

*Required fields are shown with yellow backgrounds and asterisks.*

Filing by NASDAQ Stock Market  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<b>Initial *</b>	<b>Amendment *</b>	<b>Withdrawal</b>	<b>Section 19(b)(2) *</b>	<b>Section 19(b)(3)(A) *</b>	<b>Section 19(b)(3)(B) *</b>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
<b>Pilot</b>	<b>Extension of Time Period for Commission Action *</b>	<b>Date Expires *</b>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

<b>Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010</b>	<b>Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934</b>
<b>Section 806(e)(1) *</b>	<b>Section 806(e)(2) *</b>
<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 3C(b)(2) *</b>	
<input type="checkbox"/>	

<b>Exhibit 2 Sent As Paper Document</b>	<b>Exhibit 3 Sent As Paper Document</b>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \*  Last Name \*

Title \*

E-mail \*

Telephone \*  Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date

By

(Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”), 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> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a 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. 1 to SR-NASDAQ-2015-160 amends and replaces the original filing in its entirety.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Nasdaq’s Board of Directors (the “Board”) approved the proposed rule change on August 5, 2015 and November 21, 2015. The proposed amendments to the By-Laws do not require approval by the Company’s stockholders.<sup>3</sup>

As provided in the Charter and By-Laws, proposed amendments to the By-Laws are to be reviewed by the Board of Directors of each self-regulatory subsidiary of

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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> See Article Eighth, Paragraph A of Nasdaq’s Amended and Restated Certificate of Incorporation (the “Charter”) and Section 11.2 of the By-Laws, which provide that the By-Laws may be amended by Nasdaq’s Board without stockholder approval.

Nasdaq, and if any such proposed amendment must, under Section 19 of the Act and the rules promulgated thereunder, be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.<sup>4</sup> Accordingly, the Boards of Directors of NASDAQ OMX BX, Inc., the Exchange and NASDAQ OMX PHLX LLC approved the proposed rule change on December 1, 2015, and the Boards of Directors of the Boston Stock Exchange Clearing Corporation and the Stock Clearing Corporation of Philadelphia approved the proposed rule change on December 10, 2015. Each such board has determined that the proposed rule change should be filed with the Commission.

No other action is necessary for the filing of the rule change. The proposed amendments will be implemented on a date designated by the Company following approval by the Commission.

Questions and comments on the proposed rule change may be directed to Erika J. Moore, Senior Associate General Counsel, Nasdaq, Inc., at +1 301 978 8490.

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

a. Purpose

The Company is proposing amendments to certain provisions of its By-Laws that relate to Director<sup>5</sup> classifications.<sup>6</sup> Specifically, the Company proposes to revise Section

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<sup>4</sup> See Article Eighth, Paragraph B of the Charter and Section 11.3 of the By-Laws.

<sup>5</sup> "Director" means a member of the Company's Board of Directors. See Article I(j) of the By-Laws.

<sup>6</sup> 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.

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 Directors;<sup>7</sup> (ii) Non-Industry Directors,<sup>8</sup> which are further

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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.

<sup>7</sup> "Industry Director" or "Industry committee member" means a Director (excluding any Staff Directors) or committee member who (1) is, or within the last year was, or has an immediate family member who is, or within the last year was, a member of a Self-Regulatory Subsidiary; (2) is, or within the last year was, employed by a member or a member organization of a Self-Regulatory Subsidiary; (3) has an immediate family member who is, or within the last year was, an executive officer of a member or a member organization of a Self-Regulatory Subsidiary; (4) has within the last year received from any member or member organization of a Self-Regulatory Subsidiary more than \$100,000 per year in direct compensation, or received from such members or member organizations in the aggregate an amount of direct compensation that in any one year is more than 10 percent of the Director's annual gross compensation for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); or (5) is affiliated, directly or indirectly, with a member or member organization of a Self-Regulatory Subsidiary. See Article I(m) of the By-Laws. A "Self-Regulatory Subsidiary" is any subsidiary of the Company that is a self-regulatory organization as defined under Section 3(a)(26) of the Act. See Article I(s) of the By-Laws. Currently, the term "Self-Regulatory Subsidiary" encompasses NASDAQ OMX BX, Inc. ("BX"), the Exchange, NASDAQ OMX PHLX LLC ("Phlx"), Boston Stock Exchange Clearing Corporation ("BSECC") and the Stock Clearing Corporation of Philadelphia ("SCCP").

