

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 the filing also will be available for inspection and copying at the principal office of the CHX. 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-CHX-2014-15 and should be submitted on or before October 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>112</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73144; File No. SR-BSECC-2014-001]

### Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Amended and Restated Certificate of Incorporation and By-Laws of The NASDAQ OMX Group, Inc.

September 19, 2014.

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 September 10, 2014, 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, II and III below, which Items have been prepared by BSECC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency'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 Amended and Restated Certificate of Incorporation (the "Charter") and By-Laws (the "By-Laws") of its parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX" or the "Company"). The proposed amendments will be implemented on a date designated by NASDAQ OMX 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. Clearing Agency'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) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

NASDAQ OMX is proposing to make certain amendments to its Charter and By-Laws.

###### (i) Background

Article Fourth, Paragraph C of NASDAQ OMX's Charter includes a voting limitation that generally prohibits a stockholder from voting shares beneficially owned, directly or indirectly, by such stockholder in excess of 5% of the then-outstanding shares of capital stock of NASDAQ OMX entitled to vote as of the record date in respect of any matter. Pursuant to Article Fourth, Paragraph C(6) of the Charter, NASDAQ OMX's Board may grant exemptions to this limitation prior to the time a stockholder beneficially

owns more than 5% of the outstanding shares of stock entitled to vote on the election of a majority of directors at such time. NASDAQ OMX's Board has never granted an exemption to the 5% voting limitation and has no current plans to do so. However, in the event the Board decides to grant such an exemption in the future, Article Fourth, Paragraph C(6) of the Charter and Section 12.5 of the By-Laws limit the Board's authority to grant the exemption. These provisions, which are intended to be substantively identical, currently contain some language differences. Following discussions with the SEC staff,<sup>3</sup> NASDAQ OMX proposes the amendments described below to the Charter and By-Laws to conform these provisions and remove any ambiguity that may exist because of the current language differences.

###### (ii) Proposed Amendments to Charter

First, unlike the Charter, the By-Laws state that for so long as NASDAQ OMX shall control, directly or indirectly, any self-regulatory subsidiary, a resolution of the Board to approve an exemption for any person under Article Fourth, Paragraph C(6) of the Charter shall not be permitted to become effective until such resolution has been filed with and approved by the SEC under Section 19 of the Act. NASDAQ OMX proposes that this requirement be added to the Charter and that "self-regulatory subsidiary," which is currently not a defined term in the Charter, be defined as any subsidiary of NASDAQ OMX that is a "self-regulatory organization" as defined under Section 3(a)(26) of the Act.<sup>4</sup> At present, this defined term would include NASDAQ, BX and Phlx, which are national securities exchanges, and BSECC and SCCP, which are registered clearing agencies that are both currently dormant.

Second, both the Charter and the By-Laws state that the Board may not approve an exemption to the 5% voting limitation for: (i) a registered broker or dealer or an affiliate thereof or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Act. The By-Laws include a further proviso stating that, for these purposes, an "affiliate" shall not be deemed to include an entity that either owns 10% or less of the equity of a

<sup>3</sup> See Securities Exchange Act Release No. 71353 (January 17, 2014), 79 FR 4209 (January 24, 2014) (SR-BSECC-2013-001, SR-BX-2013-057, SR-NASDAQ-2013-148, SR-Phlx-2013-115, SR-SCCP-2013-01), at note 14.

<sup>4</sup> Under Section 3(a)(26) of the Act, a "self-regulatory organization" is "any national securities exchange, registered securities association, or registered clearing agency . . ." 15 U.S.C. 78c(a)(26).

<sup>112</sup> 17 CFR 200.30-3(a)(12).

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

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

broker or dealer, or receives 1% or less of its consolidated gross revenues from a broker or dealer. This proviso, which is not currently included in the Charter, allows NASDAQ OMX's Board to grant exemptions to the 5% voting limitation for entities that either own 10% or less of the equity of a broker or dealer, or receive 1% or less of their consolidated gross revenues from a broker or dealer. NASDAQ OMX proposes that this proviso be added to the Charter to ensure consistency between the Charter and By-Laws.

