

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104511; File No. SR-BSECC-2025-001; SR-SCCP-2025-01]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Stock Clearing Corporation of Philadelphia; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as modified by Amendment No. 1, by Boston Stock Exchange Clearing Corporation and Stock Clearing Corporation of Philadelphia to Amend the Amended and Restated Certificate of Incorporation and By-Laws of Parent Corporation, Nasdaq, Inc.

December 23, 2025.

I. INTRODUCTION

On September 29, 2025, each of Boston Stock Exchange Clearing Corporation (“BSECC”) and Stock Exchange Clearing Corporation (“SCCP” and collectively, the “Clearing Agencies”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes SR-BSECC-2025-001 and SR-SCCP-2025-01, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² to amend the Amended and restated Certificate of Incorporation (“Certificate”) and By-Laws (“By-Laws”) of their parent corporation, Nasdaq, Inc. (“Nasdaq”).³ The Notices of Filing amend the Certificate to align with certain amendments to the Delaware General Corporation Law (“DGCL”) passed in 2022 and update the By-Laws to reflect recent changes in law and best practices. The Notices of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release Nos. 104156 (Sept. 30, 2025), 90 FR 48073 (SR-BSECC-2025-001) (“BSECC Notice of Filing”), 104155 (Sept. 30, 2025), 90 FR 48062 (SR-SCCP-2025-01) (“SCCP Notice of Filing”) (collectively, “Notices of Filing”).

Filing were published for comment in the *Federal Register* on October 3, 2025.⁴ On November 3, 2025, pursuant to Section 19(b)(2) of the Exchange Act,⁵ the Commission designated a longer period within which to approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed rule changes.⁶ On December 19, 2025, the Clearing Agencies filed an amendment (“Amendment No. 1”)⁷ to the Notices of Filing to correct the statutory basis section describing how the proposed rule changes are consistent with the Act, namely Sections 17A(b)(3)(A)⁸ and 17A(b)(3)(F)⁹ and Rule 17ad-22(e)(2) under the Act.¹⁰ The Commission has received no comments regarding the proposed rule changes. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and, for the reasons discussed below, is approving the proposed rule changes as modified by Amendment No. 1 (hereinafter defined as the “Proposed Rule Changes”).

II. DESCRIPTION OF THE PROPOSED RULE CHANGES

The Clearing Agencies propose amendments to the Certificate to exculpate covered officers from monetary liability for breach of fiduciary duty, similar to the existing treatment of

⁴ *Id.*

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 104173 (Nov. 3, 2025), 90 FR 51424 (designating January 1, 2025, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule changes).

⁷ Amendment No. 1 consists of 1) updated statutory basis section describing how the proposed rule changes are consistent with the Exchange Act; 2) Exhibit 4, showing no changes to the proposed rule text from the Notices of Filing; and 3) Exhibit 5, showing the proposed rule text. The text of Amendment No. 1 can be found on the Clearing Agencies website: <https://listingcenter.nasdaq.com/rulebook/BSECC/rulefilings>.

⁸ 15 U.S.C. 78q-1(b)(3)(A).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 CFR 240.17ad-22(e)(2).

directors.¹¹ As discussed more fully in the Notices of Filing, the Clearing Agencies state that the proposed amendments would update the Certificate to reflect amendments to the DGCL that enable companies to limit the liability of certain officers in narrow circumstances.¹²

The Clearing Agencies also propose amendments to the following provisions of the By-Laws: Articles III (Meetings of Stockholders);¹³ IV (Board of Directors);¹⁴ VII (Officers, Agents, and Employees);¹⁵ VIII (Indemnification);¹⁶ IX (Capital Stock);¹⁷ X (Miscellaneous Provisions);¹⁸ XI (Amendments and Emergency By-Laws);¹⁹ and XIII (Forum Selection);²⁰ as well as other non-substantive changes.²¹ These amendments are summarized below and discussed more fully in the Notices of Filing.

Proposed amendments to Article III

- Specify the scope of information that may be requested in connection with a stockholder nominee for director to provide that Nasdaq may require any other information to determine whether the proposed nominee is qualified under the Certificate, the By-Laws, and other applicable rules, laws, and regulations.

¹¹ See, e.g., BSECC Notice of Filing, *supra* note 4, at 48073.

¹² See, e.g., BSECC Notice of Filing, *supra* note 4, at 48073 (discussing related corporate governance trends under Delaware law and the potential consequences to Nasdaq from failing to adopt the proposed changes).

¹³ See *id.* at 48074-48077.

¹⁴ See *id.* at 48077-78.

