subsequently determines that:
- (i) VAT was chargeable on that supply; and
  - (ii) the obligation to account for such VAT falls on TR or an Affiliate of TR,

then TR shall, or shall cause its Affiliates to, issue an invoice (or amended invoice) showing the amount of VAT claimed by the relevant Governmental Authority, and the Acquiror shall, upon receipt of such invoice, pay to TR the VAT due, together with 50% of any interest and penalties relating thereto; provided, that, to the extent that such interest and penalties are directly attributable to a default by TR or any of its Affiliates on the one hand, or by the Acquiror or any of its Affiliates on the other hand, 100% of such interest and penalties shall be borne by the defaulting party.

- (e) If the Acquiror (or the relevant Acquiror Designee, as applicable) pays an amount in respect of VAT under this Section 7.5 and the relevant Governmental Authority determines that all or part of it was not properly chargeable, TR shall or shall procure that its Affiliate shall repay the amount or relevant part of it to the Acquiror (or the relevant Acquiror Designee, as applicable) as follows. The repayment shall be made promptly following the determination, unless TR or the relevant Affiliate has already accounted to the relevant Governmental Authority for the VAT. In that case, TR shall or shall procure that its relevant Affiliate shall apply for a refund of the VAT (plus any interest payable by the relevant Governmental Authority), use reasonable endeavors to obtain it as speedily as practicable, and pay to the Acquiror (or the relevant Acquiror Designee, as applicable) the amount of the refund and any interest when and to the extent received from the relevant Governmental Authority. Where applicable, TR shall or shall procure that its relevant Affiliate shall deliver to the Acquiror (or the relevant Acquiror Designee, as applicable) a proper credit note for VAT purposes.
- (f) If the Acquiror so requests, TR shall or shall procure that its relevant Affiliate shall request a review and/or pursue an appeal of any claim by a relevant Governmental Authority that VAT is chargeable on the supply of the Business (or any part thereof) contrary to the determinations made pursuant to Section 7.5(b) above, to the extent that TR considers (acting reasonably) that it reasonable to do so in the circumstances, bearing in mind the amount of VAT claimed and without undue regard to its right to reimbursement from the Acquiror. The Acquiror shall indemnify TR and its Affiliates against all reasonable costs and expenses properly incurred in taking any such action.
- (g) TR shall keep the Acquiror fully and promptly informed of the progress of any dispute with a relevant Governmental Authority in relation to the VAT treatment of the supply of the Business (or any part thereof), and shall give the Acquiror a reasonable opportunity to comment on any relevant documents, correspondence or procedural steps (providing such information and assistance to TR as is reasonably available and reasonably required for such purpose) and shall take any reasonable comments provided by the Acquiror into account.
- (h) On or before Closing, TR shall provide the Acquiror with details of any capital items included in the Transferred Assets, the input tax on which could be subject to adjustment in accordance with the provisions of a VAT regime applicable in Europe (outside the UK), Australia or Canada which is similar to the Capital Goods Scheme, where such adjustment after Closing in relation to any asset or asset class could exceed US\$100,000.
- (i) In the absence of a specific rule under Law to the contrary, no Seller shall transfer or deliver to the Acquiror (or any Acquiror Designee) any records relating to VAT.

## **8. CONDITIONS TO CLOSING**

### **8.1 Conditions to Obligations of TR**

The obligation of TR to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or waiver by TR in its sole discretion, at or prior to the Closing, of each of the following conditions:

- (a) Representations and Warranties; Covenants. (i) Each of the representations and warranties of the Acquiror contained in this Agreement are true and correct as of the Closing as if made on the Closing Date, without giving effect to any materiality or Material Adverse Effect qualifications

set forth therein, other than representations and warranties made as of another date, which representations and warranties shall have been true and correct as of such date; provided, that this condition shall be deemed satisfied unless the failure of such representations and warranties to be so true and correct on the Closing Date, individually or taken together, has had or is reasonably expected to have a material adverse effect on the Acquiror's ability to consummate the transactions contemplated by this Agreement and (ii) the covenants contained in this Agreement and required to be performed or complied with by the Acquiror on or before the Closing shall have been performed or complied with in all material respects.

- (b) Antitrust and Competition Approval. Any waiting period (and any extension of such period) under the HSR Act applicable to the transactions contemplated by this Agreement shall have expired or shall have been terminated and the applicable filings or approvals under the competition Laws of any relevant foreign jurisdictions that are required to be made or obtained prior to Closing shall have been made or obtained.
- (c) No Governmental Order. There shall be no Governmental Order (whether temporary, preliminary or permanent) in existence that challenges or prohibits or otherwise materially restrains the sale of the Transferred Assets or the other transactions contemplated by this Agreement or the Ancillary Agreements, and there shall not be pending any Action brought by any Governmental Authority seeking any of the foregoing.
- (d) Ancillary Agreements. The Acquiror shall have executed and delivered, or caused to be executed and delivered, to TR the Ancillary Agreements, as applicable.

## 8.2 Conditions to Obligations of the Acquiror

The obligations of the Acquiror to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or waiver by the Acquiror in its sole discretion, at or prior to the Closing, of each of the following conditions:

- (a) Representations and Warranties; Covenants. (i) Each of the representations and warranties of TR contained in this Agreement are true and correct as of the Closing as if made on the Closing Date, without giving effect to any materiality or Material Adverse Effect qualifications set forth therein, (other than representations and warranties that are made as of a specific date, which representations shall have been true and correct as of such date); provided, that this condition shall be deemed satisfied unless the failure of such representations and warranties to be so true and correct on the Closing Date or on such earlier date, individually or taken together, has had or is reasonably expected to have a Material Adverse Effect, and (ii) the representation and warranty set forth in Section 3.5(b) is true and correct as of the Closing as if made on the Closing in all respects; and (iv) the covenants contained in this Agreement required to be performed or complied with by TR on or before the Closing shall have been performed or complied with in all material respects.
- (b) Antitrust and Competition Approval. Any waiting period (and any extension of such period) under the HSR Act applicable to the transactions contemplated by this Agreement shall have expired or shall have been terminated and the applicable filings or approvals under the competition Laws of any relevant foreign jurisdictions that are required to be made or obtained prior to Closing shall have been made or obtained.

- (c) No Governmental Order. There shall be no Governmental Order (whether temporary, preliminary or permanent) in existence that challenges or prohibits or otherwise materially restrains the sale of the Transferred Assets or the other transactions contemplated by this Agreement or the Ancillary Agreements, and there shall not be pending any Action brought by any Governmental Authority seeking any of the foregoing.
- (d) Ancillary Agreements. TR shall have executed and delivered, or caused to be executed and delivered, to the Acquiror the Ancillary Agreements, as applicable.

## 9. TERMINATION, AMENDMENT AND WAIVER

### 9.1 Termination

This Agreement may be terminated prior to the Closing:

- (a) by the mutual written consent of TR and the Acquiror;
- (b) by either TR or the Acquiror if the Closing shall not have occurred by [*date that is 6 months after the date of this Agreement*] (the **Outside Date**); provided, however, that on the Outside Date, TR or the Acquiror shall have the right, each in its sole discretion, to extend the Outside Date to [*date that is 12 months after the date of this Agreement*] (which date shall then be the **Outside Date**) in the event that the waiting period under the HSR Act has not expired or been terminated and so long as such party is not in material breach of its covenants set forth in Sections 5.5(a) through (d); provided, further, that the right to terminate this Agreement under this Section 9.1(b) shall not be available to any party whose failure to take any action required to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur prior to such date;
- (c) by TR if the Acquiror shall have breached or failed to perform any of its representations, warranties, covenants or agreements contained in this Agreement, which would give rise to the failure of a condition set forth in Section 8.1(a) and (x) cannot be cured by the Outside Date or (y) if capable of being cured by the Outside Date, shall not have been cured by the earlier of the Outside Date and seventy-five days following receipt of written notice from TR to the Acquiror of such breach or failure; provided, however, that the right to terminate this Agreement under this Section 9.1(c) shall not be available if TR is then in breach of any of its representations, warranties, covenants or other agreements contained in this Agreement that would result in a failure of a condition set forth in Section 8.2(a);
- (d) by the Acquiror if TR shall have breached or failed to perform any of its representations, warranties, covenants or agreements contained in this Agreement, which would give rise to the failure of a condition set forth in Section 8.2(a) and (x) cannot be cured by the Outside Date or (y) if capable of being cured by the Outside Date, shall not have been cured by the earlier of the Outside Date and seventy-five days following receipt of written notice from the Acquiror to TR of such breach or failure; provided, however, that the right to terminate this Agreement under this Section 9.1(d) shall not be available if the Acquiror is then in breach of any of its representations, warranties, covenants or other agreements contained in this Agreement that would result in a failure of a condition set forth in Section 8.1(a); or
- (e) by either TR or the Acquiror in the event of the issuance of a final, nonappealable Governmental Order restraining or prohibiting the sale of the Transferred Assets.

## 9.2 Notice of Termination

Any party desiring to terminate this Agreement pursuant to Section 9.1 shall give written notice of such termination to the other party or parties, as the case may be, to this Agreement.

## 9.3 Effect of Termination

In the event of the termination of this Agreement as provided in Section 9.1, this Agreement shall forthwith become void and there shall be no liability on the part of any party to this Agreement, except as set forth in Sections 5.4 and 9.4 and Article 10; provided, however, that nothing in this Agreement shall relieve either TR or the Acquiror from liability for (a) failure to perform the obligations set forth in Section 5.4 or (b) any willful breach of this Agreement or willful failure to perform its obligations under this Agreement.

## 9.4 Termination Fee

Notwithstanding anything in this Agreement to the contrary, in the event this Agreement is terminated pursuant to Section 9.1(b) or Section 9.1(e) and at the time of such termination, (a) the failure of one or more of the conditions in Section 8.1(b) or 8.1(c) to be satisfied is not primarily caused by any material breach of Section 5.5 of this Agreement by TR or their Affiliates, and (b) all conditions set forth in Section 8.2(a) shall have been satisfied or waived at the time of termination (as if the date of termination were the Closing Date), then the Acquiror shall promptly, but in no event later than three Business Days after the date of such termination, pay TR a termination fee of \$30 million (the **Termination Fee**) in cash by wire transfer of immediately available funds. The Acquiror acknowledges and agrees that the agreements contained in this Section 9.4 are an integral part of the transactions contemplated hereby and that, without this right, TR would not enter into this Agreement; accordingly, if the Acquiror fails to promptly pay the amount due pursuant to this Section 9.4, and in order to obtain such payment, TR commences an Action that results in a judgment against the Acquiror for the fee set forth in this Section 9.4 or any portion of such fee, the Acquiror shall pay to TR its costs and expenses (including attorneys' fees) in connection with such Action, together with interest on the amount of the fee at the Interest Rate in effect on the date such payment was required to be made through the date of payment.

## 9.5 Extension; Waiver

At any time prior to the Closing, either TR or the Acquiror may (a) extend the time for the performance of any of the obligations or other acts of the other Person, (b) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant to this Agreement or (c) waive compliance with any of the agreements or conditions contained in this Agreement. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party granting such extension or waiver.

## 10. INDEMNIFICATION

### 10.1 Indemnification by TR

- (a) Subject to Sections 10.1(b), 10.3, 10.5 and 11.1, if the Closing shall occur TR shall indemnify, defend and hold harmless the Acquiror, its Affiliates and their respective officers, directors, employees, agents, successors and assigns (collectively, the **Acquiror Indemnified Parties**) against, and reimburse any Acquiror Indemnified Party for, all Losses that such Acquiror Indemnified Party may suffer or incur, or become subject to, directly or indirectly, arising out of or as a result of:
- (i) the failure of any representation or warranty made by TR in this Agreement to be true and correct as of the Offer Letter Date or as of the Closing Date (or with respect to representations and warranties that are made as of a specific date, as of such date) (it being understood that for purposes of this Section 10.1(a)(i) all "materiality" and "Material Adverse Effect" qualifications and exceptions contained in such representations and warranties shall be disregarded);

- (ii) any breach by TR of any of its covenants contained in this Agreement; or
  - (iii) any Excluded Liability (including the failure of the Sellers to perform or in due course pay and discharge any Excluded Liability).
- (b) Notwithstanding any other provision to the contrary, (i) TR shall not be required to indemnify, defend or hold harmless any Acquiror Indemnified Party against, or reimburse any Acquiror Indemnified Party for, any Losses pursuant to Section 10.1(a)(i), (A) if such Loss was included in calculating Specified Current Liabilities less Prepaid Expenses as of the Closing in accordance with Section 2.5 and Sections 2.8 through 2.10, (B) with respect to any claim unless such claim or series of related claims involves Losses in excess of \$25,000 (nor shall such item be applied to or considered for purposes of calculating the aggregate amount of the Acquiror Indemnified Parties' Losses) and (C) until the aggregate amount of the Acquiror Indemnified Parties' Losses exceeds 1% of the Purchase Price, and then only to the extent of any such excess; but only if such Losses also meet the requirements of subclauses (A) and (B) of clause (i) of this Section 10.1(b); and (ii) the cumulative indemnification obligation of TR under Section 10.1(a)(i) shall in no event exceed 15% of the Purchase Price; provided, that clause (ii) shall not apply to any breach of any representation or warranty contained in Section 3.9(a); and provided, further, that none of clauses (i) or (ii) shall apply to any breach of any Fundamental Representation or any representation set forth in Section 3.16.