Third, both the Charter and By-Laws require the Board to make certain determinations prior to granting an exemption to the 5% voting limitation. Regarding the first of these determinations, the Charter states that the Board must determine that granting such an exemption would not reasonably be expected to diminish the quality of, or public confidence in, NASDAQ OMX or The NASDAQ Stock Market LLC or the other operations of NASDAQ OMX and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public. The By-Laws include similar language, but state that the Board must make this determination with respect to NASDAQ OMX or its self-regulatory-subsidiaries. Because the term "self-regulatory subsidiary" includes The NASDAQ Stock Market LLC but also includes other entities, NASDAQ OMX proposes that the provisions be made fully consistent by amending the Charter to refer to NASDAQ OMX or the self-regulatory subsidiaries, and to define the term "self-regulatory subsidiary" as described above.

Fourth, unlike the Charter, the By-Laws further provide that prior to granting an exemption from the 5% voting limitation, the Board must also determine that granting the exemption would promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), assure the safeguarding of securities and funds in the custody or control of the self-regulatory subsidiaries that are clearing agencies or securities and funds for which they are responsible, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. NASDAQ OMX proposes that this language be added to the Charter.

Finally, NASDAQ OMX proposes that Article Fourth, Paragraph C(6) of the Charter be amended to correct a cross-reference to subparagraph 6(b), which no longer exists.

(iii) Proposed Amendments to the By-Laws

NASDAQ OMX also proposes amendments to NASDAQ OMX's By-Laws to further conform the Charter and By-Law provisions discussed above. Specifically, the proposed amendment to Article I(s) revises the definition of "self-regulatory subsidiary" in the By-Laws to refer to any subsidiary of NASDAQ OMX that is a self-regulatory organization as defined under Section 3(a)(26) of the Act, rather than list specific subsidiaries that would fall within this category. This revised definition, which is the same definition of "self-regulatory subsidiary" proposed for purposes of the Charter as described above, will capture NASDAQ OMX's current self-regulatory subsidiaries as well as any subsidiaries that in the future meet the definition of "self-regulatory organization" under the Act. Consequently, such future self-regulatory subsidiaries will automatically be subject to the By-Law provisions relating to these subsidiaries without NASDAQ OMX having to take formal action to amend the By-Laws to include them.

The proposed By-Law amendments also include the correction of a typographical error in Article I and minor edits to Section 12.5 to conform the language regarding the 5% voting limitation to the language in the analogous provision of the Charter.

2. Statutory Basis

BSECC believes that its proposal is consistent with Section 17A(b)(3)(C) of the Act,<sup>5</sup> 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 NASDAQ OMX, rather than BSECC, BSECC is indirectly owned by NASDAQ OMX, and therefore, NASDAQ OMX's stockholders have an indirect stake in BSECC. In addition, the participants in BSECC, to the extent any exist, could purchase stock in NASDAQ OMX in the open market, just like any other stockholder. The proposals ensure that NASDAQ OMX stockholders have clarity about the existing voting limitation in NASDAQ OMX's Charter and By-Laws. As a result, BSECC believes that the proposals assure a fair

representation of NASDAQ OMX's stockholders in the selection of directors and administration of NASDAQ OMX's affairs, as well as the affairs of BSECC.

Specifically, NASDAQ OMX is proposing changes to its Charter and By-Laws to conform the provisions in each document relating to the procedures by which NASDAQ OMX's Board may grant an exemption to the prohibition on any NASDAQ OMX stockholder voting shares in excess of 5% of the Company's then-outstanding shares of capital stock. BSECC believes that the changes will eliminate confusion that may exist because of the current language differences between the two provisions. In addition, NASDAQ OMX is proposing to define "self-regulatory subsidiary" with reference to a definition in the Act. This will ensure that any NASDAQ OMX subsidiary that meets the definition of "self-regulatory organization" in the Act will be subject to the Charter and By-Law provisions relating to self-regulatory subsidiaries. Finally, the remaining changes are clarifying in nature, and they protect stockholders by making NASDAQ OMX's governance documents clearer and easier to understand.

