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–CBOE–2025–075. 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 website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2025–075 and should be submitted on or before October 24, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104156; File No. SR–BSECC–2025–001]

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 Its Parent Corporation, Nasdaq, Inc.

September 30, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2025, 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. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BSECC proposes to amend the Amended and Restated Certificate of Incorporation (''Certificate'') and By-Laws (''By-Laws'') of its parent corporation, Nasdaq, Inc. (''NASDAQ'' or ''Corporation''). The proposed changes would align the Certificate with certain amendments to the Delaware General Corporation Law as well as update the By-Laws to reflect recent changes in law and best practices, as discussed below.

The text of the proposed rule change is available on BSECC's website at *https://listingcenter.nasdaq.com/rulebook/bsecc/rulefilings,* and at the principal office of BSECC.

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

1. Purpose

BSECC is proposing to update the Certificate to reflect certain amendments to the Delaware General Corporation Law. BSECC is also proposing to update the By-Laws to reflect recent changes in law and best practices as discussed below.

(a) Proposed Amendments to the Certificate

(1) Background

On April 23, 2025, NASDAQ's Board of Directors approved proposed amendments to the Certificate to provide for limited officer exculpation. On June 11, 2025, NASDAQ held its Annual Meeting of Stockholders, during which its stockholders considered and approved the Certificate amendments. In 2022, Delaware amended the Delaware General Corporation Law to enable companies incorporated in Delaware, such as NASDAQ, to limit the liability of certain of their officers in narrow circumstances. This change was made to address situations where directors would be dismissed from litigation, but the officers, who were not exculpated, had to continue in the litigation to show their actions were not grossly negligent. Generally, this issue arises in the mergers and acquisitions context and often relates to claims that a particular disclosure document was deficient.

The Certificate amendment would exculpate covered officers from monetary liability for breach of the duty of care in a manner similar to that already permitted for directors. However, it would not exculpate such officers in connection with derivative actions. Failing to adopt the Certificate amendment could potentially expose the Company to higher litigation expenses associated with lawsuits, regardless of merit, and/or impact the Company's recruitment and retention of exceptional officer candidates who conclude that the potential exposure to liabilities, costs of defense, and other risks of proceedings exceed the benefits of serving as one of the Company's officers. BSECC notes that amendments providing for officer exculpation are increasingly common for public companies, and that the number of shareholder proposals calling for such amendments—the majority of which have been approved by wide margins—have continued to increase since 2022 when the Delaware law was passed.[3]

Under NASDAQ'S Certificate and By-Laws, BSECC must determine whether proposed amendments to the Certificate must be filed with the Commission prior to taking effect. On April 30, 2025, the Board of BSECC determined that the proposed amendments to the Certificate must be filed with the Commission.

(2) Proposed Amendments

To effect the changes discussed above, BSECC proposes to amend Article Sixth of NASDAQ's Amended and Restated Certificate of Incorporation as follows. Paragraph A of Article Sixth of the Certificate provides that ''[a] director of Nasdaq shall not be liable to Nasdaq or its stockholders for monetary damages for breach of fiduciary duty as a

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See, e.g.,* Andrew J. Noreuil and Andrew J. Stanger, *Developments and Trends in Delaware Officer Exculpation Charter Amendments,* Harv. L. Sch. F. On Corp. Governance (June 14, 2024), *https://corpgov.law.harvard.edu/2024/06/14/developments-and-trends-in-delaware-officer-exculpation-charter-amendments/;* Megan W. Shaner, *Understanding Officer Exculpation Under the MBCA Amendments,* Bus. L. Today (Nov. 19, 2024) *https://businesslawtoday.org/2024/11/understanding-officer-exculpation-mbca-amendments/.*

director, except to the extent that such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended.'' Paragraph B of Article Sixth provides that ''[a]ny repeal or modification of paragraph A shall not adversely affect any right or protection of a director of Nasdaq existing hereunder with respect to any act or omission occurring prior to such repeal or modification.'' In each of these provisions, BSECC proposes to add, after each instance of the word ''director,'' the words ''or officer.'' [4]

BSECC believes the proposed changes to paragraphs A and B of Article Sixth of the Certificate would update the Certificate to reflect amendments to the Delaware General Corporation Law [5] that enable companies incorporated in Delaware, such as NASDAQ, to limit the liability of certain of their officers in narrow circumstances, as discussed above.