## 10.2 Indemnification by the Acquiror

- (a) Subject to Sections 10.2(b), 10.3 and 11.1, if the Closing shall occur the Acquiror shall indemnify, defend and hold harmless TR, its Affiliates and their respective officers, directors, employees, agents, successors and assigns (collectively, the **TR Indemnified Parties**) against, and reimburse any TR Indemnified Party for, all Losses that such TR Indemnified Party may suffer or incur, or become subject to, directly or indirectly, arising out of or as a result of:
- (i) the failure of any representation or warranty made by the Acquiror in this Agreement to be true and correct as of the Offer Letter Date or as of the Closing Date (or with respect to representations and warranties that are made as of a specific date, as of such date) (it being understood that for purposes of this Section 10.2(a)(i) all "materiality" qualifications and exceptions contained in such representations and warranties shall be disregarded);
  - (ii) any breach by the Acquiror of any of its covenants contained in this Agreement;
  - (iii) any claim or cause of action by any Person arising before, on or after the Closing Date against any TR Indemnified Party with respect to the Transferred Assets or the operations of the Business, except for any claims with respect to which TR is specifically obligated to indemnify the Acquiror Indemnified Parties under Section 10.1(a) of this Agreement;

- (iv) any Post-Closing Termination Liability; or
  - (v) any Assumed Liability (including the failure of the Acquiror to perform or in due course pay and discharge any Assumed Liability).
- (b) Notwithstanding any other provision to the contrary, the Acquiror shall not be required to indemnify, defend or hold harmless any TR Indemnified Party against, or reimburse any TR Indemnified Party for, any Losses pursuant to Section 10.2(a)(i), (A) if such Loss was included in calculating Specified Current Liabilities less Prepaid Expenses as of the Closing in accordance with Section 2.5 and Sections 2.8 through 2.10, (B) with respect to any claim unless such claim involves Losses in excess of \$25,000.

### 10.3 Notification of Claims

- (a) A Person that may be entitled to be indemnified under this Agreement (the **Indemnified Party**), shall as promptly as practicable notify the party or parties liable for such indemnification (the **Indemnifying Party**) in writing of any matter that the Indemnified Party has determined has given or could reasonably be expected to give rise to a right of indemnification under this Agreement describing in reasonable detail the relevant facts and circumstances; provided, however, that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations under this Article 10 except to the extent the Indemnifying Party is actually and materially prejudiced by such failure, it being understood that notices for claims in respect of a breach of a representation, warranty, covenant or agreement must be delivered prior to the expiration of any applicable survival period specified in Section 11.1 for such representation, warranty, covenant or agreement. If an Indemnified Party shall receive notice of any pending or threatened Action, audit or demand asserted by a third party against the Indemnified Party that the Indemnified Party has determined has given or could reasonably be expected to give rise to a right of indemnification under this Agreement (such claim being a **Third Party Claim**), the Indemnified Party shall as promptly as practicable notify the Indemnifying Party in writing of such Third Party Claim; provided, however, that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations under this Article 10 except to the extent the Indemnifying Party is actually and materially prejudiced by such failure.
- (b) Upon receipt of a notice of a Third Party Claim, the Indemnifying Party shall assume the defense and control of such Third Party Claim. If thereafter the Indemnifying Party determines in good faith that it is not obligated to indemnify the Indemnified Party with respect to such Third Party Claim, then the Indemnifying Party shall promptly notify the Indemnified Party and such parties shall in good faith, for a period of 30 days, attempt to reach agreements as to whether the Indemnifying Party or the Indemnified Party will assume the defense of such Third Party Claim (such assuming party, the **Defending Party**). If the Indemnifying Party and the Indemnified Party are unable to so agree within such 30-day period, then the Indemnifying Party and the Indemnified Party shall submit to binding arbitration as to whether the Indemnifying Party or the Indemnified Party shall be the Defending Party. Such arbitration shall be conducted in New York City before, and in accordance with, the then-existing Rules for Commercial Arbitration of the American Arbitration Association, and before an arbitrator appointed pursuant to such rules. The Indemnifying Party and the Indemnified Party shall instruct such

arbitrator to render its reasoned written decision as promptly as practicable but in no event later than 30 days after its selection. The judgment rendered by such arbitrator shall be final, binding and non-appealable, and judgment may be entered by any court having jurisdiction thereof. The fees and expenses of such arbitrator shall be borne equally by the Indemnifying Party and the Indemnified Party. If the Indemnifying Party is the Defending Party or otherwise assumes the defense and control of a Third Party Claim, then the Indemnifying Party shall be entitled to assume the defense and control of any Third Party Claim with its own counsel and at the expense of the Indemnifying Party if it gives notice of its intention to do so to the Indemnified Party within 15 days of the receipt of notice from the Indemnified Party of such Third Party Claim, but shall allow the Indemnified Party a reasonable opportunity to participate in the defense of such Third Party Claim with its own counsel and at its own expense. Notwithstanding the foregoing, if the Indemnified Party has been advised by counsel that there exists or there is a reasonable likelihood that there exists a conflict of interest that would make it inappropriate for the same counsel to represent both the Indemnified Party and the Indemnifying Party, then the Indemnified Party shall be entitled to participate in the defense of such action or claim with counsel of its choosing and the reasonable fees and expenses of one counsel incurred by the Indemnified Party shall be borne by the Indemnifying Party. TR or the Acquiror, as the case may be, shall, and shall cause each of its Affiliates and Representatives to, cooperate fully with the Indemnifying Party in the defense of any Third Party Claim. The Indemnifying Party shall be authorized to consent to a settlement of, or the entry of any judgment arising from, any Third Party Claim, without the consent of any Indemnified Party; provided, that the Indemnifying Party shall (i) pay or cause to be paid all amounts arising out of such settlement or judgment concurrently with the effectiveness of such settlement, (ii) not encumber any of the assets of any Indemnified Party or agree to any restriction or condition that would apply to or adversely affect any Indemnified Party or the conduct of any Indemnified Party's business, (iii) obtain, as a condition of any settlement or other resolution, an unconditional and complete release of any Indemnified Party and its Affiliates potentially affected by such Third Party Claim and (iv) the settlement or judgment shall not impose equitable remedies or any obligation on the Indemnified Party or any of its Affiliates other than the payment of money damages the payment of which shall be made pursuant to clause (i) above. In the case of an action, audit, claim, litigation, arbitration or other proceeding conducted by a Governmental Authority (**Tax Contest**) relating to the Transferred Assets in respect of a taxable period that begins on or before and ends after the Closing Date, the party that has the greatest liability for Taxes with respect to such Tax Contest, taking into account indemnification obligations under this Article 10 shall be entitled to control such Tax Contest; provided, that (i) the other party shall be entitled to participate in such Tax Contest at its own expense and (ii) the controlling party will not settle or compromise such Tax Contest without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

- (c) In the event any Indemnifying Party receives a notice of a claim for indemnity from an Indemnified Party pursuant to Section 10.3(a) that does not involve a Third Party Claim, the Indemnifying Party shall notify the Indemnified Party within 30 days following its receipt of such notice if the Indemnifying Party disputes its liability to the Indemnified Party under this Article 10. If the Indemnifying Party does not so notify the Indemnified Party, the claim specified by the Indemnified Party in such notice shall be conclusively deemed to be a liability of the Indemnifying Party under this Article 10, and the Indemnifying Party shall pay, subject to the limitations set forth in Section 10.1(b) and 10.2(b), if applicable, the amount of such liability to the Indemnified Party on demand or, in the case of any notice in which the amount of the claim (or any

portion of the claim) is estimated, on such later date when the amount of such claim (or such portion of such claim) becomes finally determined. If the Indemnifying Party has timely disputed its liability with respect to such claim as provided above, the Indemnifying Party and the Indemnified Party shall resolve such dispute in accordance with Section 11.11.

#### **10.4 Exclusive Remedies**

Except with respect to the matters covered by Sections 2.8 through 2.10, TR and the Acquiror acknowledge and agree that, following the Closing, the indemnification provisions of Sections 10.1 and 10.2 shall be the sole and exclusive remedies of TR and the Acquiror, respectively, for any Losses (including pursuant to any Action brought by any Governmental Authority or Person and including reasonable attorneys' fees) of any kind (including any Losses of any kind from claims for breach of contract, warranty, tortious conduct (including negligence) or otherwise and whether predicated on common law, statute, strict liability, or otherwise) that each party may at any time suffer or incur, or become subject to, as a result of, or in connection with, any breach of any representation or warranty in this Agreement by the other party or any failure by the other party to perform or comply with any covenant or agreement that, by its terms, was to have been performed, or complied with, by such other party prior to the Closing; provided, that nothing in this Section 10.4 shall restrict or prohibit any party bringing any action for fraud or willful breach or from seeking specific performance pursuant to Section 11.13 of any obligation hereunder; and provided, further, that nothing in this Section 10.4 shall apply to the Content and Platform Services Agreement, the Transition Services Agreement, the Multimedia Solutions and Distribution Rights Agreement, the Patent License Agreement or the Subleases. Solely to the extent necessary to give effect to the foregoing, each of the parties hereby waive, to the fullest extent permitted by applicable Law, any and all other rights, claims and causes of action (including rights of contribution, if any) known or unknown, foreseen or unforeseen, that exist or may arise in the future, that it may have against TR or the Acquiror, as the case may be, arising under or based upon any federal, state or local Law. Without limiting the generality of the foregoing, except in the case of fraud, the parties hereby irrevocably waive any right of rescission they may otherwise have or to which they may become entitled.

#### **10.5 Additional Indemnification Provisions**

With respect to each indemnification obligation contained in any Transaction Agreement or any other document executed in connection with the Closing (a) each such obligation shall be calculated on an After-Tax Basis, (b) all Losses shall be net of any third-party insurance proceeds that have been actually paid to the Indemnified Party in connection with the facts giving rise to the right of indemnification; provided, that the amount of such proceeds shall be reduced by any costs and expenses incurred in obtaining such proceeds and by the amount of any increase in insurance premiums resulting from making the claim giving rise to the recovery of such insurance proceeds, (c) in no event shall the Indemnifying Party have liability to the Indemnified Party for any consequential, special, incidental, indirect or punitive damages, lost profits or similar items (except to the extent necessary to reimburse such Indemnified Party in Third Party Claims for judgments or arbitration awards actually awarded, or settlement payments actually made, to third parties in respect of such claims in each case in accordance with this Article 10), (d) no representation or warranty of TR shall be deemed untrue or incorrect as a consequence of the existence of any fact, circumstance or event that is disclosed on the Disclosure Schedule in connection with another representation or warranty contained in this Agreement to the extent that the relevance of such disclosure would be reasonably apparent to a reader of such disclosure and (e) TR shall have no liability to indemnify any Indemnified Party with respect to any Losses caused by or resulting from any action required or permitted by Section 5.1.

## 10.6 Mitigation

Each of the parties agrees to take all reasonable steps to mitigate their respective Losses upon and after becoming aware of any event or condition that would reasonably be expected to give rise to any Losses that are indemnifiable hereunder.

## 11. GENERAL PROVISIONS

### 11.1 Survival

The representations and warranties, and the covenants and agreements the performance of which is required by or prior to the Closing of TR and the Acquiror contained in or made pursuant to this Agreement or in any certificate furnished pursuant to this Agreement shall survive in full force and effect until the date that is 18 months after the Closing Date, at which time they shall terminate (and no claims shall be made for indemnification under Section 10.1 or 10.2 thereafter); provided, however, that the representations and warranties made in Sections 3.1, 3.2(a), 3.18, 4.1, 4.2, 4.3(a) and 4.7 (collectively, the **Fundamental Representations**) shall survive indefinitely, Section 3.9 and Section 3.11(b) shall survive until the date that is 24 months after the Closing Date, (c) Section 3.11 (other than Section 3.11(b)) shall survive until the date that is 36 months after the Closing Date, Section 3.16 shall survive the Closing until 60 days after the expiration of the applicable statute of limitations; and provided, further, that (i) the covenants and agreements that by their terms are to be performed in whole or in part after the Closing Date, shall survive for the period provided in such covenants and agreements, if any, or until fully performed or until the statute of limitations applicable to a breach of such covenant expires, and (ii) any indemnification for Taxes under Section 10.1 shall survive the Closing until 60 days after the expiration of the applicable statute of limitations.

### 11.2 Expenses

Except as may be otherwise specified in the Transaction Agreements or as set forth below, all costs and expenses, including fees and disbursements of counsel, financial advisers and accountants, incurred in connection with the Transaction Agreements and the transactions contemplated by the Transaction Agreements shall be paid by the Person incurring such costs and expenses, whether or not the Closing shall have occurred.

