The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

The public may view background documentation for this information collection at the following Web site, www.reginfo.gov. Persons submitting comments on the collection of information requirements should direct them to (i) the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington DC, 20549, or send an email to: PRA_Mailbox@sec.gov. Comments should reference SEC File No. 270–247. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 30, 2015.
Jill M. Peterson,
Assistant Secretary.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the By-Laws of Nasdaq, Inc.

December 31, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (‘‘Act’’),1 and Rule 19b–4 thereunder,2 notice is hereby given that on December

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21, 2015, Boston Stock Exchange Clearing Corporation (‘‘BSECC’’) filed with the Securities and Exchange Commission (‘‘SEC’’ or ‘‘Commission’’) the proposed rule change as described in Items I and II below, which Items have been prepared by BSECC. On December 29, 2015, BSECC filed Amendment No. 1 to the proposal.3 The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

BSECC is filing this proposed rule change with respect to amendments of the By-Laws (the ‘‘By-Laws’’) of its parent corporation, Nasdaq, Inc. (‘‘Nasdaq’’ or the ‘‘Company’’), to revise the requirements regarding Director classifications. This Amendment No. 1 to SR–BSECC–2015–002 amends and replaces the original filing in its entirety. The proposed amendments will be implemented on a date designated by the Company following approval by the Commission. The text of the proposed rule change is available on BSECC’s Web site at http://nasdaqomxbx.cchwallstreet.com, at the principal office of BSECC, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

The Company is proposing amendments to certain provisions of its By-Laws that relate to Director classifications.5 Specifically, the Company proposes to revise Section 4.3 of the By-Laws to state that it may, rather than shall, include at least one, but no more than two, Issuer Directors on its Board. In addition, the Company proposes to revise Section 4.7 of the By-Laws to clarify the procedures when a Director’s classification changes between annual meetings of stockholders.

i. Section 4.3

Currently, the Company’s By-Laws require that all of the Company’s Directors be classified as: (i) Industry

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3 Amendment No. 1 amends and replaces the original filing in its entirety. In Amendment No. 1, BSECC, among other things, clarified the operation of the current and proposed provisions of the By-Laws of Nasdaq, Inc. and how the proposed rule change would operate in conjunction with the Listing Rules of The NASDAQ Stock Market. See infra, note 5.

4 “Director” means a member of the Company’s Board of Directors. See Article I(i) of the By-Laws.
5 The provisions of the Company’s By-Laws that relate to Director classifications are completely distinct from the Listing Rules of The NASDAQ Stock Market. Therefore, the proposed amendments do not affect in any way the Company’s obligation, as an issuer listed on The NASDAQ Stock Market, to comply with the Listing Rules, and the Company will continue to comply with the Listing Rules, including provisions relating to corporate governance, following the effectiveness of the proposed By-Law amendments.

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Directors; 6 (ii) Non-Industry Directors,7 Directors. Finally, the Board shall include no more than one Staff Director, unless the Board consists of ten or more Directors, in which case, the Board shall include no more than two Staff Directors.

The Company proposes to amend Section 4.3 of the By-Laws to state that the Board may, rather than shall, include one, but no more than two, Issuer Directors. With this change, the Company intends to give itself the option, but not the requirement, to include one or two Issuer Directors on its Board. Issuer Directors bring to the Board the perspective of an officer or employee of companies listed on The NASDAQ Stock Market. While the Company highly values the views of its listed companies, it does not believe that it is strictly necessary to have an Issuer Director on its own Board to represent those views. Within the overall governance structure of the Company and its subsidiaries, issues relating to listed companies are generally the province of NASDAQ and its Board of Directors, rather than the Company and its Board of Directors.

The Company is a holding company for over 100 subsidiaries that provide both regulated and unregulated products and services across the globe, while NASDAQ is the Company subsidiary that, among other things, provides listing services on The NASDAQ Stock Market. The Company’s Board generally focuses on the overall strategic direction of the Company, while NASDAQ’s Board generally focuses on issues relevant specifically to The NASDAQ Stock Market, including issues affecting listed companies. Furthermore, NASDAQ’s Board includes issuer representation, as required by its By-Laws.11 Finally, if the Company’s Board ever does address issues relating to listed companies, its Directors are experienced and capable enough to handle those issues without specifically having an Issuer Director on the Board.12

Therefore, it is not strictly necessary to have an officer or employee of a listed company on the Company’s Board of Directors, and accordingly, the Company proposes to amend its By-Laws to give itself the option, but not the requirement, to include an Issuer Director on its Board.

See Article II(o) of the By-Laws.