(b) Proposed Amendments to the By-Laws

(1) Background

On April 23, 2025, NASDAQ's Board of Directors approved proposed amendments to the By-Laws to reflect changes in law and best practices that have occurred since the most recent amendments to the By-Laws in 2016. As discussed above, under NASDAQ's Certificate and By-Laws, BSECC must determine whether proposed amendments to the By-Laws must be filed with the Commission prior to taking effect. On April 30, 2025, BSECC determined that the proposed amendments to the By-Laws must be filed with the Commission.

(2) Proposed Amendments

To effect the changes discussed above, BSECC proposes to amend the By-Laws as follows.

(i) Article III Meetings of Stockholders

Section 3.1(b) of Article III of the By-Laws sets forth the requirements for a stockholder's notice to NASDAQ of nominations or other business to be considered at an annual meeting. Section 3.1(b)(i) of the By-Laws currently sets forth the information that a stockholder must provide to NASDAQ about each person whom the stockholder proposes to nominate for election as a director. Section 3.1(b)(i) of the By-Laws provides in part that the Corporation may require any proposed nominee to furnish such other information it may reasonably require to determine the eligibility of such proposed nominee to serve as director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack of independence, of such proposed nominee.[6] BSECC proposes to amend Section 3.1(b)(i) to narrow the scope of information that may be requested under this provision. Specifically, BSECC proposes to provide that the Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine whether the-proposed nominee is qualified under the Restated Certificate of Incorporation, the By-Laws, the rules and regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation to serve as a director and/or independent director of the Corporation.[7] BSECC believes that the proposed changes address concerns that the current provision is unnecessarily open-ended by limiting the information that may be requested to information on the nominee's qualifications to serve as director and/or independent director of the Corporation. BSECC also proposes certain clarifying changes to Section 3.1(b)(i) of the By-Laws. Specifically, BSECC proposes to insert, in its first full sentence, the word ''Corporation's'' and the words ''of such Proposing Person and in the accompanying proxy card.'' [8]

BSECC believes these proposed non-substantive changes would facilitate the application of this provision by rendering it more specific and clearer to understand.

Section 3.1(b) of the By-Laws sets forth requirements for notices from a Proposing Person [9] to NASDAQ regarding nominations or other business to be considered at an annual meeting. Section 3.1(b)(iii) of the By-Laws sets out the information required to be provided with respect to each Proposing Person. Information required to be provided under current Section 3.1(b)(iii)(C) includes ''a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing.'' [10] BSECC proposes to amend Section 3.1(b)(iii)(C) to delete the reference to others ''acting in concert with any of the foregoing.'' [11] BSECC believes this proposed change is appropriate to conform the By-Laws to current practices because the ''acting in concert'' language has been challenged by plaintiffs or otherwise used in search of potential litigation targets. BSECC thus believes it is appropriate to delete such language from the advance notice requirements under this section of the By-Laws.[12]

Section 3.1(b)(iii)(I) requires that a Proposing Person describe any significant equity interest or any Synthetic Equity Interest or Short Interest in any principal competitor of the Corporation held by such Proposing Person. BSECC proposes to add a parenthetical stating the term ''principal

[4] *See* proposed Article Sixth of the Certificate.

[5] *See* 8 Del. C. Section 102(b)(7).

[6] *See* Section 3.1(b)(1) of the By-Laws. As discussed below, BSECC is also proposing a non-substantive change to Section 3.1(a) of the By-Laws to delete the term ''shareholder'' and substitute therefor the word ''stockholder'' to more closely track established terminology of the By-Laws and thus make them clearer and easier to understand. *See* proposed Section 3.1(a) of the By-Laws.