¹⁵ See *id.* at 48078-79.

¹⁶ See *id.* at 48079.

¹⁷ See *id.* at 48079-80.

¹⁸ See *id.* at 48080.

¹⁹ See *id.*

²⁰ See *id.* at 48080-81.

²¹ See *id.* at 48081. These changes are either typographical corrections or otherwise administrative or clarifying changes (such as changing a reference to “shareholder” to “stockholder” to more closely reflect terminology of the By-Laws).

- Amend the information requirements for notices to Nasdaq from a Proposing Person²² regarding nominations or other business to be considered at an annual meeting of stockholders. Such notices require “a description of any agreement, arrangement or understanding with respect to the nomination or proposal between and among such stockholder and/or such beneficial owners, any of their respective affiliates or associates, and *any others acting in concert with any of the foregoing*” (emphasis added).²³ The amendments remove the references to others “acting in concert.”²⁴
- Add a requirement that a Proposing Person’s notice must include a representation as to whether the Proposing Person intends, or is part of a group which intends, “to solicit proxies or votes in support of any proposed nominee in accordance with Rule 14a-19²⁵ promulgated under the Act.”²⁶
- Limit the number of nominees that a Proposing Person may nominate for election at the annual meeting in certain instances to the number of directors to be elected at

²² Section 3.1(c) of the By-Laws defines “Proposing Person” as (i) the stockholder providing the notice of business or the notice of the nomination, as applicable, proposed to be brought before an annual meeting, (ii) any beneficial owner or beneficial owners, if different, on whose behalf such business is proposed to be brought before the meeting or the notice of the nomination proposed to be made at the meeting is made, as applicable, and (iii) any affiliate or associate (each within the meaning of Rule 12b-2 under the Act for purposes of these By-Laws) of such stockholder or beneficial owner.

²³ See BSECC Notice of Filing, *supra* note 4, at 48074; proposed By-Laws Section 3.1(b)(iii)(C).

²⁴ The Clearing Agencies propose a similar amendment to By-Law Section 3.2(a), which addresses requirements for requesting a special meeting of the stockholders, including procedures for determining the requisite percentage of stockholders necessary to support a special meeting request. See BSECC Notice of Filing, *supra* note 4, at 48076.

²⁵ 17 CFR 240.14a-9 (referred to as the “universal proxy rule”).

²⁶ See, e.g., BSECC Notice of Filing, *supra* note 4, at 48075; proposed By-Laws Section 3.1(b)(iii)(O)(3). Other amendments to the By-Laws under the Notices of Filing also clarify when the universal proxy rule would apply. See, e.g., BSECC Notice of Filing, *supra* note 4, at 48075; proposed By-Laws Section 3.3(a) (relating to when Nasdaq would disregard nominees proposed by a stockholder under the universal proxy rule, if the stockholder has failed to comply with the rule).

such annual meeting.

- Remove a reference to the binding nature of the Board's²⁷ determination with respect to whether a special meeting request is in proper form, which aligns the By-Laws with current Delaware corporate practices.²⁸
- Require that the chairman who presides over stockholder meetings shall be an officer or director of Nasdaq.

Proposed amendments to Article IV

- Provide Nasdaq with greater flexibility to include “Issuer Directors” on the Board by removing the current restriction that the Board may not include more than two such directors.²⁹
- Amend the Board quorum and voting provisions to clarify how a quorum is calculated and the process for the adjournment of meetings.
- Amend how notice of meetings may be given to, or waived by, directors (e.g., eliminate outdated forms of communication, such as telegram, telefax, cable, and radio).
- Specify that Nasdaq is opting into Section 141(c)(2) of the DGCL, which provides Nasdaq greater flexibility with respect to the formation and powers of Board committees, including, for example, allowing greater delegations of authority.³⁰

²⁷ “Board” is defined in Article I(c) of the By-Laws as the Board of Directors of Nasdaq.

²⁸ The Clearing Agencies propose similar deletions of references to the decisions made in the “sole discretion” of the Board or to the finality or “binding” nature of decisions by the Board (or persons authorized by the Board), any committees thereof, or the chairman of a meeting thereof throughout the proposed amendments.

²⁹ “Issuer Director” is defined in Article I(o) of the By-Laws.

³⁰ See, e.g., BSECC Notice of Filing, *supra* note 4, at 48077.