8 "Insider Director" or "Issuer committee member" means a Director (excluding any Staff Director) or committee member who (i) is, or within the last year was, or has an immediate family member who is, or within the last year was, a member of a Self-Regulatory Subsidiary; (ii) is, or within the last year was, employed by a member or a member organization of a Self-Regulatory Subsidiary; (iii) has an immediate family member who is, or within the last year was, an executive officer of a member or a member organization of a Self-Regulatory Subsidiary; (iv) is affiliated, directly or indirectly, with a member or member organization of a Self-Regulatory Subsidiary more than $100,000 per year in direct compensation, or received from such members or member organizations in the aggregate an amount of direct compensation that in any one year is more than 10 percent of the Director’s annual gross compensation for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); or (v) is affiliated, directly or indirectly, with a member or committee member of a Self-Regulatory Subsidiary. See Article II(m) of the By-Laws. A "Self-Regulatory Subsidiary" is any subsidiary of the Company that is a self-regulatory organization as defined under Section 3(a)(26) of the Act. See Article II(n) of the By-Laws. Currently, the term "Self-Regulatory Subsidiary" encompasses NASDAQ OMX Group, Inc. ("NASDAQ") and its subsidiaries, including NASDAQ OMX Group, Inc., NASDAQ OMX Nordic ("Nordexx"), NASDAQ OMX First North ("First North"), NASDAQ OMX Stockholm LLC ("NASDAQ"), NASDAQ OMX PHLX LLC ("Phlx"), BSECC and the Stock Clearing Corporation of Philadelphia ("SCCP").

7 "Non-Industry Director" or "Non-Industry committee member" means a Director (excluding any Staff Director) or committee member who is (1) a Public Director or Public committee member; (2) an Issuer Director or Issuer committee member; or (3) any other individual who would not be an Industry Director or Industry committee member. See Article II(o) of the By-Laws.

9 “Public Director” or “Public committee member” means a Director or committee member who (1) is not an Industry Director or Industry committee member, is not an Issuer Director or Issuer committee member, and (3) has no material business relationship with a member or member organization of a Self-Regulatory Subsidiary, the Company or its affiliates, or the Financial Industry Regulatory Authority, Inc. and its affiliates. See Article II(p) of the By-Laws.

10 "Staff Director" means an officer of the Company that is serving as a Director. See Article II(q) of the By-Laws.

11 See Article III, Section 2 of NASDAQ’s By-Laws. Currently, three of the Company’s eleven Directors are also directors of companies listed on The NASDAQ Stock Market or another national securities exchange. These Directors do not qualify as Issuer Directors because they are not specifically officers or employees of listed companies; however, as directors of such companies, they are familiar with corporate governance topics and other issues confronted by listed companies.

12 See Section 4.13(b)(ii) of the By-Laws.

13 See Section 4.13(h)(iii) of the By-Laws.

14 See Section 4.13(b)(iii) of the By-Laws.

15 But see Kurz v. Holbrook, 989 A.2d 140, 156–57 (Del.Ch. 2010) (holding that a by-law cannot...
would be extremely disruptive to the Board, its committees and the Company to add, remove, disqualify or replace a Director between annual meetings of stockholders simply because the Director no longer has the same classification he or she had at the time of the annual meeting. In addition, the selection of nominees to the Company’s Board is an extremely complex process, managed by the Board’s Nominating & Governance Committee, that takes almost the full year between annual meetings of stockholders. The Nominating & Governance Committee considers possible candidates suggested by Board members, industry groups, stockholders, senior management and/or a third-party search firm engaged from time-to-time to assist in identifying and evaluating qualified candidates. In evaluating candidates for nomination to the Board, the Nominating & Governance Committee reviews the skills, qualifications, character, and experience desired for the Board as a whole and for its individual members, with the objective of having a Board that reflects diverse backgrounds and senior level experience in the areas of global business, finance, legal and regulatory, technology and marketing. The Nominating & Governance Committee evaluates each individual candidate in the context of the Board as a whole, with the objective of maintaining a group of Directors that can further the success of Nasdaq’s business, while representing the interests of stockholders, employees and the community in which the company operates. Because the nominee selection process is so long and complex, the Board cannot act quickly to replace a Director whose classification has changed, and it is not in the best interests of the Company’s stockholders for the Board to be forced to take such an action when the Director otherwise provides valuable service to the Board.

The Company therefore proposes to amend Section 4.7 of the By-Laws to provide that the Board may elect to defer until the next annual meeting of stockholders a determination regarding a change in a Director’s classification and such Director’s continued service on the Board. Further, if the Board makes such an election, neither the Board nor any committee shall be deemed to be in violation of Section 4.3 of the By-Laws, which relates to Board composition, or Section 4.13 of the By-Laws, which relates to committee composition. This will give the Board the option to retain Directors whose classification has changed, but whose continued service is otherwise beneficial to the Board, the Company and its stockholders. This also will prevent the significant disruption that would occur if the Board had to replace a Director between annual meetings of stockholders and allow the Board to continue to make informed, deliberate decisions regarding Director nominees, rather than force it to act quickly in a way that is not in the best interest of the Company’s stockholders.