[7] To effect these changes, BSECC proposes to delete, from the final sentence of Section 3.1(b)(i) the following: (1) the romanette (i); (2) the words ''eligibility of such''; and (3) the phrase ''or (ii) that could be material to a reasonable stockholder's understanding of the independence, or lack of independence, of such proposed nominee.'' Further, BSECC proposes to amend the final sentence of Section 3.1(b)(i) of the By-Laws as follows: (1) insert, immediately after the words ''to determine'' the word ''whether''; (2) insert, immediately after ''proposed nominee, the words ''is qualified under the Restated Certificate of Incorporation, these By-Laws, the rules and regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation''; and (3) insert, immediately after the words ''to serve as a director'' the phrase ''and/or independent director.'' *See* proposed Section 3.1(b)(i) of the By-Laws. As discussed below, BSECC is also proposing a non-substantive change to Section 3.1(a) of the By-Laws to delete therefrom the word ''shareholder'' and substitute therefor the word ''stockholder.'' *See* proposed Section 3.1(a) of the By-Laws.

[8] *See* proposed Section 3.1(b)(i) of the By-Laws. BSECC also proposes a non-substantive change to Section 3.1(b)(i) to replace the term ''Requesting Person'' with ''Proposing Person'' as that term and not ''Requesting Person,'' is defined in the Section 3.1(c) of the By-Laws.

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

[10] *See* Section 3.1(b)(iii)(C) of the By-Laws.

[11] *See* proposed Section 3.1(b)(iii)(C) of the By-Laws. BSECC is also proposing conforming changes to express ''others'' in the singular ''other'' and to add, immediately thereafter, the word ''person.''

[12] As proposed, Section 3.1(b)(iii)(C) would require the Proposing Person to describe ''any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any other person.'' *See* proposed Section 3.1(b)(iii)(C) of the By-Laws.

competitor'' as used in this subsection shall be ''as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914.'' [13] BSECC believes that the proposed change would address a textual ambiguity in this subsection by providing greater clarity with respect to the scope of the term ''principal competitor,'' which the current subsection does not define.

Section 3.1(b)(iii)(J) further requires a Proposing Person to describe any direct or indirect interest of such Proposing Person in any contract with the Corporation, any affiliate of the Corporation, or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement.[14] BSECC proposes adding two parentheticals to this subsection. The first parenthetical would state that an ''affiliate,'' as that term is used in this subsection, would be ''as reflected on the most recent Form 10–K of the Corporation.'' [15] The second parenthetical would clarify that ''principal competitor,'' as provided in this subsection, would be ''as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914.'' [16] BSECC believes that the proposed changes would address textual ambiguities in this subsection by providing greater clarity with respect to the scope of the terms ''affiliate'' and ''principal competitor,'' which terms the current subsection does not define.

Section 3.1(b)(iii)(K) further requires Proposing Persons to describe any pending or threatened litigation in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or Directors, or any affiliate of the Corporation.[17] BSECC proposes to add a parenthetical to clarify, consistent with proposed changes to Section 3.1(b)(iii)(J), that an ''affiliate,'' as used in this subsection, shall be ''as reflected on the most recent Form 10–K of the Corporation.'' [18]

Section 3.1(b)(iii)(L) of the By-Laws requires Proposing Persons to describe any material transaction occurring, in whole or in part, during the then immediately preceding 12-month period between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation. Consistent with proposed changes to Section 3.1(iii)(b)(I)–(K), BSECC proposes adding two parentheticals: the first stating that an ''affiliate,'' as that term is used in this subsection, would be ''as reflected on the most recent Form 10–K of the Corporation;'' [19] the second would clarify that ''principal competitor,'' as provided in this subsection, would be ''as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914.'' [20] BSECC believes that these proposed changes to Section 3.1(b)(iii)(L) would—consistent with similarly proposed changes to Section 3.1(b)(iii)(I)–(K)—provide greater clarity with respect to the meaning of the terms ''affiliate'' and ''principal competitor,'' which terms the current Section 3.1(b)(iii)(L) does not define.