### 11.3 Notices

All notices, requests, claims, demands and other communications under the Transaction Agreements shall be, unless otherwise specified in any Transaction Agreement, in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service, by facsimile with receipt confirmed (followed by delivery of an original via overnight courier service) or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 11.3):

- (a) if to TR:
  - Thomson Reuters (Markets) LLC
  - 3 Times Square
  - New York, NY 10036
  - Attention: General Counsel, Financial & Risk
  - Facsimile: (646) 223-4250

with a copy (which shall not constitute notice) to:

Allen & Overy LLP  
1221 Avenue of the Americas  
New York, NY 10020  
Attention: A. Peter Harwich  
Facsimile: (212) 610-6399

- (b) if to Parent Guarantor:  
Thomson Reuters Corporation  
3 Times Square  
New York, NY 10036  
Attention: General Counsel  
Facsimile: (646) 223-4250

with a copy (which shall not constitute notice) to:

Allen & Overy LLP  
1221 Avenue of the Americas  
New York, NY 10020  
Attention: A. Peter Harwich  
Facsimile: (212) 610-6399

- (c) if to the Acquiror:  
c/o The NASDAQ OMX Group, Inc.  
One Liberty Plaza  
New York, New York 10006  
Attention: Alex Kogan

with a copy (which shall not constitute notice) to:

Shearman & Sterling LLP  
599 Lexington Avenue  
New York, NY 10022-6069  
Attention: John A. Marzulli, Jr.  
Facsimile: (646) 848-8590

#### **11.4 Public Announcements**

No party to this Agreement or any Affiliate or Representative of such party shall issue or cause the publication of any press release or public announcement or otherwise communicate with any news media in respect of this Agreement or the transactions contemplated by this Agreement without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), except as may be required by Law or stock exchange rules, in which the case the party required to publish such press release or public announcement shall allow the other party a reasonable opportunity to comment on such press release or public announcement in advance of such publication.

### **11.5 Severability**

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any Law or as a matter of public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties to this Agreement shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

### **11.6 Entire Agreement**

Except as otherwise expressly provided in the Transaction Agreements, the Transaction Agreements constitute the entire agreement of TR, the other Sellers or their Affiliates, on the one hand, and the Acquiror or its Affiliates, on the other hand, with respect to the subject matter of the Transaction Agreements and supersede all prior agreements, undertakings and understandings, both written and oral, other than the Confidentiality Agreement to the extent not in conflict with this Agreement, between or on behalf of TR, the other Sellers or their Affiliates, on the one hand, and the Acquiror or its Affiliates, on the other hand, with respect to the subject matter of the Transaction Agreements.

### **11.7 Assignment**

This Agreement shall not be assigned by operation of Law or otherwise without the prior written consent of TR and the Acquiror, except that (a) TR may assign any or all of its rights and obligations under this Agreement to any of its Affiliates, and (b) the Acquiror may assign any or all of its rights (in whole or in part, including with respect to any Transferred Asset that is intangible property, less than all of the rights that make up such Transferred Asset) and obligations under this Agreement to any of the Acquiror's Subsidiaries designated in writing by the Acquiror at least 15 Business Days prior to the Closing (collectively, the **Acquiror Designees**); provided, that in each case, no such assignment shall release a party from any liability or obligation under this Agreement. Any attempted assignment in violation of this Section 11.7 shall be void. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the parties hereto and their permitted successors and assigns.

### **11.8 No Third-Party Beneficiaries**

Except as provided in Article 10 with respect to TR Indemnified Parties and Acquiror Indemnified Parties, this Agreement is for the sole benefit of the parties to this Agreement and their permitted successors and assigns and nothing in this Agreement or any other Transaction Agreements, including Article 6 hereto, express or implied, is intended to or shall confer upon any other Person, including any union or any employee or former employee of TR or the Business, or entity any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement.

### **11.9 Amendment**

No provision of this Agreement or any other Transaction Agreement, including any Exhibits or Schedules thereto, may be amended, supplemented or modified except by a written instrument making specific reference hereto or thereto signed by all the parties to such agreement. No consent from any Indemnified Party under Article 10 (other than the parties to this Agreement) shall be required in order to amend this Agreement.

### 11.10 Disclosure Schedules

Any disclosure with respect to a Section or Schedule of this Agreement, including any Section of the Disclosure Schedule, shall be deemed to be disclosed for other Sections and Schedules of this Agreement, including any Section of the Disclosure Schedule, to the extent that the relevance of such disclosure would be reasonably apparent to a reader of such disclosure. Matters reflected in any Section or Schedule of this Agreement, including any Section of the Disclosure Schedule, are not necessarily limited to matters required by this Agreement to be so reflected. Such additional matters are set forth for informational purposes and do not necessarily include other matters of a similar nature. No reference to or disclosure of any item or other matter in any Section or Schedule of this Agreement, including any Section of the Disclosure Schedule, shall be construed as an admission or indication that such item or other matter is material or that such item or other matter is required to be referred to or disclosed in this Agreement. From and after the date of this Agreement until the Closing Date, TR shall have the right, but not the obligation, to update and amend the Disclosure Schedule. Any such update or amendment shall be deemed to have amended the Disclosure Schedule, to have qualified the relevant Section of this Agreement and to have cured any misrepresentation or breach of warranty that might have otherwise existed hereunder; provided, however, that any such update or amendment shall be disregarded for purposes of Section 8.2(a)(i) and Section 10.1(a)(i). All references herein to particular Sections of the Disclosure Schedule, or to the Disclosure Schedule generally, shall after any such amendment or supplement include the Disclosure Schedule as amended or supplemented.

### 11.11 Dispute Resolution

- (a) Except as set forth in Sections 2.9, 2.10, 2.12, 7.2, 7.5 and 10.3(b) and except for any request for equitable relief (including interim relief) by a party on or prior to the Closing Date, any dispute, controversy or claim arising out of or relating to the transactions contemplated by the Transaction Agreements, or the validity, interpretation, breach or termination of any such agreement, including claims seeking redress or asserting rights under any Law (a **Dispute**), shall be resolved in accordance with the procedures set forth in this Section 11.11 and Sections 11.12 and 11.13. Until completion of such procedures, no party may take any action to force a resolution of a Dispute by any judicial or similar process, except to the limited extent necessary to (i) avoid expiration of a claim that might eventually be permitted by this Agreement or (ii) obtain interim relief, including injunctive relief, to preserve the status quo or prevent irreparable harm.
- (b) Any party seeking resolution of a Dispute shall first submit the Dispute for resolution by mediation pursuant to the International Institute for Conflict Prevention & Resolution Mediation Procedure (for Business Disputes) as then in effect. Mediation will continue for at least 60 days unless the mediator chooses to withdraw sooner.
- (c) All offers of compromise or settlement among the parties or their Representatives in connection with the attempted resolution of any Dispute shall be deemed to have been delivered in furtherance of a Dispute settlement and shall be exempt from discovery and production and shall not be admissible in evidence (whether as an admission or otherwise) in any proceeding for the resolution of the Dispute.

- (d) Notwithstanding the foregoing, the parties agree that either of them may seek interim measures including injunctive relief in relation to the provisions of this Agreement or any Transaction Agreement or the parties' performance of it from any New York Court (as defined below).

#### **11.12 Governing Law; Submission to Jurisdiction**

- (a) This Agreement and each other Transaction Agreement (and any claims or disputes arising out of or related hereto or thereto or to the transactions contemplated hereby and thereby or to the inducement of any party to enter herein and therein, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall in all respects be governed by, and construed in accordance with, the Laws of the State of New York, including all matters of construction, validity and performance, in each case without reference to any conflict of Law rules that might lead to the application of the Laws of any other jurisdiction.
- (b) Each of TR and the Acquiror agrees that if any Dispute is not resolved by mediation undertaken pursuant to Section 11.11(b), such Dispute shall be resolved only in the Courts of the State of New York sitting in the Borough of Manhattan of The City of New York or the United States District Court sitting in the Borough of Manhattan of The City of New York and the appellate courts having jurisdiction of appeals in such courts (the **New York Courts**). In that context, and without limiting the generality of the foregoing, each of TR and the Acquiror by this Agreement irrevocably and unconditionally:
- (i) submits for itself and its property in any Action relating to the Transaction Agreements, or for recognition and enforcement of any judgment in respect thereof, to the exclusive jurisdiction of the New York Courts, and agrees that all claims in respect of any such Action shall be heard and determined in the New York Courts;
  - (ii) consents that any such Action may and shall be brought in the New York Courts and waives any objection that it may now or hereafter have to the venue or jurisdiction of any such Action in the New York Courts or that such Action was brought in an inconvenient court and agrees not to plead or claim the same;
  - (iii) agrees that service of process in any such Action may be effected by mailing a copy of such process by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such party at its address as provided in Section 11.3; and
  - (iv) agrees that nothing in the Transaction Agreements shall affect the right to effect service of process in any other manner permitted by the Laws of the State of New York.

#### **11.13 Specific Performance**

The parties hereby acknowledge and agree that the failure of any party to perform its agreements and covenants hereunder, including its failure to take all actions as are necessary on its part to consummate the transactions contemplated hereby, may cause irreparable injury to the other party, for which damages, even if available, may not be an adequate remedy. Accordingly, each party hereby consents to the issuance of temporary, preliminary and permanent injunctive relief by the New York Courts to compel performance of such party's obligations, or to prevent breaches or threatened breaches of this Agreement, and to the granting by the New York Courts of the remedy of specific performance of its obligations hereunder, without, in any such case, the requirement to post any bond or other undertaking, in addition to any other rights or remedies available hereunder or at law or in equity.

#### 11.14 Parent Guarantee

- (a) The Parent Guarantor hereby absolutely, unconditionally and irrevocably guarantees to the Acquiror the full, complete and timely performance, subject to the terms and conditions hereof, by TR (or another Affiliate of TR party thereto) (each, a **TR Party**) of each and every obligation of any TR Party under this Agreement and each Ancillary Agreement. If any default shall be made by a TR Party in the performance of any such obligations, then the Parent Guarantor shall perform or cause to be performed such obligations immediately upon written notice from the Acquiror specifying the default. Prior to proceeding against the Parent Guarantor hereunder, the Acquiror shall first demand performance from the TR Party in accordance with the applicable provisions of this Agreement or such Ancillary Agreement; provided, however, that the Acquiror shall not be required to initiate legal proceedings against the TR Party prior to proceeding against the Parent Guarantor or demand performance therefrom more than once. Subject to the terms and conditions hereof, the Parent Guarantor waives (i) any and all defenses specifically available to a guarantor (other than performance in full by the TR Party) and (ii) any notices, including any notice of any amendment of this Agreement or any Ancillary Agreement or waiver or other similar action granted pursuant to this Agreement or any Ancillary Agreement and any notice of acceptance. The guarantee set forth in this Section 11.14 shall be deemed a continuing guarantee and shall remain in full force and effect until the satisfaction in full of all obligations of the TR Parties under this Agreement and the Ancillary Agreements. The guarantee set forth in this Section 11.14 is a primary guarantee of performance and not just of collection.
- (b) The Parent Guarantor is duly incorporated and is valid and subsisting as a corporation under the Laws of the Province of Ontario, Canada. The Parent Guarantor has all requisite corporate power and authority and has taken all corporate action necessary to execute and deliver this Agreement and perform its obligations hereunder. This Agreement has been duly and validly executed and delivered by the Parent Guarantor and, assuming the due authorization, execution and delivery by each of the other parties hereto, this Section 11.14 and the provisions referenced in Section 11.14(d) constitute a valid and binding obligation of the Parent Guarantor, enforceable against it in accordance with its terms, subject, as to enforceability, to bankruptcy, insolvency, reorganization, moratorium and other Laws of general applicability relating to or affecting creditors' rights and to general equity principles. The Parent Guarantor owns, directly or indirectly, 100% of the equity interests in TR.
- (c) Except to the extent of the expiration of all statutes of limitations under applicable Law, no delay of the Acquiror in the exercise of, or failure to exercise, any rights under the guarantee set forth in this Section 11.14 shall operate as a waiver of such rights, a waiver of any other rights, or a release of the Parent Guarantor from any of its obligations hereunder. The Parent Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of, or other changes in the terms of the obligations subject to, the guarantee set forth in this Section 11.14 or any part thereof, in each case, to the extent Parent Guarantor has agreed to such change in writing in accordance with this Agreement.
- (d) The Parent Guarantor hereby agrees to be bound by Sections 11.3, 11.5, 11.7, 11.12, 11.13, 11.16, 11.17.

### **11.15 Bulk Sales Laws**

The Acquiror and TR each hereby waive compliance by the Sellers with the provisions of the “bulk sales,” “bulk transfer” or similar Laws of any state or any jurisdiction outside the United States.