<sup>8</sup> "Non-Industry Director" or "Non-Industry committee member" means a Director (excluding any Staff Director) or committee member who is (1) a Public Director or Public committee member; (2) an Issuer Director or Issuer committee member;

classified as either Issuer Directors<sup>9</sup> or Public Directors;<sup>10</sup> or (iii) Staff Directors.<sup>11</sup>

Section 4.3 of the By-Laws includes composition requirements for the Board based on these classifications. Specifically, the number of Non-Industry Directors on the Board must equal or exceed the number of Industry Directors. In addition, the Board must include at least two Public Directors and at least one, but no more than two, Issuer Directors. Finally, the Board shall include no more than one Staff Director, unless the Board consists of ten or more Directors, in which case, the Board shall include no more than two Staff Directors.

The Company proposes to amend Section 4.3 of the By-Laws to state that the Board may, rather than shall, include one, but no more than two, Issuer Directors. With this change, the Company intends to give itself the option, but not the requirement, to include one or two Issuer Directors on its Board. Issuer Directors bring to the Board the perspective of an officer or employee of companies listed on The NASDAQ Stock

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or (3) any other individual who would not be an Industry Director or Industry committee member. See Article I(q) of the By-Laws.

<sup>9</sup> “Issuer Director” or “Issuer committee member” means a Director (excluding any Staff Director) or committee member who is an officer or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary, excluding any Director or committee member who is a director of such an issuer but is not also an officer or employee of such an issuer. See Article I(o) of the By-Laws.

<sup>10</sup> “Public Director” or “Public committee member” means a Director or committee member who (1) is not an Industry Director or Industry committee member, (2) is not an Issuer Director or Issuer committee member, and (3) has no material business relationship with a member or member organization of a Self-Regulatory Subsidiary, the Company or its affiliates, or the Financial Industry Regulatory Authority, Inc. and its affiliates. See Article I(r) of the By-Laws.

<sup>11</sup> “Staff Director” means an officer of the Company that is serving as a Director. See Article I(t) of the By-Laws.

Market. While the Company highly values the views of its listed companies, it does not believe that it is strictly necessary to have an Issuer Director on its own Board to represent those views. Within the overall governance structure of the Company and its subsidiaries, issues relating to listed companies are generally the province of NASDAQ and its Board of Directors, rather than the Company and its Board of Directors. The Company is a holding company for over 100 subsidiaries that provide both regulated and unregulated products and services across the globe, while NASDAQ is the Company subsidiary that, among other things, provides listing services on The NASDAQ Stock Market. The Company's Board generally focuses on the overall strategic direction of the Company, while NASDAQ's Board generally focuses on issues relevant specifically to The NASDAQ Stock Market, including issues affecting listed companies. Furthermore, NASDAQ's Board includes issuer representation, as required by its By-Laws.<sup>12</sup> Finally, if the Company's Board ever does address issues relating to listed companies, its Directors are experienced and capable enough to handle those issues without specifically having an Issuer Director on the Board.<sup>13</sup>

Therefore, it is not strictly necessary to have an officer or employee of a listed company on the Company's Board of Directors, and accordingly, the Company proposes to amend its By-Laws to give itself the option, but not the requirement, to include an Issuer Director on its Board.

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<sup>12</sup> See Article III, Section 2 of NASDAQ's By-Laws.