Section 3.1(b)(iii)(O) requires notice to the Corporation if a Proposing Person intends to act as part of a group to solicit or deliver proxies in support of a proposal or the election of a nominee under specified circumstances. Specifically, Section 3.1(b)(iii)(O) of the By-Laws requires a representation as to whether the Proposing Person intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (2) otherwise to solicit *proxies* from stockholders in support of such proposal or nomination.[21] BSECC proposes to amend to Section 3.1(b)(iii)(O) to clarify, in Section 3.1(b)(iii)(O)(2), that the representation required to be provided under that subsection would extend to the solicitation of proxies *or votes* from stockholders in support of any proposal or proposed nominee.[22] As further proposed, new Section 3.1(b)(iii)(O)(3) would specify that the representation required under Section 3.1(b)(iii) extends to whether the Proposing Person intends or is part of a group which intends ''to solicit proxies or votes in support of any proposed nominee in accordance with Rule 14a–19 promulgated under the Act.'' [23]

BSECC believes that the proposed changes to Section 3.1(iii)(O) enhance the transparency of this provision by providing greater specificity with respect to the content of representations required to be provided under this subsection. Similarly, proposed Section 3.1(iii)(O)(3) would enhance the clarity of this provision by specifying that the representation required under this section extends to whether the stockholder intends to act as part of a group to solicit proxies under the SEC's universal proxy rule.

Section 3.1(d) of the By-Laws addresses stockholder notice requirements with respect to nominees for additional directorships if the number of directors to be elected to the Board at an annual meeting is increased effective at the annual meeting.[24] Section 3.1(d) provides no limitations on the number of nominees that may be nominated under such circumstances.[25] BSECC proposes to amend Section 3.1(d) to set limits on the number of nominees that may be nominated in such cases to not exceed the number of directors to be elected at the subject annual meeting. Specifically, BSECC proposes to provide, in a new final sentence to Section 3.1(d) of the By-Laws, that the number of nominees a Proposing Person may nominate for election at the annual meeting on its own behalf (or in the case of a Proposing Person giving the notice on behalf of a beneficial owner, the number of nominees a Proposing Person may nominate for election at the annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such annual meeting.[26]

BSECC believes that the proposed changes to Section 3.1(d) of the By-Laws would align the By-Laws with current practices by safeguarding against the practice of proposing multiple nominees and then deciding—at the last minute—which nominees will actually stand for election. This in turn would spare the Corporation and its stockholders from needless expenditure of time and resources to vet the surplus nominees.

Section 3.2(a) of the By-Laws addresses requirements for requesting a special meeting of the stockholders, including procedures for determining the requisite percentage of stockholders necessary to support a special meeting request. BSECC proposes to amend Section 3.2(a) of the By-Laws to remove

[13] *See* proposed Section 3.1(b)(iii)(I) of the By-Laws.

[14] *See* Section 3.1(b)(iii)(J) of the By-Laws

[15] *See* proposed Section 3.1(b)(iii)(J) of the By-Laws.

[16] *See id.*

[17] *See* Section 3.1(b)(iii)(K) of the By-Laws.

[18] *See* proposed Section 3.1(b)(iii)(K) of the By-Laws.

[19] *See* proposed Section 3.1(b)(iii)(I)–(K) of the By-Laws.

[20] *See id.*

[21] *See* Section 3.1(b)(iii)(O) of the By-Laws.

[22] To effect this change, BSECC proposes to insert, immediately after ''otherwise to solicit proxies'' in Section 3.1(b)(iii)(O)(2), the words ''or votes.'' *See* proposed Section 3.1(b)(iii)(O)(2).

[23] *See* proposed Section 3.1(b)(iii)(O)(3) of the By-Laws. BSECC proposes a conforming change to insert, at the conclusion of Section 3.1(b)(iii)(O)(2) the following: ''and/or.'' *See* proposed Section 3.1(b)(iii)(O)(2) of the By-Laws.

[24] *See* Section 3.1(d) of the By-Laws.

[25] *See id.*

[26] *See* proposed Section 3.1(d) of the By-Laws.

the phrase ''acting in concert'' and substitute therefor the words ''knowingly coordinating.'' [27] BSECC believes this proposed change would mitigate against the potential for plaintiff's firms to leverage the ''acting in concert'' requirement to find targets for potential litigation.

BSECC further proposes to amend Section 3.2(a) to remove a reference to the binding nature of the Board's determination with respect to whether the special meeting request is in proper form.[28] Specifically, BSECC proposes to delete from the final sentence in Section 3.2(a) the words ''and such determination shall be binding on the Corporation and the stockholders.'' [29] BSECC believes that the proposed changes would align the By-Laws with current practices because it would remove all references to the binding or final nature of Board actions, which language has been the challenged on the basis that it purports to limit or foreclose judicial review by Delaware courts.

