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 your comments 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 copying at the principal offices of BSECC. All comments received will be posted without change; however, personal identifying information will be withheld, to the extent permitted by law. All written 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.14

Jill M. Peterson, Assistant Secretary.

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 (“Phlx” 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–Phlx–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.chicagowallstreet.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 Director classifications. 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 On December 30, 2015, the Exchange withdrew Amendment No. 1.
4 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.
5 Amendment No. 1 to SR–Phlx–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.
There is no natural text to extract from this image.
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, characteristics 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 communities 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.18 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

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,19 in general, and furthers the objectives of Section 6(b)(5) of the Act,20 in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

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. The Exchange believes that this change will protect investors and the public interest. Because 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). The Exchange notes that the Company would still have the option to include Issuer Directors on the Board, and the Exchange believes the views of listed companies are well-represented on the Board without the explicit participation of an Issuer Director.21

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.22 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.

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 the Exchange, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period 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 the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

time of election during the middle of his or her term), rev’d on other grounds sub nom Crown EM&E Power, LLC v. Kuss, 992 A.2d 377 (Del. 2010); see also Klaassen v. Allegro Development Corp., 2013 WL 5739680, at *23 (Del. Ch. Oct. 11, 2013) (noting that director qualifications are applied at the front-end of the director’s term when such director is elected and qualified), aff’d 106 A.3d 1035 (Del. 2014).

18 The intent of the amendment is to allow the Board a deferral until the next annual meeting when it can nominate a slate of directors with classifications sufficient to satisfy the requirements of Section 4.3 of the By-Laws for election by the Company’s stockholders. Assuming due election of the Board’s nominees, the Board therefore will comply with Section 4.3 of the By-Laws immediately after the next annual meeting.


21 See note 14, supra.
SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations;
Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Derivatives and Other Off-Balance Sheet Items Schedule Pursuant to FINRA Rule 4524 (Supplemental FOCUS Information)

December 31, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) or “SEA”1 and Rule 19b–4 thereunder,2 notice is hereby given that on December 23, 2015, Financial Industry Regulatory Authority, Inc. (“FINRA”) 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 substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend the instructions to the Derivatives and Other Off-Balance Sheet Items Schedule (“OBS”)3 pursuant to FINRA Rule 4524 (Supplemental FOCUS Information) to expand the application of the OBS to certain non-carrying/non-clearing firms that have significant amounts of off-balance sheet obligations. The proposed rule change does not propose amendments to existing rule text.

The text of the proposed rule change is available on FINRA’s Web site at http://www.finra.org, at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections IIA, IIB, and IIC 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

FINRA Rule 4524 requires each firm, as FINRA shall designate, to file such additional financial or operational schedules or reports as FINRA may deem necessary or appropriate for the protection of investors or in the public interest as a supplement to the FOCUS Report.3 In February 2013, the SEC approved FINRA’s adoption, pursuant to FINRA Rule 4524, of the OBS as a supplement to the FOCUS report.4 The OBS captures important information that is not otherwise reported on firms’ balance sheets and requires all firms that carry customer accounts or self-clear or clear transactions for others (referred to, collectively, as “carrying or clearing firms”) to file with FINRA the OBS within 22 business days of the end of each calendar quarter, unless carrying or clearing firm meets the de minimis exception set forth in the instructions to the OBS.5 Pursuant to FINRA Rule 4524, the proposed rule change would amend the instructions to the OBS to expand its application beyond carrying or clearing firms to include firms that neither carry customer accounts nor clear transactions (referred to, collectively, as “non-clearing firms”) that have, pursuant to SEA Rule 15c3–1,6 a

II. Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All comments should refer to File Number SR–Phlx–2015–113. 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 communications relating 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2015–113, and should be submitted on or before January 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.22

Jill M. Peterson,
Assistant Secretary.

[FR Doc. 2015–33309 Filed 1–6–16; 8:45 am]

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4 Carrying or clearing firms were required to file with FINRA their initial OBS on or before July 31, 2013, to disclose off-balance sheet information as of June 30, 2013. See Regulatory Notice 13–10 (March 2013) (Supplemental FOCUS Information).

5 The de minimis exception relieves a carrying or clearing firm from filing the OBS for the reporting period if the aggregate of all gross amounts of off-balance sheet items is less than 10 percent of the firm’s excess net capital on the last day of the reporting period. For purposes of the OBS, as well as the proposed amendments to the OBS, the term “excess net capital” means net capital reduced by the greater of the minimum dollar net capital requirement or two percent of combined aggregate debit items as shown in the Formula for Reserve Requirements pursuant to SEA Rule 15c3–3. See Securities Exchange Act Release No. 68832 (February 5, 2013), 78 FR 9754, 9755 (February 11, 2013) (Order Approving File No. SR–FINRA–2012–050).