<sup>13</sup> Currently, three of the Company's eleven Directors are also directors of companies listed on The NASDAQ Stock Market or another national securities exchange. These Directors do not qualify as Issuer Directors because they are not specifically officers or employees of listed companies; however, as directors of such companies, they are familiar with corporate governance topics and other issues confronted by listed companies.

ii. Section 4.7

As required by Section 4.13(h)(iii) of the By-Laws, the Company's Corporate Secretary certifies to the Nominating & Governance Committee of the Company's Board on an annual basis the classification of each Director following a review of information relating to the classifications collected from the Directors. This certification usually occurs in connection with the Company's annual meeting of stockholders, and at the same time, Directors are elected to serve on various Board committees, all of which have compositional requirements relating to the classifications.<sup>14</sup> However, Directors' classifications may change from time to time following the annual meeting due to various changes in personal circumstances (e.g., a retirement or job change). Directors are required to report to the Corporate Secretary any change in the information used as the basis of their classification.<sup>15</sup>

Section 4.7 of the By-Laws addresses potential disqualifications of Directors due to a classification change. Under this section, the term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) the Director no longer satisfies the classification for which the Director was elected; and (b) the Director's continued service would violate the Board compositional requirements. Section 4.7 also states that if a Director position becomes vacant because of such disqualification, and the remaining term of office is not more than six months, the By-Laws do not require an immediate replacement.

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<sup>14</sup> See Section 4.13 of the By-Laws.

<sup>15</sup> See Section 4.13(h)(iii) of the By-Laws.



The Company has observed two potential weaknesses relating to the disqualification procedures as currently drafted. First, Section 4.7 of the By-Laws does not address a situation where a Director's classification has changed, but the Board believes that it is in the best interests of the Company and its stockholders for such Director to remain on the Board. Second, the By-Laws could be read to contemplate that the Company must immediately cure any deficiencies in Board or committee composition that may occur because of a change in a Director or committee member's classification because otherwise the Board would not meet all of the compositional requirements set forth in Section 4.3 of the By-Laws.<sup>16</sup> It 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,

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<sup>16</sup> But see Kurz v. Holbrook, 989 A.2d 140, 156-57 (Del.Ch. 2010) (holding that a by-law cannot disqualify a director who was duly qualified at the time of election during the middle of his or her term), rev'd on other grounds sub nom Crown EMAK P'ners, LLC v. Kurz, 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).

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.<sup>17</sup> 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

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<sup>17</sup> 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.

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. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>19</sup> 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 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.<sup>20</sup>

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<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> See note 13, supra.

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. 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. The Exchange believes that this change will protect investors and the public interest by clarifying the disqualification provisions in the Company's By-Laws, which are currently ambiguous. In addition, the change will prevent the significant disruption that would occur if the Board were forced to replace an otherwise valuable director between annual meetings.

4. 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.

5. 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.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_; File No. SR-NASDAQ-2015-160)

December \_\_, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend the By-Laws of Nasdaq, Inc.

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 December 21, 2015, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) 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 the Exchange. 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

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. 1 to SR-NASDAQ-2015-160 amends and replaces the original filing in its entirety. 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 Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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<sup>3</sup> classifications.<sup>4</sup> 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

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<sup>3</sup> "Director" means a member of the Company's Board of Directors. See Article I(j) of the By-Laws.

<sup>4</sup> 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.

Currently, the Company's By-Laws require that all of the Company's Directors be classified as: (i) Industry Directors;<sup>5</sup> (ii) Non-Industry Directors,<sup>6</sup> which are further classified as either Issuer Directors<sup>7</sup> or Public Directors;<sup>8</sup> or (iii) Staff Directors.<sup>9</sup>