- Remove limitations on the ability of Board committees to take certain actions, such as the authorization of preferred stock designations.
- Remove the one-year limitation on the terms of committee members.³¹
- Remove duplicative language in the By-Laws that specifies that members of the Nominating & Governance Committee may be removed by “majority vote of” the Board, because the By-Laws already separately provide the voting standards for all decisions of the Board.³²
- Modify the quorum requirement for Board committees to specify that a majority of the members of a committee then serving in office, rather than a majority of total members on the committee, as is currently the case, shall constitute a quorum.³³

Proposed amendments to Article VII

- Delete outdated references to Nasdaq’s corporate structure, including references to having one President that is a director, or that has executive authority over the entire company, and add provisions that contemplate more than one president.
- Make the specified list of officers to be elected by the Board permissive rather than mandatory.
- Modify the process and authority for appointing Vice Presidents and providing that

³¹ See, e.g., BSECC Notice of Filing, *supra* note 4, at 48077-78. The Notices of Filings also remove the requirement that the chair of Nasdaq’s Audit Committee must be a Public Director (as defined in Article I of the By-Laws). See *id.* at 78078. The Clearing Agencies state that the chair of the Audit Committee must still satisfy prescribed independence standards. See *id.* With respect to the Audit Committee, the Notices of Filings would amend the By-Laws to provide flexibility for such committee to be renamed from time to time or for any successor of such committee delegated with similar duties to be known as the respective committee. See, e.g., BSECC Notice of Filing, *supra* note 4, at 48078; proposed By-Law Article I(p) and Section 4.13(g). The Notices of Filing make similar changes with respect to the Nominating & Governance Committee. See proposed By-Law Article I(p).

³² See, e.g., BSECC Notice of Filing, *supra* note 4, at 48078.

³³ *Id.*

each Vice President shall have all powers and duties usually incident to the office of a Vice President, except as specifically limited.

- Modify who may assign powers and duties to Presidents, Vice Presidents, the Secretary, and the Treasurer.³⁴
- Clarify that the obligation to pay claims or expenses related to the indemnification of directors, officers, employees, and agents is limited to those claims and expenses not prohibited by applicable law.³⁵

Proposed Amendments to Article IX

- Broaden the scope of officers authorized to sign stock certificates.
- Provide that applicable law will control whether Nasdaq is able to treat stockholders of record as shown on the stock ledgers as owners thereof and as the persons entitled to vote such shares and to receive notices, as well as when Nasdaq is bound to recognize any equitable claim to, or interest in, any shares on the part of any other person.
- Provide that Nasdaq shall be authorized, rather than the Board or an authorized committee thereof, to take certain actions with respect to lost, stolen, or destroyed certificates.

Proposed amendments to Article X

- Replace an existing provision regarding the authority for the execution of contracts and other documents with a provision that more closely reflects Nasdaq's current policies and procedures on signatory authority.

³⁴ See, e.g., BSECC Notice of Filing, *supra* note 4, at 48079.

³⁵ *Id.*

- Replace an existing provision regarding the required form of records with a provision that conforms to updated Delaware law.³⁶

Proposed amendments to Article XI

- Amend the By-Laws to reflect changes to the emergency by-law provisions of the DGCL.³⁷

Proposed amendments to Article XIII

- Provide a new forum selection provision.³⁸

III. DISCUSSION AND COMMISSION FINDINGS

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.³⁹

After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the Clearing Agencies. More specifically, the Commission finds that the Proposed Rule Change is consistent with Sections 17A(b)(3)(A) and (F) of the Exchange Act,⁴⁰ and with Exchange Act Rule 17ad-22(e)(2)⁴¹ as described in detail below.

A. Consistency with Section 17A(b)(3)(A) and (F) of the Exchange Act

³⁶ See *id.* at 48080.

³⁷ See *id.*

³⁸ See *id.* at 48080-81. The Clearing Agencies note that the by-laws of Cboe Global Markets, Inc., as well as those of CME Group, Inc., contain forum selection provisions similar to those proposed by the Clearing Agencies. See *id.* at 48081, n.75.

³⁹ 15 U.S.C. 78s(b)(2)(C).

⁴⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁴¹ 17 CFR 240.17ad-22(e)(2).

Section 17A(b)(3)(A) of the Exchange Act⁴² requires, among other things, that the Clearing Agencies be so organized and have capacity to be able to comply with the provisions of the Exchange Act and the rules and regulations thereunder. Section 17A(b)(3)(F) of the Exchange Act⁴³ requires, among other things, that the Clearing Agencies' rules must be designed to promote the prompt and accurate clearance and settlement of securities transactions. Based on the Commission's review of the record, and for the reasons described below, the changes described above are consistent Section 17A(b)(3)(A) and (F) of the Exchange Act.