Section 3.3 of the By-Laws governs determinations regarding nominations or business eligible to be considered at annual or special meetings. Section 3.3(a) provides, in part, that the chairman of the meeting has the power and duty to determine whether a nomination or business proposed to be brought before the meeting was made or proposed in accordance with the By-Laws and, if not so made or proposed, to declare that such nomination or business shall be disregarded.[30] BSECC proposes to amend that provision of Section 3.3(a) to add a parenthetical stating that, in advance of any meeting of stockholders, the Board of Directors or an authorized committee thereof shall have the same powers and duties, including the power to declare that a particular nomination or business shall be disregarded.[31] BSECC believes the proposed changes align the By-Laws with current practices because plaintiffs have argued that a determination to disregard a matter from consideration at a meeting should be subject to fiduciary duties. The proposed changes clarify that the chair of a meeting must be a director or officer whose decisions, in turn, are subject to fiduciary duties.

BSECC further proposes to amend Section 3.3(a) to clarify that the Corporation may disregard nominees proposed by a stockholder under the Commission's universal proxy rule if the shareholder has failed to comply with that rule. To effect that change, BSECC proposes to insert, at the conclusion of current Section 3.3(a), new text providing as follows:

> Notwithstanding anything to the contrary in these By-Laws, unless otherwise required by law, if any Proposing Person (i) provides notice pursuant to Rule 14a–19(b) promulgated under the Act with respect to any proposed nominee and (ii) subsequently fails to comply with the requirements of Rule 14a–19(a)(2) or Rule 14a–19(a)(3) promulgated under the Act (or fails to timely provide reasonable evidence sufficient to satisfy the Corporation that such Proposing Person has met the requirements of Rule 14a–19(a)(3) promulgated under the Act in accordance with the following sentence), then the nomination of each such proposed nominee shall be disregarded, notwithstanding that proxies or votes in respect of the election of such proposed nominees may have been received by the Corporation (which proxies and votes shall be disregarded). Upon request by the Corporation, if any Proposing Person provides notice pursuant to Rule 14a–19(b) promulgated under the Act, such Proposing Person shall deliver to the Corporation, no later than five (5) business days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a–19(a)(3) promulgated under the Act.

This proposed change to Section 3.3(a) would align the By-Laws with current practices by specifying that failure to comply with requirements of the Commission's universal proxy rule would constitute grounds for the Corporation to disregard a stockholder's proposed nomination, as well as setting out redress procedures for stockholders seeking to demonstrate that such requirements have been met.

Section 3.4 of the By-Laws governs the conduct of meetings. Section 3.4 provides in part that the date and time of the opening and closing of the polls for each matter to be voted upon at a meeting must be announced at the meeting by the person presiding over the meeting. BSECC proposes to amend Section 3.4 to clarify, consistent with the advance notice provisions in Section 3.1 of the By-Laws, that the person presiding over a meeting must be a chairman of the meeting who shall be an officer or director of the Corporation.[32] BSECC believes this proposed change enhances the clarity of Section 3.4 by specifying, consistent with the advance notice provisions under Section 3.1 of the By-Laws, that the chairman and presiding person of the meeting must be an officer or director of the Corporation. Section 3.4 also provides in part that the person presiding over a meeting shall have the right to, among other things, convene and adjourn the meeting.[33] BSECC proposes to clarify that the presiding person also shall have the right to recess the meeting for any or no reason.[34] BSECC believes this proposed change will make explicit that the presiding person's rights with respect to the conduct of the meeting includes the right to recess the meeting for any or no reason, thereby enhancing the clarity and transparency of this rule.