### **11.16 Rules of Construction**

Interpretation of the Transaction Agreements shall be governed by the following rules of construction: (a) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (b) references to the terms Article, Section, paragraph, Exhibit and Schedule are references to the Articles, Sections, paragraphs, Exhibits and Schedules of or to this Agreement unless otherwise specified; (c) the terms “hereof,” “herein,” “hereby,” “hereto,” and derivative or similar words refer to this entire Agreement, including the Schedules and Exhibits hereto; (d) references to “\$” shall mean U.S. dollars; (e) the word “including” and words of similar import when used in the Transaction Agreements shall mean “including without limitation,” unless otherwise specified; (f) the word “or” shall not be exclusive; (g) references to “written” or “in writing” include in electronic form; (h) the headings contained in the Transaction Agreements are for reference purposes only and shall not affect in any way the meaning or interpretation of the Transaction Agreements; (i) TR and the Acquiror have each participated in the negotiation and drafting of the Transaction Agreements and if an ambiguity or question of interpretation should arise, the Transaction Agreements shall be construed as if drafted jointly by the parties thereto and no presumption or burden of proof shall arise favoring or burdening either party by virtue of the authorship of any of the provisions in any of the Transaction Agreements; (j) a reference to any Person includes such Person’s successors and permitted assigns; (k) any reference to “days” means calendar days unless Business Days are expressly specified; (l) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded, and if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day; and (m) an item arising with respect to a specific representation or warranty shall be deemed to be “reflected on” or “set forth in” a balance sheet or financial statements, if (i) there is a reserve, accrual or other similar item underlying a number on such balance sheet or financial statement that is related to the subject matter of such representation, (ii) such item is otherwise specifically set forth on the balance sheet or financial statement or (iii) such item is reflected on the balance sheet or financial statement and is specifically referred to in the notes thereto.

### **11.17 Counterparts**

Each of the Transaction Agreements may be executed in two or more counterparts, and by the different parties to each such agreement in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to any Transaction Agreement by facsimile, .pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of any such Agreement.

### **11.18 Waiver of Jury Trial**

EACH PARTY HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY OTHER TRANSACTION AGREEMENTS OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY. EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR

OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER TRANSACTION AGREEMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.18.

#### **11.19 Waiver**

Neither the failure nor any delay by any party in exercising any right under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, and no single or partial exercise of any such right will preclude any other or further exercise of such right or the exercise of any other right. To the maximum extent permitted by applicable Law: (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other parties; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement. The rights and remedies of the parties to this Agreement are cumulative and not alternative.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, TR and the Acquiror have caused this Agreement to be executed on the date first written above by their respective duly authorized officers.

THOMSON REUTERS (MARKETS) LLC

By: \_\_\_\_\_  
Name:  
Title:

THOMSON REUTERS GLOBAL RESOURCES

By: \_\_\_\_\_  
Name:  
Title:

[ACQUIROR]

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and agreed solely with respect to Section 11.14:

THOMSON REUTERS CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page to Asset Purchase Agreement]

## EXHIBIT 1

### DEFINITIONS

**Accounts Payable** shall have the meaning set forth in Section 2.11(c).

**Accrued Revenue** shall have the meaning set forth in the Transaction Accounting Principles.

**Acquiror** shall have the meaning set forth in the Preamble.

**Acquiror Bonus Plan** shall have the meaning set forth in Section 6.4(a).

**Acquiror Designees** shall have the meaning set forth in Section 11.7.

**Acquiror FSA** shall have the meaning set forth in Section 6.6.

**Acquiror Indemnified Parties** shall have the meaning set forth in Section 10.1(a).

**Acquiror's Banker** shall have the meaning set forth in Section 4.7.

**Acquiror Parent** shall have the meaning set forth in the Offer Letter.

**Action** means any claim, action, suit, arbitration, litigation, inquiry, investigation or proceeding by or before any Governmental Authority.

**Affiliate** means, with respect to any specified Person, any other Person that, at the time of determination, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such specified Person; provided, however, that for the purposes of this Agreement, the Sellers shall not be deemed Affiliates of the Acquiror.

**After-Tax Basis** means that, in determining the amount of the payment necessary to indemnify any party against, or reimburse any party for, Losses, the amount of such Losses shall be determined net of any Tax benefit actually used by the Indemnified Party in the taxable year that the Loss is sustained as the result of sustaining such Losses and the amount of such payment shall be increased (including through gross-up) to take into account any net Tax cost actually incurred by the recipient thereof in the taxable year of the receipt or accrual of the payment as a result of the receipt or accrual of the payment. In determining any Tax benefit or Tax cost, (i) the Indemnified Party shall be deemed to recognize all other items of income, gain, loss, deduction or credit, and shall take into account any available Tax attributes (e.g., net operating loss or credit carryforwards), before recognizing any item as a result of sustaining such Losses or the receipt or accrual of an indemnity payment, and (ii) the Indemnified Party shall be deemed to have actually used a Tax benefit or actually incurred a Tax cost to the extent that the amount of Taxes paid by such Indemnified Party is reduced below or increased above, as the case may be, the amount of Taxes that such Indemnified Party would be required to pay but for sustaining such Losses or the receipt or accrual of the indemnity payment, as the case may be.

**Agreement** means this Asset Purchase Agreement dated as of the date first set forth above between TR and the Acquiror, including the Disclosure Schedule and the Exhibits, and all amendments to such agreement made in accordance with the provisions hereof.

**Ancillary Agreements** means the Offer Letter, the Bill of Sale and Assignment and Assumption Agreement, the Foreign Implementing Agreements, the Patent License Agreement, the Content and Platform Services Agreement, the Transition Services Agreement, the Multimedia Solutions Distribution Rights Agreement, the Subleases, the Non-Competition and Non-Solicitation Agreement and the Intellectual Property Assignment Agreement.

**Antitrust Clearance** shall have the meaning set forth in [Section 5.5\(d\)](#).

**Assumed IP Licenses** shall have the meaning set forth in [Section 2.1\(a\)\(ii\)](#).

**Assumed Leased Real Property** shall have the meaning set forth in [Section 2.1\(a\)\(ix\)](#).

**Assumed Leases** shall have the meaning set forth in [Section 2.1\(a\)\(ix\)](#).

**Assumed Liabilities** shall have the meaning set forth in [Section 2.1\(c\)](#).

**Benefits Arrangements** means employee benefit plans, programs, arrangements and agreements (including any retirement benefit and post-retirement health benefit plans, programs, arrangements and agreements).

**Bill of Sale and Assignment and Assumption Agreement** means the Bill of Sale and Assignment and Assumption Agreement among the applicable Seller and the Acquiror or an Acquiror Designee substantially in the form attached hereto as [Exhibit 3](#).

**Business** shall have the meaning set forth in [Recital B](#).

**Business Day** means any day that is not a Saturday, a Sunday or other day on which commercial banks in the City of New York, New York are required or authorized by Law to be closed.

**Business Intellectual Property** shall have the meaning set forth in [Section 2.1\(a\)\(iii\)](#).

**Business IT Assets** shall have the meaning set forth in [Section 3.11\(e\)](#).

**Business Software** shall have the meaning set forth in [Section 2.1\(a\)\(iv\)](#).

**Closing** shall have the meaning set forth in [Section 2.3](#).

**Closing Date** shall have the meaning set forth in [Section 2.3](#).

**Closing Notice** shall have the meaning set forth in [Section 2.5\(a\)](#).

**Closing Payment** shall have the meaning set forth in [Section 2.5\(c\)](#).

**COBRA** means the Consolidated Omnibus Budget Reconciliation Act of 1986, as amended.

**Code** means the United States Internal Revenue Code of 1986, as amended.

**Confidentiality Agreement** shall have the meaning set forth in [Section 5.4](#).

**Consultation Period** shall have the meaning set forth in [Section 2.9\(b\)](#).

**Content and Platform Services Agreement** shall have the meaning set forth in [Section 5.8](#).

**Content Charges** shall have the meaning set forth in the Content and Platform Services Agreement.

**Contingent Worker** shall have the meaning set forth in [Section 3.15\(a\)](#).

**Contract** means any contract, subcontract, agreement, lease, license, commitment, sale and purchase order, or other instrument, arrangement or understanding of any kind to which a Seller is a party other than contracts, agreements or other arrangements or instruments of any kind relating to (a) Tax, (b) Benefits Arrangements, (c) Insurance Arrangements, and (d) licenses of Intellectual Property.

**Control** means, as to the relationship between two or more Persons, the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. The terms “Controlled by,” “under common Control with” and “Controlling” shall have correlative meanings.

**Current Assets** shall have the meaning set forth in the Transaction Accounting Principles.

**Current Liabilities** shall have the meaning set forth in the Transaction Accounting Principles.

**Customer Contract** means any Contract exclusively related to the Business that is entered into by and between (a) any Seller, on the one hand, and (b) a customer of the Business, on the other hand.

**Debt** means of any Person means, without duplication, (a) all outstanding indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (c) all unreimbursed amounts drawn under letters of credit or similar facilities issued for the account of such Person, (d) any capitalized lease obligations, and (e) any guaranty of any of the foregoing.

**Defending Party** shall have the meaning set forth in [Section 10.3\(b\)](#).

**Deferred Assets** shall have the meaning set forth in [Section 2.13\(a\)](#).

**Deferred Closing** shall have the meaning set forth in [Section 2.13\(b\)](#).

**Deferred Closing Countries** shall have the meaning set forth in [Section 2.13\(a\)](#).

**Deferred Closing Date** shall have the meaning set forth in [Section 2.13\(b\)](#).

**Deferred Liabilities** shall have the meaning set forth in [Section 2.13\(a\)](#).

**Deferred Revenue** shall have the meaning set forth in the Transaction Accounting Principles.

**Disclosure Schedule** means the schedule dated as of the date hereof delivered by TR to the Acquiror and that forms a part of this Agreement.

**Dispute** shall have the meaning set forth in [Section 11.11\(a\)](#).

**Employee** means each U.S. Employee or Non-U.S. Employee, as applicable.

**Employee Plans** shall have the meaning set forth in [Section 3.14\(a\)](#).

**Employment Regulations** shall have the meaning set forth in [Exhibit 11](#).

**Environmental Law** means any binding Law applicable to the Business principally governing worker health and safety, or the pollution or protection of the environment, as in effect on the Offer Letter Date.

**Environmental Permit** means any material Permit issued pursuant to any Environmental Law.

**ERISA** means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

**Estimated Closing Statement** shall have the meaning set forth in [Section 2.5\(a\)](#).

**Excluded Assets** shall have the meaning set forth in [Section 2.1\(b\)](#).

**Excluded Contracts** means all Contracts other than the Transferred Contracts, including all Mixed-Use Contracts that are not Extracted Contracts.

**Excluded Liabilities** shall have the meaning set forth in [Section 2.1\(d\)](#).

**Existing Financial Statements** shall have the meaning set forth in [Section 3.4\(a\)](#).

**Existing IT Reports** shall have the meaning set forth in [Schedule 5.16](#).

**Extracted Contracts** means, in the case of a Mixed-Use Contract, solely (a) the terms and conditions of such agreement that are Related to the Business; and (b) such other terms and conditions that are reasonably related to the terms and conditions in part (a) of this definition of “Extracted Contracts.”

**Final Adjustment** shall have the meaning set forth in [Section 2.10](#).

**Final Closing Statement** shall have the meaning set forth in [Section 2.9\(c\)](#).

**Financial Statements** shall have the meaning set forth in [Section 3.4\(a\)](#).

**Foreign Implementing Agreements** shall have the meaning set forth in [Section 5.14\(b\)](#).

**Fundamental Representations** shall have the meaning set forth in [Section 11.1](#).

**Furniture and Equipment** means all furniture, fixtures, furnishings, equipment, vehicles, leasehold improvements, and other tangible personal property owned by any of the Sellers that are Related to the Business, including desks, chairs, tables, tools, Hardware, copiers, telecopy machines and other telecommunication equipment, cell phones, cubicles and miscellaneous office furnishings and supplies, including those listed in [Section 1.1\(e\)](#) of the Disclosure Schedule, but excluding any such items that (a) are provided to the Business pursuant to a Mixed-Use Contract, (b) will be provided under any of the Ancillary Agreements (excluding the Subleases, but including any such items located in the office space that will be made available to the Acquiror for a transition period pursuant to the Transition Services Agreement), or (c) are set forth in [Section 1.1\(f\)](#) of the Disclosure Schedule.

**Governmental Authority** means any United States federal, state or local or any supra-national or non-U.S. government, political subdivision, governmental, regulatory or administrative authority, instrumentality, agency, body or commission, self-regulatory organization or any court, tribunal, or judicial or arbitral body.

**Governmental Order** means any order, writ, judgment, injunction or decree, issued by or with any Governmental Authority.

**Hardware** means any and all computer and computer-related hardware, including computers, file servers, facsimile servers, scanners, color printers, laser printers and networks.