2. Statutory Basis

BSECC believes that its proposal is consistent with Section 17A(b)(3)(C) of the Act, 17 in that it assures a fair representation of shareholders and participants in the selection of directors and administration of its affairs. While the proposals relate to the organizational documents of the Company, rather than BSECC, BSECC is indirectly owned by the Company, and therefore, the Company’s stockholders have an indirect stake in BSECC. In addition, the participants in BSECC, to the extent any exist, could purchase stock in the Company in the open market, just like any other stockholder. First, the Company is proposing an amendment to Section 4.3 of the By-Laws to state that it may, rather than shall, include at least one, but no more than two, Issuer Directors on its Board. BSECC believes that this change will assure a fair representation of shareholders and participants in the selection of directors and administration of its affairs by allowing the Company’s Nominating & Governance Committee to select nominees for the Company’s Board based on the overall strategic needs of the Board, the Company and its stockholders without forcing the Board to fill one slot with an officer or director of a listed company (i.e., an Issuer Director). BSECC notes that the Company would still have the option to include Issuer Directors on the Board, and BSECC believes the views of listed companies are well-represented on the Board without the explicit participation of an Issuer Director.18

Second, the Company is proposing an amendment to Section 4.7 of the By-Laws to provide that the Board may elect to defer until the next annual meeting of stockholders a determination regarding a change in a Director’s classification and such Director’s continued service on the Board. Further, if the Board makes such an election, neither the Board nor any committee shall be deemed to be in violation of Section 4.3 of the By-Laws, which relates to Board composition, or Section 4.13 of the By-Laws, which relates to committee composition. BSECC believes that this change will assure a fair representation of shareholders and participants in the selection of directors and administration of its affairs by clarifying the disqualification provisions in the Company’s By-Laws, which are currently ambiguous. In addition, the change will prevent the significant disruption that would occur if the Board were forced to replace an otherwise valuable director between annual meetings.

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

Because the proposed rule change relates to the governance of the Company and not to the operations of BSECC, BSECC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days of such date (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which BSECC consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

18 See note 12, supra.
IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or

• Send an email to rule-comments@sec.gov. Please include File Number SR–BSECC–2015–002 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSECC–2015–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/sro.shtml).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of BSECC. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BSECC–2015–002, and should be submitted on or before January 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.13

Jill M. Peterson,
Assistant Secretary.

[FR Doc. 2015–33305 Filed 1–6–16; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NASDAQ OMX PHXL LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 2 Thereto, To Amend the By-Laws of Nasdaq, Inc.

December 31, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),1 and Rule 19b–4 thereunder,2 notice is hereby given that on December 21, 2015, NASDAQ OMX PHXL LLC (“PHXL” or “Exchange”) filed with the Securities and Exchange Commission (”SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On December 29, 2015, the Exchange filed Amendment No. 1 to the proposal.3 On December 30, 2015, the Exchange filed Amendment No. 2 to the proposal.4 The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons.

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

The Exchange is filing this proposed rule change with respect to amendments of the By-Laws (the “By-Laws”) of its parent corporation, Nasdaq, Inc. (“Nasdaq” or the “Company”), to revise the requirements regarding Director classifications. This Amendment No. 2 to SR–PHXL–2015–113 amends and replaces the original filing in its entirety.5 The proposed amendments will be implemented on a date designated by the Company following approval by the Commission. The text of the proposed rule change is available on the Exchange’s Web site at http://nasdaqomxphlx.cchwallstreet.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

The Company is proposing amendments to certain provisions of its By-Laws that relate to Director6 classifications.7 Specifically, the Company proposes to revise Section 4.3 of the By-Laws to state that it may, rather than shall, include at least one, but no more than two, Issuer Directors on its Board. In addition, the Company proposes to revise Section 4.7 of the By-Laws to clarify the procedures when a Director’s classification changes between annual meetings of stockholders.

i. Section 4.3

Currently, the Company’s By-Laws require that all of the Company’s Directors be classified as: (i) Industry

5 On December 30, 2015, the Exchange withdrew Amendment No. 1.
6 Amendment No. 2 amends and replaces the original filing in its entirety. In Amendment No. 2, the Exchange, among other things, clarified the operation of the current and proposed provisions of the By-Laws of Nasdaq, Inc. and how the proposed rule change would operate in conjunction with the Listing Rules of The NASDAQ Stock Market. See infra, note 7.
7 Amendment No. 1 to SR–PHXL–2015–113 was filed on December 29, 2015 and subsequently withdrawn on December 30, 2015.

6 “Director” means a member of the Company’s Board of Directors. See Article I(j) of the By-Laws.
7 The provisions of the Company’s By-Laws that relate to Director classifications are completely distinct from the Listing Rules of The NASDAQ Stock Market. Therefore, the proposed amendments do not affect in any way the Company’s obligation, as an issuer listed on The NASDAQ Stock Market, to comply with the Listing Rules, and the Company will continue to comply with the Listing Rules, including provisions relating to corporate governance, following the effectiveness of the proposed By-Law amendments.