Section 3.6(d) of the By-Laws governs the amount of shares that a stockholder must own to invoke proxy access. Section 3.6(d) provides in part that ''[w]hether outstanding shares of the common stock of the Corporation are 'owned' for these purposes shall be determined by the Board or any committee thereof, in each case, in its sole discretion.'' [35] BSECC proposes to amend Section 3.6(d) to delete therefrom the words ''in each case, in its sole discretion.'' [36] BSECC further proposes to remove from Section 3.6(h)(ii), Section 3.6(h)(viii), Section 3.6(i)(i), and Section 3.6(k) of the By-Laws similar references to the finality or ''binding'' nature of decisions by the Board (or persons authorized by the Board), any committee thereof, or the chairman of a meeting of stockholders.[37] These proposed changes align the By-Laws with current practice because provisions that purport to assign a binding effect to or otherwise finality to the decisions of the Board—such as those proposed to be deleted—are likely targets by litigants who argue that such

[27] *See* proposed Section 3.2 of the By-Laws.

[28] *See* Section 3.2(a) of the By-Laws.

[29] *See* proposed Section 3.2(a) of the By-Laws. BSECC further proposes to make a non-substantive change to Section 3.2(a) of the By-Laws to capitalize the word ''secretary'' to conform to other usages of such word in the By-Laws. BSECC also proposes to correct a typographical error in Section 3.2(c) of the By-Laws to express the word ''Business'' therein in the singular as ''business'' is not a defined term. *See* proposed Section 3.2(c) of the By-Laws.

[30] *See* Section 3.3(a) of the By-Laws.

[31] *See* proposed Section 3.3 of the By-Laws. To effect this change, BSECC proposes to insert, immediately after the words ''Except as otherwise provided by law, the chairman of the meeting'' a parenthetical to read as follows: ''(or, in advance of any meeting of stockholders, the Board of Directors or an authorized committee thereof).'' BSECC also proposes to make a non-substantive conforming change to Section 3.3(a) to insert, immediately after the word ''proxies'' in the second full sentence of Section 3.3(a) the words ''or votes,'' consistent with changes proposed for Section 3.1(b)(iii)(O) of the By-Laws.

[32] *See* proposed Section 3.4 of the By-Laws. To effect this change, BSECC proposes to insert, in the first full sentence of Section 3.4 and immediately after ''shall be announced at the meeting by the'' the words ''chairman of the meeting who shall be an officer or director of the Corporation and who shall be the.'' *See id.*

[33] *See* Section 3.4 of the By-Laws.

[34] *See* proposed Section 3.4 of the By-Laws.

[35] *See* Section 3.6(d) of the By-Laws.

[36] *See* proposed Section 3.6(d) of the By-Laws.

[37] *See* proposed Section 3.6(h)(ii), Section 3.6(h)(viii), Section 3.6(i)(i), and Section 3.6(k) of the By-Laws.

provisions unlawfully purport to foreclose judicial review.

Finally, Section 3.6(m) provides that Section 3.6 shall be the exclusive method for stockholders to include nominees for director in the Corporation's proxy materials. BSECC proposes to amend Section 3.6(m) to provide an exception for nominees for director in the Corporation's proxy materials submitted pursuant to, and in compliance with, the Commission's universal proxy rule.[38] The proposed changes to Section 3.6(m) align the By-Laws with current practice by providing that, in addition to the exclusive method set out in Section 3.6 of the By-Laws, stockholders may also include nominees for such purposes pursuant to and consistent with requirements under the SEC's universal proxy rule.[39]

(ii) Article IV Board of Directors

Section 4.3 of Article IV of the By-Laws governs qualifications for Directors of the Corporation. This section currently provides in part the Board may include at least one, but not more than two, Issuer Directors. BSECC proposes to amend Section 4.3 to remove limitations on the number Issuers Directors on the Board.[40] The proposed change would provide the Corporation with greater flexibility with respect to the number of Issuer Directors that may be members of the Board, as NASDAQ is frequently in search of officers of NASDAQ-listed companies to join the Board.