**HSR Act** means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

**IFRS** means International Financial Reporting Standards as adopted by the International Accounting Standards Board.

**Indemnified Party** shall have the meaning set forth in [Section 10.3\(a\)](#).

**Indemnifying Party** shall have the meaning set forth in [Section 10.3\(a\)](#).

**Independent Firm** shall have the meaning set forth in [Section 2.9\(c\)](#).

**Information Security Procedures** means the procedures set forth in [Schedule 5.16](#).

**Initial Closing Statement** shall have the meaning set forth in [Section 2.8\(a\)](#).

**Insurance Arrangements** shall have the meaning set forth in [Section 2.1\(b\)\(iv\)](#).

**Intellectual Property** means all of the following whether arising under the Laws of the United States or of any other jurisdiction: (a) patents, patent applications (including patents issued thereon) and statutory invention registrations, including reissues, divisions, continuations, continuations in part, extensions and reexaminations thereof, all rights therein provided by international treaties or conventions, (b) trademarks, service marks, trade names, service names, trade dress, logos and other identifiers of same, domain names, including all goodwill associated therewith, and any and all common law rights, and registrations and applications for registration thereof, all rights therein provided by international treaties or conventions, and all reissues, extensions and renewals of any of the foregoing, (c) copyrightable works, copyrights, moral rights, mask work rights, database rights and design rights, in each case, other than Software, whether or not registered, and registrations and applications for registration thereof, and all rights therein provided by international treaties or conventions, (d) confidential and proprietary information, including trade secrets, processes and know-how and (e) intellectual property or other rights arising from or in respect of technology, designs, formulae, algorithms, procedures, methods, discoveries, processes, techniques, ideas, research and development, technical data, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice) apparatus, creations, improvements, works of authorship in any media, confidential, proprietary or non-public information, and other similar materials, and all records, graphs, drawings, reports, analyses and other writings, and other tangible embodiments of the foregoing in any form whether or not listed herein, and all related technology, other than Software.

**Intellectual Property Assignment Agreement** shall have the meaning set forth in [Section 5.13](#).

**Interest Rate** means an interest rate per annum equal to the average of the one month British Bankers Association LIBOR for U.S. dollars that appears on page 3750 (or a successor page) of the Dow Jones Telerate Screen as of 11:00 a.m. (London time) on each day during the period for which interest is to be paid.

**IRS** means the Internal Revenue Service.

**IT Reports** shall have the meaning set forth in [Schedule 5.16](#).

**Knowledge of TR** means the actual knowledge of Rob Coran, Michael Cotter, William Haney, Nancy Hannigan, Pamela Marroquin, Shaun McIver, Gaugarin Oliver and Michael Piispanen.

**Law** means any supranational, U.S. federal, state, local or non-U.S. statute, law, ordinance, regulation, rule, code, order or other requirement or rule of law.

**Leased Real Property** shall have the meaning set forth in [Section 3.10\(a\)](#).

**Leasehold Improvements** shall have the meaning set forth in [Section 3.10\(c\)](#).

**Liabilities** means debts, liabilities, expenses, commitments and obligations of every kind and description, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, including those arising under any Law, Action or Governmental Order and those arising under any Contract, commitment or undertaking.

**Lien** means any mortgage, pledge, charge, easement, right of first refusal, right of first offer, option, deed of trust, hypothecation, security interest, encumbrance or lien of any kind.

**Losses** means all losses, damages, costs, expenses, interests, awards, judgments, liabilities, Taxes, penalties, obligations and claims of any kind (including any Action brought by any Governmental Authority or Person) and including reasonable attorneys' fees and expenses.

**Material Adverse Effect** means any change, effect, event, or occurrence that has had, or is reasonably expected to have, a material adverse effect on the business, condition (financial or otherwise), assets or results of operations of the Business, taken as a whole; but excluding (a) general political or economic conditions, general financial and capital market conditions (including interest rates) or general conditions in any of the industries in which the Business is engaged, or, in each case, any changes therein (including as a result of an outbreak or escalation of hostilities involving the United States or any other country or the declaration by the United States or any other country of a national emergency or war, including any act of terrorism, (b) any effect resulting from or relating to any changes in Law, IFRS or any authoritative interpretations thereof, (c) the entering into of, or the consummation of the transactions contemplated by, or the performance of obligations under, or any effect directly arising out of or attributable to the public announcement or the becoming public of the transactions contemplated by, this Agreement (including the threatened or actual impact on relationships of the Business with customers, vendors or employees, including termination, suspension, modification or reduction of such relationships), (d) any effect arising out of or attributable to any action taken or failed to be taken by TR or any of its Affiliates at the written request of the Acquiror or that is expressly required by this Agreement, (e) any effect arising out of or attributable to a failure to meet TR's internal forecasts for the Business (provided, that this clause (e) shall not be construed as providing that the circumstances or events giving rise to such failure do not constitute or contribute to a Material Adverse Effect and provided, further that this clause (e) shall not be construed as implying that TR is making any representation or warranty hereunder with regard to any internal forecasts for the Business) or (f) any effect arising out of or attributable to any action taken by the Acquiror or any of its Affiliates, except in the cases of (a) and (b) to the extent such change, effect, event or occurrence has a materially disproportionate effect on the Business, taken as a whole, compared with other Persons operating in the industries in which the Business is engaged.

**Material Contract** shall have the meaning set forth in [Section 3.13\(a\)](#).

**Mixed-Use Contracts** means any Contract that includes both terms and conditions that are Related to the Business and terms and conditions that relate to other businesses of the Sellers, between (a) a Seller, on the one hand, and (b) a supplier, vendor or customer of the Sellers, on the other hand.

**Multimedia Solutions Distribution Rights Agreement** shall have the meaning set forth in Section 5.10.

**New Software** shall have the meaning set forth in Section 5.17.

**New York Courts** shall have the meaning set forth in Section 11.12(b).

**Non-Competition and Non-Solicitation Agreement** shall have the meaning set forth in Section 5.12.

**Non-U.S. Employee** means each employee of the Business whose principal place of employment is located outside the United States, including employees working in the United States on a non-permanent basis pursuant to a secondment agreement, but excluding any Non-U.S. Excluded Employee.

**Non-U.S. Employee Plans** mean, in each case with respect to employees of the Business located other than in the United States, all (i) material employee benefit plans and retirement, welfare benefit, bonus, stock option, stock purchase, restricted stock, incentive, supplemental retirement, deferred compensation, pension, profit sharing, retiree health, medical or life insurance, severance, retention, or vacation plans, programs or agreements, in each case (A) to which any of the Sellers or their respective Affiliates is a party, (B) that are maintained by, contributed to or sponsored by any of the Sellers or any of their respective Affiliates for the benefit of any employee of the Business located other than in the United States, or (C) in connection with which the Acquiror could reasonably be expected to incur any Liability with respect to any employee of the Business located other than in the United States, (ii) individual employment, retention, termination, severance or other similar contracts (except for the Retention Agreements), pursuant to which any of the Sellers or their respective Affiliates currently has any obligation with respect to any employee of the Business located other than in the United States, and (iii) contracts, arrangements, agreements or understandings between any of the Sellers or their respective Affiliates and any current employee of the Business located other than in the United States that provide for compensation or benefits, or the acceleration of the vesting or payment of compensation or benefits, to any employee of the Business located other than in the United States arising from or related to, in whole or in part, the transactions contemplated by this Agreement and not otherwise described hereinabove. For the avoidance of doubt, Non-U.S. Employee Plans also include any plan, arrangement or agreement maintained, sponsored, contributed to, or entered into by a predecessor of any of the Sellers or their Affiliates with or for the benefit of any employee of the Business located other than in the United States to the extent that the Sellers or their Affiliates have any liability with respect thereto.

**Non-U.S. Excluded Employee** means each employee of the Business whose principal place of employment is located in a city as set forth in Schedule 6.1(f) to this Agreement.

**Non-U.S. Transferred Employee** shall have the meaning set forth in Exhibit 11.

**Notice of Disagreement** shall have the meaning set forth in Section 2.9(a).

**Offer Letter** shall have the meaning set forth in Recital C.

**Offer Letter Date** shall have the meaning set forth in Recital C.

**Open Source Software** means all software that is distributed as “open source software” or under a similar licensing or distribution model (including but not limited to the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL) the Sun Industry Standards License (SISL) and the Apache License.

**Other Contracts** shall mean the Contracts set forth in Section 1.1(b) of the Disclosure Schedule.

**Outside Date** shall have the meaning set forth in Section 9.1(b).

**Owned Real Property** shall have the meaning set forth in Section 2.1(b)(xi).

**Parent Guarantor** shall have the meaning set forth in the Preamble.

**Patent License Agreement** shall have the meaning set forth in Section 5.7.

**Permits** shall have the meaning set forth in Section 3.8(a).

**Permitted Liens** means the following Liens: (a) Liens for Taxes, assessments or other governmental charges or levies that are not yet due or payable or that are being contested in good faith by appropriate proceedings or that may thereafter be paid without interest, penalty or similar charges; (b) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, materialmen, workmen, repairmen and other similar Liens imposed by Law and incurred in the ordinary course of business on a basis consistent with past practice; (c) Liens incurred or deposits made in the ordinary course of business and on a basis consistent with past practice in connection with workers’ compensation, unemployment insurance or other types of social security legislation; (d) defects or imperfections of title, easements, covenants, rights of way, restrictions and other similar charges or encumbrances not materially interfering with the ordinary conduct of the Business; (e) Liens incurred in the ordinary course of business and on a basis consistent with past practice securing obligations or liabilities that are not material to the Transferred Assets, respectively; (f) any set of facts an accurate up-to-date survey of the Leased Real Property and which do not, individually or in the aggregate, materially impair the occupancy or current use of such Leased Real Property or materially reduce the value of any of the Transferred Assets would show; provided, that such facts do not materially interfere with the ordinary conduct of the Business; and (g) non-exclusive licenses granted under Intellectual Property to customers or resellers in the ordinary course of business.

**Person** means any natural person, general or limited partnership, corporation, limited liability company, limited liability partnership, firm, association or organization or other legal entity.

**Post-Closing Adjustment** shall have the meaning set forth in Section 2.10.

**Post-Closing Termination Liability** means all Liabilities incurred by any Seller or any of its Affiliates or the Acquiror or any of its Affiliates either after the Closing Date with respect to any individual employed with the Business immediately prior to the Closing Date including severance, outplacement, vacation pay, salary, commissions and benefits for periods after the Closing Date, claims of wrongful termination, age, race or sex discrimination or the like, WARN Act Liabilities or any liability under applicable Law including COBRA and State benefits continuation laws, and any taxes or penalties payable with respect to any of the foregoing payments or liabilities.

**Pre-Closing Accounts Receivable** shall have the meaning set forth in Section 2.11(a).

**Prepaid Expenses** shall have the meaning set forth in the Transaction Accounting Principles; provided, that Prepaid Expenses shall not include any prepaid Taxes with respect to the Transferred Assets or the Business that relate to a taxable period (or portion thereof) that ends on or before the Closing Date.

**Purchase Price** shall have the meaning set forth in Section 2.4.

**Reference Statement of Net Assets** shall have the meaning set forth in Section 3.4(a).

**Reference Statement of Transferred Assets** shall have the meaning set forth in Section 3.4(a).

**Related to the Business** means used or held for use primarily in, or arising, directly or indirectly, primarily out of the operation or conduct of, the Business as conducted by the Sellers.

**Reports** shall have the meaning set forth in Schedule 5.16.

**Representative** of a Person means the directors, officers, employees, advisors, agents, consultants, attorneys, accountants, investment bankers or other representatives of such Person.

**Retention Agreement** shall have the meaning set forth in Section 6.4(b).

**Retention Bonus Delivery Date** shall have the meaning set forth in Section 6.4(b).

**Review Period** shall have the meaning set forth in Section 2.8(b).

**Second Request** shall have the meaning set forth in Section 5.5(b).

**Security Analyst** shall have the meaning set forth in Schedule 5.16.

**Security Stack** shall have the meaning set forth in Schedule 5.16.

**Selected Vulnerability** shall have the meaning set forth in Schedule 5.16.

**Sellers** shall have the meaning set forth in Recital A.

**Service Charges** shall have the meaning set forth in the Content and Platform Services Agreement.

**Severance Payments** shall have the meaning set forth in Section 6.1(f).

**Software** shall mean any and all (a) computer programs, including any and all software implementation of algorithms, models and methodologies, whether in source code, object code, human readable form or other form, (b) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (c) descriptions, flow charts and other work products used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons and (d) all documentation including user manuals and other training documentation relating to any of the foregoing.

**Specified Current Liabilities** means Deferred Revenue plus all Current Liabilities reflected in the Final Closing Statement expressly assumed by the Acquiror as set forth in Article 6 or Exhibit 11.

**Subleased Leases** shall have the meaning set forth in Section 3.10(a).

**Subleased Real Property** shall have the meaning set forth in [Section 3.10\(a\)](#).

**Subleases** shall have the meaning set forth in [Section 5.11](#).

**Subsidiary** of any Person means any corporation, general or limited partnership, joint venture, limited liability company, limited liability partnership or other Person that is a legal entity, trust or estate of which (or in which) (a) the issued and outstanding capital stock having ordinary voting power to elect a majority of the board of directors (or a majority of another body performing similar functions) of such corporation or other Person (irrespective of whether at the time capital stock of any other class or classes of such corporation or other Person shall or might have voting power upon the occurrence of any contingency), (b) more than 50% of the interest in the capital or profits of such partnership, joint venture or limited liability company or (c) more than 50% of the beneficial interest in such trust or estate, is at the time of determination directly or indirectly owned or Controlled by such Person.