As discussed above, the amendments to the Certificate and By-laws make the Clearing Agencies governance documents consistent with developments in DGCL that enable companies incorporated in Delaware to limit the liability of certain of their officers in narrow circumstances. As discussed in the Notices of Filing, the Clearing Agencies state that such amendments are increasingly common for public companies; that the number of stockholder proposals calling for such amendments have continued to increase since 2012 when the DGCL was amended; and that the majority of these proposals have been approved by wide margins.⁴⁴ The Clearing Agencies state that failing to adopt such amendments could potentially expose Nasdaq to higher litigation expenses and impact its recruitment and retention of officer candidates.⁴⁵ Additionally, updates to Articles VII-XIII clarify officer roles, indemnification limits, emergency by-law provisions, and record-keeping requirements. The proposed amendments to the Certificate and By-laws should help to ensure that the Clearing Agencies are so organized and have the capacity to be able to carry out the purposes of the Exchange Act by staying consistent with DGCL, while also

⁴² 15 U.S.C. 78q-1(b)(3)(A).

⁴³ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁴ *See, e.g.*, BSECC Notice of Filing, *supra* note 3, at 48073.

⁴⁵ *Id.*

promoting the prompt and accurate clearance and settlement of securities transactions by ensuring their governance By-laws are consistent with their Certificate.

Accordingly, the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(A) and (F) of the Exchange Act.⁴⁶

B. Consistency with Rule 17ad-22(e)(2) under the Exchange Act

Rule 17ad-22(e)(2) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things, (1) are clear and transparent, and (2) support the public interest requirements in Section 17A of the Exchange Act.⁴⁷

As described above, the amendments to the Certificate and By-laws make the Clearing Agencies governance documents consistent with developments in DGCL that enable companies incorporated in Delaware to limit the liability of certain of their officers in narrow circumstances. By aligning the governance arrangements in the By-laws with the amendments in the Certificate made as a result in a change to the DGCL, the Proposed Rule Change should provide for governance arrangements that are clear and transparent. Additionally, updates to Articles VII-XIII clarify officer roles, indemnification limits, emergency by-law provisions, and record-keeping requirements should further provide clear and transparent governance arrangements that support the public interest requirements in Section 17A of the Exchange Act.

Accordingly, the Proposed Rule Change is consistent with Rule 17ad-22(e)(2) under the Exchange Act.⁴⁸

IV. SOLICITATION OF COMMENTS ON AMENDMENT NO. 1 TO THE

⁴⁶ *Id.*

⁴⁷ 17 CFR 240.17ad-22(e)(2).

⁴⁸ *Id.*

PROPOSED RULE CHANGE

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include file numbers SR-BSECC-2025-001; SR-SCCP-2025-01 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 numbers SR-BSECC-2025-001; SR-SCCP-2025-01.

This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (<http://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of BSECC. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file numbers SR-BSECC-2025-001; SR-SCCP-2025-01 and should be submitted on or before [INSERT DATE 21 DAYS

AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

V. ACCELERATED APPROVAL OF PROPOSED RULE CHANGE, AS MODIFIED BY AMENDMENT NO. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,⁴⁹ to approve the proposed rule change prior to the 30th day after the date of publication of notice of the filing of Amendment No. 1 in the *Federal Register*. As discussed above, Amendment No. 1 modified the Notices of Filing to correct the statutory basis section describing how the proposed rule changes are consistent with the Act, namely Sections 17A(b)(3)(A)⁵⁰ and 17A(b)(3)(F)⁵¹ and Rule 17ad-22(e)(2) under the Act.

For similar reasons as discussed above, the Commission finds that Amendment No. 1 is consistent with the requirement that the Clearing Agencies' rules be designed to promote the prompt and accurate clearance and settlement of securities transactions under Section 17A(b)(3)(F) of the Exchange Act.⁵² Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act, to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.⁵³

VI. CONCLUSION

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act⁵⁴ and the rules and regulations

⁴⁹ 15 U.S.C. 78s(b)(2).

⁵⁰ 15 U.S.C. 78q-1(b)(3)(A).

⁵¹ 15 U.S.C. 78q-1(b)(3)(F).

⁵² 15 U.S.C. 78q-1(b)(3)(F).

⁵³ 15 U.S.C. 78s(b)(2).

⁵⁴ In approving the Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,⁵⁵ that the proposed rule change (SR-BSECC-2025-001; SR-SCCP-2025-01), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁶

Sherry R. Haywood,

Assistant Secretary.

⁵⁵ 15 U.S.C. 78s(b)(2).

⁵⁶ 17 CFR 200.30-3(a)(12).