(B) Clearing Agency's Statement on Burden on Competition

Because the proposed rule change relates to the governance of NASDAQ OMX 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) Clearing Agency'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 (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 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.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(C).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-BSECC-2014-001 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-2014-001. 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 the filing also will be available for inspection and copying at the principal office 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-2014-001 and should be submitted on or before October 16, 2014.

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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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73148; File No. SR-ISEGemini-2014-09]

#### Self-Regulatory Organizations; ISE Gemini, LLC; Order Approving Proposed Rule Change Related to Market Maker Risk Parameters

September 19, 2014.

##### I. Introduction

On March 10, 2014, the ISE Gemini, LLC (the "Exchange" or "ISE Gemini") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend ISE Gemini Rule 804 to mitigate market maker risk by adopting an Exchange-provided risk management functionality. The proposed rule change was published for comment in the **Federal Register** on March 26, 2014.<sup>3</sup> The Commission received no comments on the proposal. On May 7, 2014, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On June 24, 2014, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> In response to the Order

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

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

<sup>3</sup> See Securities Exchange Act Release No. 71758 (March 20, 2014), 79 FR 16846 (March 26, 2014) (SR-ISEGemini-2014-09) ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 72118, 79 FR 27355 (May 13, 2014). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it would have sufficient time to consider the proposed rule change. Accordingly, the Commission designated June 24, 2014, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>6</sup> See Securities Exchange Act Release No. 72454, 79 FR 36854 (Jun. 30, 2014) ("Order Instituting Proceedings"). In the Order Instituting Proceedings, the Commission noted, among other things, that questions remain as to whether the Exchange's proposal is consistent with the requirements of

Instituting Proceedings, the Commission received five comment letters on the proposal.<sup>7</sup> This order approves the proposed rule change.

##### II. Description of the Proposal

The Exchange proposes to amend ISE Gemini Rule 804 to enhance its risk management offering for market maker quotes.<sup>8</sup>

Currently, there are four parameters that can be set by market makers on a class-by-class basis. These parameters are available for market maker quotes in single options series and in complex instruments on the complex order book. Market makers establish a time frame during which the system calculates: (1) The number of contracts executed by the market maker in an options class; (2) the percentage of the total size of the market maker's quotes in the class that has been executed; (3) the absolute value of the net between contracts bought and sold in an options class, and (4) the absolute value of the net between (a) calls purchased plus puts sold, and (b) calls sold plus puts purchased. Once the limits for each of the four parameters are exceeded within the prescribed time frame, the market maker's quotes in all series of that class are automatically removed or curtailed. Additionally, ISE Gemini's rules provide that if a specified number of curtailment events are exceeded within the prescribed time period, the market maker quotes in all classes will be automatically removed from ISE Gemini's trading system.<sup>9</sup> The Exchange

Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and a national market system, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Additionally, the Commission questioned whether the proposal is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

<sup>7</sup> See Letters to the Commission from Andrew Killion, Chief Executive Officer, Akuna Securities LLC, dated July 24, 2014 ("Akuna Letter"); Brent Hippert, President/CCO, Hardcastle Trading USA LLC, dated July 28, 2014 ("Hardcastle Letter"); John Kinahan, Chief Executive Officer, Group One Trading, L.P., dated July 29, 2014 ("Group One Letter"); Sebastiaan Koeling, Chief Executive Officer, Optiver US LLC, dated July 29, 2014 ("Optiver Letter"); and Andrew Stevens, General Counsel, IMC Chicago, LLC d/b/a IMC Financial Markets, dated August 18, 2014 ("IMC Letter").

<sup>8</sup> For a more complete description of the proposal, see Notice, *supra* note 3.

<sup>9</sup> See Securities Exchange Act Release Nos. 70644 (October 9, 2013), 78 FR 62785 (October 22, 2013) (SR-Topaz-2013-06) and 71447 (January 30, 2014), 79 FR 6956 (February 5, 2014) (SR-Topaz-2014-04).

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