**Tax** or **Taxes** means any and all taxes, including income, excise, gross receipts, ad valorem, value-added, sales, use, employment, social security, franchise, profits, gains, property, transfer, use, payroll, intangibles or other taxes, and any and all fees, stamp taxes, duties, charges, levies or assessments of any kind whatsoever (whether payable directly or by withholding), together with any interest and any penalties, additions to tax or additional amounts imposed by any Governmental Authority with respect thereto.

**Tax Contest** shall have the meaning set forth in [Section 10.3\(b\)](#).

**Tax Returns** means all returns and reports (including elections, declarations, disclosures, schedules, estimates and information returns) supplied or required to be supplied to a Governmental Authority relating to Taxes.

**Temporary Worker** shall have the meaning set forth in [Section 3.15\(c\)](#).

**Termination Fee** shall have the meaning set forth in [Section 9.4](#).

**Third Party Claim** shall have the meaning set forth in [Section 10.3\(a\)](#).

**Third Party Rights** shall have the meaning set forth in [Section 2.2](#).

**TR** shall have the meaning set forth in the [Preamble](#).

**TR Banker** shall have the meaning set forth in [Section 3.18](#).

**TR FSA** shall have the meaning set forth in [Section 6.6](#).

**TR Indemnified Parties** shall have the meaning set forth in [Section 10.2](#).

**TR Name and TR Marks** means the names or marks of TR or any of its Affiliates (other than the names and marks set forth on [Schedule 2.1\(a\)\(iii\)](#) of the Disclosure Schedule), either alone or in combination with other words, including the names, marks and other indicia of “Thomson Reuters,” names containing the word “Thomson” or “Reuters,” the characteristic and stylized font type, and any Intellectual Property related to, incorporating or utilizing such names and indicia, all marks, trade dress, logos, monograms, domain names and other source identifiers confusingly similar to or embodying any of the foregoing either alone or in combination with other words, together with all of the goodwill represented thereby or pertaining thereto.

**TR Party** shall have the meaning set forth in [Section 11.14\(a\)](#).

**TR Savings Plan** shall have the meaning set forth in Section 6.9.

**TRGR** shall have the meaning set forth in the Preamble.

**TRM** shall have the meaning set forth in the Preamble.

**Transaction Accounting Principles** means the accounting principles, policies, practices and methodologies as consistently applied by the Sellers in preparation of the Financial Statements, a description of which is set forth in Exhibit 4.

**Transaction Agreements** means this Agreement and each of the Ancillary Agreements.

**Transfer Taxes** means all sales (excluding bulk sales), use, goods and services, transfer, recording, ad valorem, privilege, documentary, registration, conveyance, excise, license, stamp or similar Taxes and fees arising out of, in connection with or attributable to the transactions effectuated pursuant to this Agreement, other than any VAT.

**Transferred Assets** shall have the meaning set forth in Section 2.1(a).

**Transferred Contracts** means (a) all Customer Contracts in effect as of the Closing, (b) all supplier or vendor Contracts Related to the Business and in effect as of the Closing, as set forth in Section 1.1(c) of the Disclosure Schedule, (c) the Extracted Contracts listed in Section 1.1(d) of the Disclosure Schedule, (d) the Other Contracts, (e) the Extracted Contracts that are customer Contracts and (f) any other Extracted Contracts entered into between the Offer Letter Date and the Closing Date by any Seller, but only to the extent such Extracted Contracts are specifically designated as “Transferred Contracts” by TR in writing, and with the Acquiror’s prior consent, after the Offer Letter Date.

**Transferred Employees** means U.S. Transferred Employees and Non-U.S. Transferred Employees, each as the case may be.

**Transferred Employee Records** mean physical or electronic copies of all personnel records (including those as required by applicable Law and those pertaining to performance, training history, job experience and history, and for the three year period immediately preceding the Closing, compensation history) for current and former employees of the Business, except where (a) the transfer or disclosure of such records is prohibited by applicable Law or would include medical records, or (b) consent of the relevant employee is required by applicable Law but not given.

**Transition Services Agreement** shall have the meaning set forth in Section 5.9.

**Unbilled Revenue** means the unbilled amounts with respect to products provided and services performed by the Business prior to the Closing, including Accrued Revenue.

**U.S. Employee** means each employee of the Business whose principal place of employment is located in the United States, other than any employee of the Business who is working in the United States pursuant to a secondment agreement.

**U.S. Employee Plans** mean, in each case with respect to employees of the Business located in the United States, all (i) material employee benefit plans (within the meaning of Section 3(3) of ERISA) and all material retirement, welfare benefit, bonus, stock option, stock purchase, restricted stock, incentive, supplemental retirement, deferred compensation, pension, profit sharing, retiree health, medical or life insurance, severance, retention, Code Section 125 flexible benefit, or vacation plans, programs or agreements, in each case (A) to which any of the Sellers or their respective Affiliates is a party, (B) that are maintained by, contributed to or

sponsored by any of the Sellers or any of their respective Affiliates for the benefit of any employee of the Business located in the United States, or (C) in connection with which the Acquiror could reasonably be expected to incur any Liability with respect to any employee of the Business located in the United States, (ii) individual employment, retention, termination, severance or other similar contracts (except for the Retention Agreements), pursuant to which any of the Sellers or their respective Affiliates currently has any obligation with respect to any employee of the Business located in the United States, and (iii) contracts, arrangements, agreements or understandings between any of the Sellers or their respective Affiliates and any current employee of the Business located in the United States that provide for compensation or benefits, or the acceleration of the vesting or payment of compensation or benefits, to any employee of the Business located in the United States arising from or related to, in whole or in part, the transactions contemplated by this Agreement and not otherwise described hereinabove. For the avoidance of doubt, U.S. Employee Plans also include any plan, arrangement or agreement maintained, sponsored, contributed to, or entered into by a predecessor of any of the Sellers or their Affiliates with or for the benefit of any employee of the Business located in the United States to the extent that the Sellers or their Affiliates have any liability with respect thereto.

**U.S. Transferred Employee** shall have the meaning set forth in Section 6.1(b).

**VAT** means, within the European Union, such Tax as may be levied in accordance with (but subject to derogations from) the Directive 2006/112/EC, and outside the European Union, any similar Tax levied by reference to turnover, added value, goods and services, sales or consumption .

**WARN Act** means the Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar U.S. state or local statute.

**WARN Act Liabilities** shall have the meaning set forth in Section 6.7.

## EXHIBIT 11

### NON-U.S. EMPLOYEES

1. In this Exhibit:

**Beneficiary** means, in relation to an indemnity, the person receiving the benefit of the indemnity;

**claim** includes a claim by any person (including a trade union and any governmental, statutory or local authority or body);

**Collective Agreements** means the collective agreements disclosed in the data room made available to the Acquiror prior to the Offer Letter Date;

**Corresponding Provisions** means, in relation to a Non-U.S. Employee, provisions that are overall no less favorable to the Non-U.S. Employee than his or her terms and conditions of employment immediately before Closing (other than defined benefit retirement plan benefits and equity compensation arrangements, which will not be required to be replicated in form in each jurisdiction so long as the economically equivalent value of the defined benefit retirement plan benefits and equity compensation arrangements are otherwise provided to such Non-U.S. Employees in another form intended to comply with applicable Law) and a provision that his or her period of continuous employment with a Seller will be treated as continuous employment with the Acquiror (or, if applicable, its Affiliate) for the purposes of all employee rights and benefit arrangements, but in all cases, subject to the applicable provisions in Exhibit 12;

**Covenantor** means, in relation to an indemnity, the person undertaking to indemnify the Beneficiary;

**Employment Regulations** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 or, in relation to any undertaking situated in any member state of the European Economic Area other than the United Kingdom, such law as corresponds to those Regulations implementing European Council Directive 2001/23/EEC; and

**liability** and **liabilities** includes any award, compensation, damages, fine, loss, order, penalty or payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by any enforcement, regulatory or supervisory body and of implementing any requirements that may arise from any such investigation); legal costs and expenses being assessed on an indemnity basis.

Any reference to an **occupational pension scheme** does not affect any obligation of any party under this Exhibit 11.

2. TR and the Acquiror acknowledge and agree that under the Employment Regulations the contracts of employment between the Sellers and the Non-U.S. Employees (except those of them to whom the Employment Regulations do not apply) and (to the extent provided for by applicable Law) the Collective Agreements shall have effect after Closing as if originally made between the Acquiror (or, if applicable, its Affiliate) and those Non-U.S. Employees or between the Acquiror (or, if applicable, its Affiliate) and the other parties to the Collective Agreements (as the case may be).

3. If any contract of employment of a Non-U.S. Employee does not have effect as if originally made between that Non-U.S. Employee and the Acquiror (or, if applicable, its Affiliate) or is alleged not to have that effect, because the Employment Regulations do not apply in the jurisdiction in which such Non-U.S. Employee works or otherwise, the Acquiror (or, if applicable, its Affiliate) shall, within 14 days of a request by TR, or of its own volition, offer to employ that Non-U.S. Employee under a new contract that includes Corresponding Provisions to take effect on the Closing Date, and such offer will be conditional upon Closing taking place and subject to such terms and conditions as set forth in Schedule 6.1(b). On that offer being made, or at any time after the expiry of 14 days if the offer is not made as requested or if, having been made, it is not accepted by the Non-U.S. Employee within 15 days of the date of the offer, TR shall, or shall cause the Sellers to, commence steps to terminate the Non-U.S. Employee's employment (whether voluntarily or involuntarily) with effect from Closing, or as soon as possible thereafter, or at TR's option may seek to find alternate employment for such Non-U.S. Employee with TR or its Affiliates. The Acquiror shall (or, if applicable, shall cause its Affiliate to) carry out all actions necessary under applicable law to effect the transfer of employment to it of each such Non-U.S. Employee who has accepted that offer. The parties will keep one another informed of all offers and acceptances referred to above. Each Non-U.S. Employee who (i) continues in employment automatically by operation of Law under this Exhibit 11 but excluding those individuals who withhold consent or object to the transfer under applicable Law and thus refuse to become an employee of the Acquiror or its Affiliates or (ii) accepts an offer of employment from the Acquiror or one of its Affiliates under this Exhibit 11, and commences such employment as of the Closing Date shall be referred to as a **Non-U.S. Transferred Employee**.
4. TR and the Acquiror agree that neither the Acquiror nor any of its Affiliates shall be required to offer employment to or continue to employ, as the case may be, any Non-U.S. Excluded Employee.
5. TR shall, or shall cause the Sellers to, discharge all of their obligations in respect of the Non-U.S. Employees up to Closing and the Non-U.S. Excluded Employees.
6. The Acquiror shall (or, if applicable, shall cause its Affiliates to) from Closing perform and discharge all of the obligations of the employer in relation to the Non-U.S. Transferred Employees including compensation for dismissal (including compensation in lieu of notice), overtime pay, end of service gratuity, repatriation expenses, bonus or incentive payments, holiday pay (including pay for unused leave) and any other remuneration or liability payable after Closing (including applicable social security contributions payable after Closing in connection with such payable remuneration).
7. Subject to Section 6.1(f) and Article 10 of the Agreement to which this Exhibit 11 forms a part, the Acquiror shall indemnify the Sellers against any liability arising from the Acquiror's (or, if applicable, its Affiliate's) failure to perform or discharge any obligation referred to in paragraphs 3 or 6 and against any liability relating to a Non-U.S. Employee that arises out of or in connection with:
  - (a) a change after Closing to any term of employment or working condition (including any term or condition relating to an occupational pension scheme) or any proposal to make such a change including any proposal communicated directly or indirectly to a Non-U.S. Transferred Employee, Non-U.S. Transferred Employees' representatives or a trade union by the Acquiror, its Affiliate or the Sellers, consistent with information received from the Acquiror or its Affiliate regarding such a proposal;

- (b) the termination of employment of a Non-U.S. Transferred Employee for any reason by the Acquiror or its Affiliates or any other event, matter or circumstance relating to the Non-U.S. Transferred Employees occurring after Closing;
- (c) a complaint of failure to comply with Regulation 13 of the Employment Regulations (or equivalent), or in respect of an award of compensation under Regulation 15 of the Employment Regulations (or equivalent), but solely to the extent that the Liability arises from the Acquiror's or (if applicable) its Affiliate's failure to comply with Regulation 13(4) of the Employment Regulations (or equivalent); and
- (d) a complaint of failure to comply with Regulation 11 of the Employment Regulations (or equivalent) or in respect of an award of compensation under Regulation 12 of the Employment Regulations (or equivalent).

For the avoidance of doubt, this paragraph 7 shall not apply to the extent that it relates to any Non-U.S. Excluded Employee.