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<sup>5</sup> "Industry Director" or "Industry committee member" means a Director (excluding any Staff Directors) or committee member who (1) is, or within the last year was, or has an immediate family member who is, or within the last year was, a member of a Self-Regulatory Subsidiary; (2) is, or within the last year was, employed by a member or a member organization of a Self-Regulatory Subsidiary; (3) has an immediate family member who is, or within the last year was, an executive officer of a member or a member organization of a Self-Regulatory Subsidiary; (4) has within the last year received from any member or member organization of a Self-Regulatory Subsidiary more than \$100,000 per year in direct compensation, or received from such members or member organizations in the aggregate an amount of direct compensation that in any one year is more than 10 percent of the Director's annual gross compensation for such year, excluding in each case director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service); or (5) is affiliated, directly or indirectly, with a member or member organization of a Self-Regulatory Subsidiary. See Article I(m) of the By-Laws. A "Self-Regulatory Subsidiary" is any subsidiary of the Company that is a self-regulatory organization as defined under Section 3(a)(26) of the Act. See Article I(s) of the By-Laws. Currently, the term "Self-Regulatory Subsidiary" encompasses NASDAQ OMX BX, Inc. ("BX"), the Exchange, NASDAQ OMX PHLX LLC ("Phlx"), Boston Stock Exchange Clearing Corporation ("BSECC") and the Stock Clearing Corporation of Philadelphia ("SCCP").

<sup>6</sup> "Non-Industry Director" or "Non-Industry committee member" means a Director (excluding any Staff Director) or committee member who is (1) a Public Director or Public committee member; (2) an Issuer Director or Issuer committee member; or (3) any other individual who would not be an Industry Director or Industry committee member. See Article I(q) of the By-Laws.

<sup>7</sup> "Issuer Director" or "Issuer committee member" means a Director (excluding any Staff Director) or committee member who is an officer or employee of an issuer of securities listed on a national securities exchange operated by any Self-Regulatory Subsidiary, excluding any Director or committee member who is a director of such an issuer but is not also an officer or employee of such an issuer. See Article I(o) of the By-Laws.

<sup>8</sup> "Public Director" or "Public committee member" means a Director or committee member who (1) is not an Industry Director or Industry committee member, (2) is not an Issuer Director or Issuer committee member, and (3) has no material business relationship with a member or member organization of a Self-



Section 4.3 of the By-Laws includes composition requirements for the Board based on these classifications. Specifically, the number of Non-Industry Directors on the Board must equal or exceed the number of Industry Directors. In addition, the Board must include at least two Public Directors and at least one, but no more than two, Issuer Directors. Finally, the Board shall include no more than one Staff Director, unless the Board consists of ten or more Directors, in which case, the Board shall include no more than two Staff Directors.

The Company proposes to amend Section 4.3 of the By-Laws to state that the Board may, rather than shall, include one, but no more than two, Issuer Directors. With this change, the Company intends to give itself the option, but not the requirement, to include one or two Issuer Directors on its Board. Issuer Directors bring to the Board the perspective of an officer or employee of companies listed on The NASDAQ Stock Market. While the Company highly values the views of its listed companies, it does not believe that it is strictly necessary to have an Issuer Director on its own Board to represent those views. Within the overall governance structure of the Company and its subsidiaries, issues relating to listed companies are generally the province of NASDAQ and its Board of Directors, rather than the Company and its Board of Directors. The Company is a holding company for over 100 subsidiaries that provide both regulated and unregulated products and services across the globe, while NASDAQ is the Company subsidiary that, among other things, provides listing services on The NASDAQ Stock

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Regulatory Subsidiary, the Company or its affiliates, or the Financial Industry Regulatory Authority, Inc. and its affiliates. See Article I(r) of the By-Laws.

<sup>9</sup> “Staff Director” means an officer of the Company that is serving as a Director. See Article I(t) of the By-Laws.

Market. The Company's Board generally focuses on the overall strategic direction of the Company, while NASDAQ's Board generally focuses on issues relevant specifically to The NASDAQ Stock Market, including issues affecting listed companies. Furthermore, NASDAQ's Board includes issuer representation, as required by its By-Laws.<sup>10</sup> Finally, if the Company's Board ever does address issues relating to listed companies, its Directors are experienced and capable enough to handle those issues without specifically having an Issuer Director on the Board.<sup>11</sup>

Therefore, it is not strictly necessary to have an officer or employee of a listed company on the Company's Board of Directors, and accordingly, the Company proposes to amend its By-Laws to give itself the option, but not the requirement, to include an Issuer Director on its Board.

ii. Section 4.7

As required by Section 4.13(h)(iii) of the By-Laws, the Company's Corporate Secretary certifies to the Nominating & Governance Committee of the Company's Board on an annual basis the classification of each Director following a review of information relating to the classifications collected from the Directors. This certification usually occurs in connection with the Company's annual meeting of stockholders, and at the same time, Directors are elected to serve on various Board committees, all of which have

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<sup>10</sup> See Article III, Section 2 of NASDAQ's By-Laws.

