

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64356; File No. SR-BSECC-2011-002)

April 27, 2011

Self-Regulatory Organizations; The Boston Stock Exchange Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the By-Laws of its Parent Corporation, The NASDAQ OMX Group, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on April 14, 2011, the Boston Stock Exchange Clearing Corporation (“BSECC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which Items have been prepared primarily by BSECC. BSECC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act² and Rule 19b-4(f)(6)³ thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

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

The proposed rule change relate to amendments to the By-Laws of BSECC’s parent corporation, The NASDAQ OMX Group, Inc. (“NASDAQ OMX”).

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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(f)(6).

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 these statements.⁴

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NASDAQ OMX recently made certain clarifying amendments to its By-Laws.⁵

Specifically, the recently approved NASDAQ OMX rule change: (i) amended the name of the Nominating Committee to the Nominating & Governance Committee; (ii) amended the NASDAQ OMX PHLX, Inc. reference to reflect a recent conversion to a limited liability company; and (iii) clarified By-Law Article IV, Section 4.4 that broker nonvotes are not counted as a vote cast either “for” or “against” a director in an uncontested election.⁶

NASDAQ OMX By-Laws previously provided for a Nominating Committee, which is appointed pursuant to the By-Laws. In addition to the responsibilities listed in By-Law Article IV, Section 4.13(h), the Nominating Committee also conducts certain governance functions such as consulting with the Board of Directors (“Board”) and the management to determine the characteristics, skills, and experience desired for the Board as a whole and for its individual members, overseeing the annual director evaluation, and reviewing the overall effectiveness of the Board. Accordingly, NASDAQ OMX renamed and changed all references to the “Nominating Committee” in the By-Laws, to the “Nominating & Governance Committee” so

⁴ The Commission has modified the text of the summaries prepared by BSECC.

⁵ Securities Exchange Act Release No. 34-64285 (April 8, 2011), 76 FR 21085 (April 14, 2011) (File No. SR-NASDAQ-2011-025) (“Approval Order”). SR-NASDAQ-2011-025 was filed by NASDAQ Stock Market LLC on behalf of NASDAQ OMX to amend the By-Laws of its parent corporation.

⁶ Id.

that the title of the committee accurately reflects all of its current functions, including those that are deemed governance functions. The proposal to rename the Nominating Committee did not change the function of the committee but was intended to clarify the current functions and its governance role with respect to the Board selection process.

Additionally, NASDAQ OMX amended Article 1, Section (o) of NASDAQ OMX's By-Laws to change the reference to "NASDAQ OMX PHLX, Inc." to "NASDAQ OMX PHLX LLC" to reflect a recently filed rule change to convert NASDAQ OMX PHLX from a Delaware corporation to a Delaware limited liability company.⁷

Finally, NASDAQ OMX added the words "and broker nonvotes" to NASDAQ OMX's By-Law Article IV, Section 4.4 to make clear that broker nonvotes will not be counted as votes cast either "for" or "against" that director's election. In its filing to amend NASDAQ OMX's By-Laws, NASDAQ Stock Market LLC noted that NASDAQ OMX's past practice has been to not count a broker nonvote as a vote cast either for or against a director's election.⁸ Accordingly, this change clarifies this practice by codifying it into the By-Laws, especially in light of NASDAQ OMX's recent change to a majority vote standard in the uncontested election of directors.

In 2010, NASDAQ OMX amended its By-Laws to state that in an uncontested election, a majority voting standard would apply to the election of its directors, requiring directors to be elected by the holders of a majority of the votes cast at any meeting for the election of directors

⁷ Securities Exchange Act Release No. 34-62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (File No. SR-Phlx-2010-104).

⁸ Securities Exchange Act Release No. 34-63925 (February 17, 2011), 76 FR 10418 (February 24, 2011) (File No. SR-NASDAQ-2011-025).

at which a quorum is present in an uncontested election.⁹ A plurality standard would still remain in a contested election. While in its filing to amend NASDAQ OMX's By-Laws, NASDAQ Stock Market LLC noted that it has always been NASDAQ OMX's practice to not count broker nonvotes "for" or "against" in director elections, the Commission noted in its Approval Order that the impact of the broker nonvote and how such votes are counted will take on added significance under NASDAQ OMX's newly adopted majority vote standard for director elections. Although in its filing NASDAQ Stock Market LLC stated that under Delaware case law,¹⁰ broker nonvotes are not considered as votes cast for or against a proposal or director nominee, BSECC proposes the change for clarity and transparency purposes.

BSECC believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹¹ in general, and with Sections 6(b)(1) and 6(b)(5) of the Act,¹² in particular, in that the proposal enables BSECC to be so organized as to have the capacity to be able to carry out the purposes of the Act, the rules and regulations thereunder, and self-regulatory organization rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

⁹ Securities Exchange Act Release 34-61786 (April 8, 2010), 75 FR 19436 (April 14, 2010) (File No. SR-NASDAQ-2010-025).

¹⁰ Berlin v. Emerald Partners, 552 A.2d 482 494 (Del Supr. 1988).

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(1),(5).

BSECC believes that changing the name of the Nominating Committee to the Nominating and Governance Committee and amending references to an exchange name to reflect a corporate change to a limited liability company are both clarifying in nature. The changes will ensure that the committee's title accurately reflects its functions and will ensure that the By-Laws accurately and properly reflect an exchange entity name. As discussed above, the amendment that broker nonvotes will not be counted as a vote either "for" or "against" in director elections will codify NASDAQ OMX's past practice, providing clarity and transparency. Accordingly BSECC believes that the amendments are consistent with investor protection and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

BSECC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. BSECC will notify the Commission of any written comments received by BSECC.

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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder because the proposed rule change

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter

does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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:

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 Number SR-BSECC-2011-002 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSECC-2011-002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your time as designated by the Commission. NASDAQ OMX PHLX LLC has satisfied this requirement.

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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 website 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 filings also will be available for inspection and copying at the principal office of BSECC and on BSECC's website at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/pdf/bsecc-filings/2011/SR-BSECC-2011-002.pdf>

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-2011-002 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Cathy H. Ahn
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).