- 8. Subject to the requirements of applicable Law, prior to or at the Closing, TR and the Acquiror shall jointly issue to each Non-U.S. Employee or the appropriate representatives of the Non-U.S. Employees (as defined in the Employment Regulations) a notice setting out information about the transfer or proposed transfer of their employment, such notice to be agreed between the parties on a jurisdiction-by-jurisdiction basis.
- 9. If the Beneficiary becomes aware of any matter that might give rise to a claim for an indemnity from the Covenantor, the following provisions shall apply:
  - (a) the Beneficiary shall immediately give written notice to the Covenantor of the matter in respect of which the indemnity is being claimed (stating in reasonable detail the nature of the matter and, so far as practicable, the amount claimed) and shall consult with the Covenantor with respect to the matter. If the matter has become the subject of any proceedings the Beneficiary shall give the notice within sufficient time to enable the Covenantor time to contest the proceedings before any first instance judgment in respect of such proceedings is given;
  - (b) the Beneficiary shall:
    - (i) take such action, institute such proceedings and give such information and assistance as the Covenantor or its insurers may reasonably request to dispute, resist, defend, compromise, remedy, mitigate or appeal the matter or enforce against any person (other than the Covenantor) the rights of the Beneficiary or its insurers in relation to the matter,
    - (ii) in connection with any proceedings related to the matter (other than against the Covenantor), use professional advisers nominated by the Covenantor or its insurers and, if the Covenantor or its insurers so requests, allow the Covenantor or its insurers the exclusive conduct of the proceedings in each case on the basis that the Covenantor shall fully indemnify the Beneficiary for all costs incurred as a result of any request or nomination by the Covenantor or its insurers, and
    - (iii) not admit liability in respect of or settle the matter without the prior written consent of the Covenantor, such consent not to be unreasonably withheld or delayed; and

- (c) if the Covenantor has conduct of any litigation and negotiations in connection with a claim, the Covenantor shall promptly take all proper action to deal with the claim so as not, by any act or omission in connection with the claim, to cause the Beneficiary to be in breach of its obligations to its current or past employees or to cause the Beneficiary's business interests to be materially prejudiced.

**EXHIBIT 12**

**NON-U.S. PENSIONS**

1. In respect of any money purchase arrangement, the Acquiror shall (or, if applicable, shall cause its Affiliates to) offer with effect from Closing to each Non-U.S. Transferred Employee contributions at no lesser rate than are currently provided by the Sellers taking account of the required amounts of the Non-U.S. Transferred Employee's contributions.
2. In respect of any other pension or life assurance arrangement to which paragraph 1 above does not apply, the Acquiror shall (or, if applicable, shall cause its Affiliates to) offer with effect from Closing to each Non-U.S. Transferred Employee retirement and death benefits that are overall no less favorable than the retirement and death benefits that were provided immediately before Closing and taking account of the required amounts of the Non-U.S. Transferred Employee's contributions.
3. For the avoidance of doubt, the Acquiror shall not be required to offer defined benefit retirement plan benefits or equity compensation benefits to the Non-U.S. Transferred Employees unless otherwise required to comply with applicable Law.
4. For the avoidance of doubt, paragraphs 1 and 2 above are in addition to, and not a derogation from, the Acquiror's requirement to comply with applicable Law.

## LIST OF CONSULTATION REQUIREMENTS FOR EACH JURISDICTION COVERED BY THIS LETTER

**1. Automatic Transfer Countries****Austria**

The works council of TR Austria G.m.b.H must be informed and, if reasonably determined necessary by TR, consulted in accordance with Austrian law and company practice about the contemplated sale of the Business.

The information/consultation procedure will be considered as completed once any issues raised by the works council have been discussed and the requirements of applicable law complied with, and this is confirmed to the Acquiror.

**Belgium**

The works committee of TR (Markets) SA (Belgium) must be informed and, if reasonably determined necessary by TR, consulted in accordance with Belgian law and company practice about the contemplated sale of the Business.

The information/consultation procedure will be considered as completed once any issues raised by the works committee have been discussed and the requirements of applicable law complied with, and this is confirmed to the Acquiror.

**Finland**

The employees of TR Finland Hel Markets must be informed and, if reasonably determined necessary by TR, consulted in accordance with Finnish law and company practice about the contemplated sale of the Business.

The information and consultation procedure will be considered as completed once any issues raised by the employee representatives have been discussed and the requirements of applicable law complied with, and this is confirmed to the Acquiror.

**France**

The works councils of Thomson Reuters France SAS must be informed and consulted in accordance with French law and company practice about the contemplated sale of the Business. The consultation process shall be completed upon the delivery by the works council of its opinion in respect of the sale of the Business. If the works council fails to provide an opinion after Thomson Reuters France SAS considers that the works council has been appropriately informed and consulted in accordance with French legal requirements and past practice, then the consultation process shall be deemed to be completed upon such date as Thomson Reuters France SAS determines that no further action in this respect is required.

The minutes of the meeting of the works councils mentioning their opinion shall be provided to the Acquiror.

## **Germany**

The employees, the works council and the economic committee of TR (Markets) Deutschland must be informed in accordance with German law and company practice about the contemplated sale of the business. This information procedure will be considered as completed once the requirements of applicable law have been complied with and this is confirmed to the Acquiror.

To the extent a split of a business (*Betriebsspaltung*) or any other form of a change of business (*Betriebsänderung*) is necessary prior to the contemplated sale of the Business in Germany, a reconciliation of interest (*Interessenausgleich*) and, if required by applicable law and if reasonably determined necessary by TR (Markets) Deutschland, a social plan (*Sozialplan*) will be negotiated with the competent works council prior to closing.

## **Italy**

The Employee Representative (RSU) and the Trade Unions covering TR (Markets) Italia S.p.A (CGIL – Confederazione Generale Italiana del Lavoro; CISL – Confederazione Italiana Sindacati dei Lavoratori; and UIL – Unione Italiana del Lavoro) must be informed in accordance with Italian law and company practice about the contemplated sale of the Business no later than 25 days before delivery of the Offer Acceptance Notice. If a meeting is requested by the trade union, the information and consultation process will be considered as complete 10 days after the first meeting, whether or not agreement is reached.

## **Netherlands**

The works council of TR (M) Netherlands BV must be informed and consulted in accordance with Dutch law and company practice about the contemplated sale of the Business.

The information/consultation procedures will be considered as completed as soon as the works council gives positive advice without any suggestions or conditions relating to the (terms of the) contemplated sale of the Dutch Business, i.e. advice supporting the intended decision in relation to which the advice of the works council is requested.

## **Norway**

Employee representatives of TR Markets (Norges) AS must be informed and, if reasonably determined necessary by TR, consulted in accordance with Norwegian law and company practice about the contemplated sale of the Business.

The information and consultation procedure will be considered as completed once any issues raised by the employee representatives have been discussed and the requirements of applicable law complied with, and this is confirmed to the Acquiror.

## **Spain**

Employee representatives of TR Markets Espana SL must be informed and, if reasonably determined necessary by TR, consulted in accordance with Spanish law and company practice about the contemplated sale of the Business.

The information and consultation procedure will be considered as completed once agreement has been reached with employee representatives or following TR giving employee representatives 30 days' notice of its decision where no agreement has been reached and, in either case, this is confirmed to the Acquiror.

## **Sweden**

The employees of TR (Markets) Sverige AB must be informed of the contemplated sale of the Business and of their right to refuse to transfer no later than 14 days before delivery of the Offer Acceptance Notice.

The information procedure will be considered as completed once information has been provided to the employees and the requirements of applicable law complied with, and this is confirmed to the Acquiror.

## **Switzerland**

In the absence of employee representatives, individual employees of TR(M) S SA (Main Dist) and TR(M) S SA (Trading) must be informed and, if reasonably determined necessary by TR, consulted in accordance with Swiss law and company practice about the contemplated sale of the Business.

The information and consultation procedure will be considered as completed once any issues raised by employees have been discussed and resolved in accordance with the requirements of applicable law, and this is confirmed to the Acquiror.

## **UK**

The relevant trade union representatives of Reuters Limited UK must be informed and, if reasonably determined necessary by TR, consulted in accordance with English law and company practice about the contemplated sale of the Business.

In relation to those employees not covered by the trade union bargaining unit, employee representatives elected for the purpose must be informed and, if reasonably determined necessary by TR, consulted in accordance with English law and company practice about the contemplated sale of the Business.

In both cases, the information and consultation procedure will be considered as completed once any issues raised by employees have been discussed and the requirements of applicable law complied with, and this is confirmed to the Acquiror.

## **2. Consent Countries**

**Australia, Canada, China, Hong Kong, India, Japan, Philippines, Russia, Singapore, South Africa, South Korea, Taiwan, UAE, USA.**

In each of the above jurisdictions the Acquiror will make offers of employment or agreements to novate employment contracts (as appropriate) to the relevant employees conditional upon Closing. TR and the Acquiror shall cooperate to maximize the number of employees who consent to accept these offers and to comply with applicable law requirements, including by commencing the offer and acceptance process in sufficient time prior to the Offer being accepted, taking into account the requirements of applicable law and company practice.

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**3. The European Employee Forum (EEF)**

The EEF shall be informed and, if reasonably determined necessary by TR, consulted about the contemplated sale of the Business in accordance with the provisions of the EEF's governing documents from time to time, applicable law and company practice.

This information and consultation procedure will be considered as completed once any issues raised by the EEF have been discussed and the requirements of the governing documents of the EEF and applicable law complied with, and this is confirmed to the Acquiror.

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE NASDAQ OMX GROUP, INC.  
AND  
ROBERT GREIFELD**

This Memorandum of Understanding dated as of December 11, 2012 is intended to describe how The NASDAQ OMX Group, Inc. (the "Company") will determine the amount of certain severance payments provided for under the Employment Agreement ("Agreement"), effective as of February 22, 2012, by and between the Company and Robert Greifeld ("Executive") which are determined in part by reference to Executive's Target Bonus under the Company's Executive Corporate Incentive Plan ("ECIP").

1. Introduction and Purpose

The parties hereto wish to enter into this Memorandum of Understanding to describe how certain severance payments under the Agreement will be determined, in order to avoid possible negative tax consequences to the Company under Section 162(m) of the Code with respect to the Company's ECIP in which Executive participates. Both the Company and Executive intend that amounts payable to Executive under the ECIP be deductible as "performance based compensation" within the meaning of Internal Revenue Code section 162(m)(4)(C). In accordance with IRS Revenue Ruling 2008-13 and Treasury Reg. 1.162-27(e)(2)(v), remuneration will not be deductible "performance based compensation" if, generally speaking, payment of a bonus based on attainment of a performance goal may be made in the event of retirement or termination of employment regardless of whether the performance goal has been attained. The parties desire to clarify how the Company will determine the severance payments under the Agreement in situations other than death or disability, in order to remove any potential ambiguity that could jeopardize the Company's ability to deduct such payments made to Executive under the ECIP and/or the Agreement.

2. The Relevant Severance Payments

This Memorandum of Understanding relates to the determination of certain severance payments set forth in the Agreement which are determined in part by reference to Executive's Target Bonus under the ECIP. These severance payments (each a "Severance Payment" or collectively the "Severance Payments" as the context requires) are described in (i) Section 8(b)(i)(A) of the Agreement (relating to termination of Executive by the Company without Cause or by the Executive for Good Reason other than in connection with a Change in Control), (ii) Section 8(f) (relating to termination of Executive's employment due to a Non-Continuation Notice) and (iii) Section 8(g)(i)(A) (relating to termination of Executive's employment without Cause or by the Executive for Good Reason following a Change in Control).

3. The Parties' Understandings

- (a) The term "Target Bonus" in clause II of the first sentence Section 8(b)(i)(A) of the Agreement and clause II of the first sentence of Section 8(g)(i)(A) of the Agreement means the Target Bonus (as defined in Section 4(a) of the Agreement) under the ECIP for the calendar year which *precedes the year* in which occurs the Executive's Date of Termination. Per Section 4(a) of the Agreement, the Target Bonus shall not be less than 200% of base salary. Further, the Target Bonus for each year will never be less than the Target Bonus for the immediately preceding year. As such, Target Bonus in clause II is intended to be a fixed severance payment of 200% of Base Salary and not a performance-contingent payment dependent on current year or prior year performance.

- (b) That portion of the Severance Payments described in Sections 8(b)(i)(A), 8(f) and 8(g)(i)(A) of the Agreement which is based on any “pro-rata Target Bonus” or “pro-rata portion of the Target Bonus” with respect to the calendar year in which Executive’s Date of Termination occurs shall be paid only in the event the performance goals established under the ECIP for that calendar year with respect to such Target Bonus have been satisfied.
- (c) Notwithstanding any language in the Agreement to the contrary, payment of that portion of a Severance Payment which is contingent on satisfaction of applicable performance goals under the ECIP (the “Performance-Conditioned Portion”) shall be delayed until following the date the Company’s Management Compensation Committee determines that such performance goals have been satisfied, in accordance with the rules under the ECIP (the “Performance Goal Determination Date”). With respect to such amounts, the payment timing provisions under the Agreement shall be modified as follows:
- (i) Payments of the Performance-Conditioned Portion of the Severance Payment in Section 8(b)(i)(A) or 8(f) shall be paid beginning as of the date described in Section 8(b)(i)(A) or 8(f) or, if later, within 30 days following the Performance Goal Determination Date. If payment of one or more installments of the Performance-Conditional Portion of the Severance Payment in Section 8(b)(i)(A) or 8(f) must be delayed until following the Performance Goal Determination Date, the initial installment shall consist of a lump sum equal to the total of all such installments delayed or due as of such payment date, without adjustment for interest.
- (ii) Payment of any Performance-Conditioned Portion of the Severance Payment in Section 8(g)(i)(A) shall be paid in a lump sum on the date described in Section 8(g)(i)(A) or, if later, within 30 days of the Performance Goal Determination Date with respect to such Performance-Conditioned Portion.

