

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67487; File No. SR-BSECC-2012-001)

July 23, 2012

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Notice of Filing of Proposed Rule Change with Respect to the Amendment of the By-Laws of its Parent Corporation, The NASDAQ OMX Group, Inc. (“NASDAQ OMX”)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 11, 2012, Boston Stock Exchange Clearing Corporation (“BSECC” or the “Corporation”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by the Corporation. 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 the Substance of the Proposed Rule Change

The Corporation proposes a rule change with respect to the amendment of the by-laws of its 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, the Corporation 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 Corporation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.<sup>3</sup>

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Commission has modified the text of the summaries prepared by BSECC.

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

NASDAQ OMX is proposing amendments to provisions of its by-laws pertaining to the composition of the Management Compensation Committee of the NASDAQ OMX Board of Directors. Specifically, NASDAQ OMX is amending the compositional requirements of its Management Compensation Committee in Section 4.13 to replace a requirement that the committee be composed of a majority of Non-Industry Directors<sup>4</sup> with a requirement that the

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<sup>4</sup> An “Industry Director” means a Director (excluding any two officers of NASDAQ OMX, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the “Staff Directors”)) who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director’s firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director’s, officer’s, or employee’s professional capacity and constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director’s firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to NASDAQ OMX or any affiliate thereof or to the Financial Industry Regulatory Authority (“FINRA”) or has had any such relationship or provided any such services at any time within the prior three years.

A “Non-Industry Director” means a Director (excluding the Staff Directors) who is (1) a Public Director; (2) an officer, director, or employee of an issuer of securities listed on a national securities exchange operated by any subsidiary of NASDAQ OMX that is a self-regulatory organization; or (3) any other individual who would not be an Industry Director.

A “Public Director” means a Director who has no material business relationship with a broker or dealer, NASDAQ OMX or its affiliates, or FINRA.

number of Non-Industry Directors on the committee equal or exceed the number of Industry Directors. Thus, in the case of a committee composed of four Directors, the current by-law provides that only one Director may be an Industry Director, while the amended by-law would allow up to two Directors to be Industry Directors. The proposed compositional requirement for the committee with regard to the balance between Industry Directors and Non-Industry Directors would be the same as that already provided for in the by-laws with respect to the Executive Committee and the Nominating and Governance Committee, as well as the full Board of Directors.

NASDAQ OMX and the Corporation believe that the change will provide greater flexibility to NASDAQ OMX with regard to populating a committee that includes Directors with relevant expertise and that is not excessively large in relation to the size of the full Board of Directors while continuing to ensure that Directors associated with members of NASDAQ OMX's exchange subsidiaries and other broker-dealers do not exert disproportionate influence of the governance of NASDAQ OMX. As required by NASDAQ Stock Market Rule 5605(d), the committee would continue at all times to be composed solely of Directors who are independent within the meaning of that rule.

The Corporation believes that that the proposed rule change is consistent with provisions of Section 17A of the Act because it will help ensure that the Corporation is so organized and has the capacity to comply with the provisions of the Act and the rules and regulations thereunder.<sup>5</sup> Specifically, the Corporation believes that the change will provide greater flexibility to NASDAQ OMX with regard to populating a committee that includes Directors with relevant expertise and that is not excessively large in relation to the size of the full Board of Directors,

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<sup>5</sup> 15 U.S.C. 78q-1.

while continuing to ensure that Directors associated with members of NASDAQ OMX's exchange subsidiaries and other broker-dealers do not exert disproportionate influence of the governance of NASDAQ OMX.

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

The Corporation 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

Written comments were neither solicited nor 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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the 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:

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](mailto:rule-comments@sec.gov). Please include File Number SR-BSECC-2012-001 on the subject line.

Paper comments:

- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C., 20549-1090.

All submissions should refer to File Number SR-BSECC-2012-001. 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. 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, N.E., Washington, D.C., 20549-1090, 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 Corporation. 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-2012-001 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.<sup>6</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).