<sup>11</sup> Currently, three of the Company's eleven Directors are also directors of companies listed on The NASDAQ Stock Market or another national securities exchange. These Directors do not qualify as Issuer Directors because they are not specifically officers or employees of listed companies; however, as directors of such companies, they are familiar with corporate governance topics and other issues confronted by listed companies.

compositional requirements relating to the classifications.<sup>12</sup> However, Directors' classifications may change from time to time following the annual meeting due to various changes in personal circumstances (e.g., a retirement or job change). Directors are required to report to the Corporate Secretary any change in the information used as the basis of their classification.<sup>13</sup>

Section 4.7 of the By-Laws addresses potential disqualifications of Directors due to a classification change. Under this section, the term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) the Director no longer satisfies the classification for which the Director was elected; and (b) the Director's continued service would violate the Board compositional requirements. Section 4.7 also states that if a Director position becomes vacant because of such disqualification, and the remaining term of office is not more than six months, the By-Laws do not require an immediate replacement.

The Company has observed two potential weaknesses relating to the disqualification procedures as currently drafted. First, Section 4.7 of the By-Laws does not address a situation where a Director's classification has changed, but the Board believes that it is in the best interests of the Company and its stockholders for such Director to remain on the Board. Second, the By-Laws could be read to contemplate that the Company must immediately cure any deficiencies in Board or committee composition that may occur because of a change in a Director or committee member's classification because otherwise the Board would not meet all of the compositional requirements set

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<sup>12</sup> See Section 4.13 of the By-Laws.

<sup>13</sup> See Section 4.13(h)(iii) of the By-Laws.

forth in Section 4.3 of the By-Laws.<sup>14</sup> It 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

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<sup>14</sup> But see Kurz v. Holbrook, 989 A.2d 140, 156-57 (Del.Ch. 2010) (holding that a by-law cannot disqualify a director who was duly qualified at the time of election during the middle of his or her term), rev'd on other grounds sub nom Crown EMAK P'ners, LLC v. Kurz, 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).

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.<sup>15</sup> 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,<sup>16</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>17</sup> in particular,

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<sup>15</sup> 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.

<sup>16</sup> 15 U.S.C. 78f(b).

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 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.<sup>18</sup>

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. 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. The Exchange believes that this change will protect investors and the public interest by clarifying the disqualification provisions in the Company's By-

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<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> See note 11, supra.

Laws, which are currently ambiguous. In addition, the change will prevent the significant disruption that would occur if the Board were forced to replace an otherwise valuable director between annual meetings.

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 (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 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:

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-NASDAQ-2015-160 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2015-160. 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 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 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 the filing also will be available for inspection and copying at the principal office 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-NASDAQ-2015-160 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>19</sup>

Robert W. Errett  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

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**BY-LAWS OF NASDAQ, INC.**

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**Sec. 4.3 Qualifications**

Directors need not be stockholders of the Corporation. The number of Non-Industry Directors shall equal or exceed the number of Industry Directors. The Board shall include at least two Public Directors. The Board [shall]may include at least one, but no more than two, Issuer Directors. The Board shall include no more than one Staff Director, unless the Board consists of ten or more Directors. In such case, the Board shall include no more than two Staff Directors.

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**Sec. 4.7 Disqualification**

The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) the Director no longer satisfies the classification for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4.3 by virtue of such vacancy. Notwithstanding the foregoing, the Board may elect to defer the determinations set forth in clauses (a) and (b) above with respect to a Director until the next annual meeting of stockholders, and, if the Board makes such an election, neither the Board nor any committee shall be deemed to be in violation of Section 4.3 or 4.13 of these By-Laws as a result of the deferral.

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