\* \* \* \*

IN WITNESS WHEREOF, and intending to be legally bound, the Parties, by the signature of their duly authorized representatives, hereby enter into this Memorandum of Understanding as of the date first hereinabove written, to be effective as if it were part of the Agreement as of its original effective date.

EXECUTIVE

/s/ Robert Greifeld

Robert Greifeld

THE NASDAQ OMX GROUP, INC.

/s/ Bryan Smith

By Bryan Smith

Its Senior Vice President, Global Human Resources

**The NASDAQ OMX Group, Inc.**  
**Computation of Ratio of Earnings to Fixed Charges**  
**And Preferred Stock Dividends**  
**(Dollars in Millions)**  
**Unaudited**

	Year Ended December 31,				
	2012 <sup>(1)</sup>	2011 <sup>(1)</sup>	2010 <sup>(1)</sup>	2009	2008 <sup>(1)</sup>
Pre-tax income from continuing operations <sup>(2)</sup>	\$ 548 <sup>(4)</sup>	\$ 571	\$ 522	\$ 388	\$ 511
Add: fixed charges	111	135	117	118	111
Pre-tax income before fixed charges	659	706	639	506	622
Fixed charges:					
Interest expense <sup>(3)</sup>	111	135	117	118	111
Total fixed charges	111	135	117	118	111
Preferred stock dividend requirements	—	—	—	—	—
Total combined fixed charges and preferred stock dividends	<u>\$ 111</u>	<u>\$ 135</u>	<u>\$ 117</u>	<u>\$ 118</u>	<u>\$ 111</u>
Ratio of earnings to fixed charges	5.94	5.23	5.46	4.29	5.60
Ratio of earnings to fixed charges and preferred stock dividends	5.94	5.23	5.46	4.29	5.60

<sup>(1)</sup> We completed the following acquisitions in 2008, 2010, 2011 and 2012:

- OMX, February 2008;
- PHLX, July 2008;
- BSX, August 2008;
- Certain subsidiaries of Nord Pool, October 2008;
- The assets of North American Energy Credit and Clearing Corp., March 2010;
- A derivatives trading market through the purchase of the remaining business of Nord Pool, May 2010;
- SMARTS, August 2010;
- FTEN, December 2010;
- ZVM, December 2010;
- Glide Technologies, October 2011;
- The business of RapiData, December 2011;
- NOS Clearing, July 2012; and
- The index business of Mergent, Inc., including Indxis, December 2012.

Additionally, we purchased a majority stake in IDCG in December 2008 which we sold in August 2012, a 22% equity interest in EMCF in January 2009, and a 72% ownership interest in Bwise in May 2012. The financial results of these transactions are included in the computation of ratio of earnings to fixed charges beginning on the date of each acquisition or strategic initiative.

<sup>(2)</sup> 2012, 2011, 2010, 2009 and 2008 pre-tax income from continuing operations is before equity in earnings of 50%-or-less-owned companies and adjustment for noncontrolling interests.

<sup>(3)</sup> Consists of interest expense on all debt obligations (including amortization of deferred financing costs and accretion of debt discount) and the portion of operating lease rental expense that is representative of the interest factor.

<sup>(4)</sup> Includes costs of \$44 million associated with NASDAQ OMX's 2012 restructuring charges.

**SUBSIDIARIES**  
**Domestic Subsidiaries**

1. Boston Stock Exchange Clearing Corporation (incorporated in Massachusetts)
2. Bwise Internal Control Inc. (incorporated in New York)
3. Directors Desk, LLC (organized in Delaware)
4. Execution Access, LLC (organized in Delaware)
5. FinQloud LLC (organized in Delaware)
6. FINRA/NASDAQ Trade Reporting Facility LLC (organized in Delaware)
7. FTEN, Inc. (incorporated in Delaware)
8. GlobeNewswire, Inc. (incorporated in California)
9. Inet Futures Exchange, LLC (organized in Delaware)
10. Nasdaq Execution Services, LLC (organized in Delaware)
11. NASDAQ Global, Inc. (incorporated in Delaware)
12. Nasdaq International Market Initiatives, Inc. (incorporated in Delaware)
13. NASDAQ OMX BX Equities LLC (organized in Delaware)
14. NASDAQ OMX BX, Inc. (incorporated in Delaware)
15. NASDAQ OMX Commodities Clearing LLC (organized in Delaware)
16. NASDAQ OMX Corporate Solutions, Inc. (incorporated in Delaware)
17. NASDAQ OMX Event Technologies LLC (organized in Delaware)
18. NASDAQ OMX Futures Exchange, Inc. (incorporated in Pennsylvania)
19. NASDAQ OMX Information, LLC (organized in Delaware)
20. NASDAQ OMX PHLX LLC (organized in Delaware)
21. NASDAQ OMX (San Francisco) Insurance LLC (organized in Delaware)
22. NASDAQ Options Services, LLC (organized in Delaware)
23. Nasdaq Technology Services, LLC (organized in Delaware)
24. Norway Acquisition LLC (organized in Delaware)
25. OM Technology (US) Inc. (incorporated in Delaware)
26. OMX (US) Inc. (incorporated in Delaware)
27. The NASDAQ OMX Group Educational Foundation, Inc. (incorporated in Delaware) (non-profit)
28. The NASDAQ Options Market LLC (organized in Delaware)
29. The NASDAQ Stock Market LLC (organized in Delaware)
30. The Stock Clearing Corporation of Philadelphia (incorporated in Pennsylvania)

**Foreign Subsidiaries\***

1. AB NASDAQ OMX Vilnius (organized in Lithuania)
2. AS eCSD Expert (organized in Estonia)
3. AS Eesti Väärtpaberikeskus (organized in Estonia)
4. AS Latvijas Centralais depozitārijs (organized in Latvia)
5. AS OMX Registrikeskus (organized in Estonia)
6. Bwise Beheer BV (organized in the Netherlands)
7. Bwise BV (organized in the Netherlands)
8. Bwise Development BV (organized in the Netherlands)
9. Bwise Germany GmbH (organized in Germany)
10. Bwise Holding BV (organized in the Netherlands)
11. Bwise U.K. Ltd (organized in the United Kingdom)
12. Carpenter Moore Insurance Services Ltd (organized in the United Kingdom)
13. “Central Depository of Armenia” Open Joint Stock Company (organized in Armenia)
14. Clearing Control CC AB (organized in Sweden)
15. Eignarhaldsfelagid Verdbrefathing hf. (organized in Iceland)
16. Findata AB (organized in Sweden)
17. FTEN Europe Ltd (organized in the United Kingdom)
18. Glide Technologies Ltd (organized in the United Kingdom)
19. Indxis Ltd (organized in the United Kingdom)
20. Lithuanian Central Securities Depository (organized in Lithuania)
21. Mamato Motion AB (organized in Sweden)

22. Nasdaq Canada Inc. (organized in Canada)
23. Nasdaq International Ltd (organized in the United Kingdom)
24. "NASDAQ OMX Armenia" Open Joint Stock Company (organized in Armenia)
25. NASDAQ OMX Australia Holding Pty Ltd (organized in Australia)
26. NASDAQ OMX Broker Services AB (organized in Sweden)
27. NASDAQ OMX Copenhagen A/S (organized in Denmark)
28. NASDAQ OMX Derivatives A/S (organized in Denmark)
29. NASDAQ OMX Europe Ltd (organized in the United Kingdom)
30. NASDAQ OMX Helsinki Ltd (organized in Finland)
31. NASDAQ OMX Holding AB (organized in Sweden)
32. NASDAQ OMX Holding Danmark A/S (organized in Denmark)
33. NASDAQ OMX Holding Luxembourg Sàrl (organized in Luxembourg)
34. NASDAQ OMX Iceland hf. (organized in Iceland)
35. NASDAQ OMX NLX Ltd (organized in the United Kingdom)
36. NASDAQ OMX Nordic Ltd (organized in Finland)
37. NASDAQ OMX Oslo ASA (organized in Norway)
38. NASDAQ OMX Riga, AS (organized in Latvia)
39. NASDAQ OMX Stockholm AB (organized in Sweden)
40. NASDAQ OMX Tallinn AS (organized in Estonia)
41. NASDAQ OMX Technology Support AB (organized in Sweden)
42. Nord Pool AB (organized in Sweden)
43. NOS Clearing ASA (organized in Norway)
44. OMX AB (organized in Sweden)
45. OMX Capital Insurance AG (organized in Switzerland)
46. OMX Ltd (organized in China)
47. OMX Netherlands BV (organized in the Netherlands)
48. OMX Netherlands Holding BV (organized in the Netherlands)
49. OMX Pte Ltd (organized in Singapore)
50. OMX Pty Ltd (organized in Australia)
51. OMX Technology AB (organized in Sweden)
52. OMX Technology Canada Inc. (organized in Canada)
53. OMX Technology Energy Systems AS (organized in Norway)
54. OMX Technology (Ireland) Ltd (organized in Ireland)
55. OMX Technology Italy Srl (organized in Italy)
56. OMX Technology Japan Ltd (organized in Japan)
57. OMX Technology Ltd (organized in the United Kingdom)
58. OMX Technology (UK) Ltd (organized in the United Kingdom)
59. OMX Treasury AB (organized in Sweden)
60. OMX Treasury Euro AB (organized in Sweden)
61. OMX Treasury Euro Holding AB (organized in Sweden)
62. Quietus Advice K & W nr 505 AB (organized in Sweden)
63. Shareholder.com B.V. (organized in the Netherlands)
64. SMARTS (Asia) Ltd (organized in China)
65. SMARTS Broker Compliance Pty Ltd (organized in Australia)
66. SMARTS Group Europe Ltd (organized in U.K.)
67. SMARTS Group Holdings Pty Ltd (organized in Australia)
68. SMARTS Market Surveillance Pty Ltd (organized in Australia)
69. Stockholms Fondbörs AB (organized in Sweden)
70. Verdbrefaskraning Islands hf. (organized in Iceland)
71. Zoom Vision Mamato AB (organized in Sweden)
72. Zoom Vision Mamato ApS (organized in Denmark)

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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 the following Registration Statements:

- (1) Registration Statement (Form S-3 No. 333-186155) of The NASDAQ OMX Group, Inc.,
- (2) Registration Statement (Form S-8 No. 333-167724) pertaining to The NASDAQ OMX Group, Inc. Employee Stock Purchase Plan,
- (3) Registration Statement (Form S-8 No. 333-167723) pertaining to The NASDAQ OMX Group, Inc. Equity Incentive Plan,
- (4) Registration Statement (Form S-8 No. 333-110602) pertaining to The Nasdaq Stock Market, Inc. Equity Incentive Plan,
- (5) Registration Statement (Form S-8 No. 333-106945) pertaining to the Employment Agreement with Robert Greifeld of The Nasdaq Stock Market, Inc.,
- (6) Registration Statement (Form S-8 No. 333-76064) pertaining to The Nasdaq Stock Market, Inc. 2000 Employee Stock Purchase Plan,
- (7) Registration Statement (Form S-8 No. 333-72852) pertaining to The Nasdaq Stock Market, Inc. 2000 Employee Stock Purchase Plan, and
- (8) Registration Statement (Form S-8 No. 333-70992) pertaining to The Nasdaq Stock Market, Inc. Equity Incentive Plan;

of our reports dated February 21, 2013, with respect to the consolidated financial statements and schedule of The NASDAQ OMX Group, Inc. and the effectiveness of internal control over financial reporting 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, 2012.

/s/ Ernst & Young LLP  
New York, New York  
February 21, 2013

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, 2012, 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 21, 2013.

/s/ Steven D. Black

\_\_\_\_\_  
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 21, 2013.

/s/ Börje Ekholm

\_\_\_\_\_  
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 21, 2013.

/s/ Glenn H. Hutchins

\_\_\_\_\_  
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 21, 2013.

/s/ Essa Kazim

\_\_\_\_\_  
Signature

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IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed as of February 21, 2013.

/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 21, 2013.

/s/ Ellyn A. McColgan

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, 2012, 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 21, 2013.

/s/ Thomas F. O'Neill

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 21, 2013.

/s/ James S. Riepe

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 21, 2013.

/s/ Michael R. Splinter

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 21, 2013.

/s/ Lars Wedenborn

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 21, 2013

## CERTIFICATION

I, Lee Shavel, 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/ Lee Shavel

Name: Lee Shavel  
Title: Chief Financial Officer and Executive Vice President,  
Corporate Strategy

Date: February 21, 2013

**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, 2012 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Robert Greifeld, as Chief Executive Officer of the Company, and Lee Shavel, as Chief Financial Officer and Executive Vice President, Corporate Strategy 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 21, 2013

/s/ Lee Shavel

Name: Lee Shavel  
Title: Chief Financial Officer and Executive Vice President,  
Corporate Strategy  
Date: February 21, 2013

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.