Section 4.9 of the By-Laws governs quorum and voting. Section 4.9 provides in part that, in general, a quorum for the transaction of all business at all meetings of the Board shall consist of a majority of the Board.[41] BSECC proposes to make a clarifying change to specify that for purposes of this section, a majority of the Board, means a majority of the total numbers of directors constituting the Board.[42] BSECC believes this proposed change would provide greater clarity to and facilitate the application of this provision. BSECC further proposes to amend Section 4.9 to clarify the process through which notice of meetings adjourned to another time and place may be given to each member of the Board.[43] Specifically, BSECC proposes to clarify in Section 4.9 that in the absence of a quorum, a majority of the Directors present may adjourn the meeting to another time and place, and that notice of the time, place and purposes of any such adjourned meeting will be given in accordance with the By-Laws.[44] BSECC further proposes to clarify that, if the notice of such adjourned meeting is announced at the meeting at which the adjournment is taken, notice need only be given to the Directors not present at such meeting.[45] BSECC believes this proposed change would provide greater clarity to the By-Laws by providing a clear and practical process for giving notices of adjournments to members of the Board.

Section 4.12 of the By-Laws governs the process for providing notice of any meeting to Directors of the Board as well as related waivers of such notice. BSECC proposes to amend Section 4.12 to remove obsolete references to certain modes of communication (both for transmission and confirmation of receipt) other than facsimile, email, or other means of electronic transmission.[46] BSECC believes this proposed change would provide greater clarity to and facilitate the application of this provision by eliminating modes of communications, such as telegram, telefax, cable, and radio, that are no longer in use. In addition, the proposed amendments reflect current practices, as a substantial amount of communications between NASDAQ and its directors outside of Board meetings occurs in electronic form.

Section 4.13 of the By-Laws governs matters relating to committees of the Board. BSECC proposes to amend Section 4.13(a) of the By-Laws to specify that the Corporation has opted into Section 141(c)(2) of Delaware law.[47] Section 141(c) of Delaware law describes the formation and powers of board committees. Opting into Section 141(c)(2) of Delaware law is a common and recommended practice for Delaware corporations such as NASDAQ, in part because it provides corporations with greater flexibility with respect to the formation and powers of board committees, such as by allowing greater delegations of authority, including as it relates to setting terms of stock. BSECC believes that opting into Section 141(c)(2) is appropriate to provide the Corporation with greater flexibility with respect to the functions and powers of committees of the Board.

BSECC further proposes to amend Section 4.13 of the By-Laws to remove from Section 4.13(c) limitations on the ability of committees to take certain actions, such as the authorization of preferred stock designations. As a substitute for that limiting language, BSECC proposes to insert new text in Section 4.13(c) of the By-Laws that would conform this subsection with the Delaware General Corporation Law, which removes limitations on the ability of committees to take certain actions, such as the authorization of preferred stock designations, as it relates to the powers of committees of the Board.[48] Consistent with proposed changes for Section 4.13(a), BSECC believes this proposed change to Section 4.13(c) of the By-Laws would align this provision with current Delaware General Corporation Law, thereby updating the By-Laws as well as providing the Corporation with greater flexibility with respect to committees of the Board.

BSECC proposes to amend Section 4.13(d)–(g) of the By-Laws to remove all references to limitations on the terms of committee members.[49] To effect that change, BSECC proposes to (1) remove from Section 4.13(d) of the By-Laws the words ''[a]n Executive Committee

[38] To effect this proposed change, BSECC proposes to add immediately after the conclusion of current Section 3.6(m) the words ''other than nominees included pursuant to, and in compliance with, Section 14a–19 of the Act.'' *See* proposed Section 3.6(m) of the By-Laws.

[39] *See* proposed Section 3.6(m) of the By-Laws.

[40] To effect this change, BSECC proposes to delete from Section 4.3 of the By-Laws the words ''at least one, but no more than two.'' *See* proposed Section 4.3 of the By-Laws.

[41] *See* Section 4.9 of the By-Laws.

[42] *See* proposed Section 4.9 of the By-Laws.

[43] *See* proposed Section 4.9 of the By-Laws.

[44] *See* proposed Section 4.9 of the By-Laws.

[45] *See* proposed Section 4.9 of the By-Laws. BSECC proposes to make a conforming change to Section 4.9 to delete from the second full sentence thereof the words ''until a quorum be present.'' *See id.*

[46] *See* proposed Section 4.12(a)–(b) of the By-Laws. To effect this change, BSECC proposes to (1) delete from Section 4.12(a)(ii) the words ''telegraph, telefax, cable, radio, wireless'' and substitute therefor the word ''facsimile''; (2) delete from Section 4.12(a)(ii) the word ''written''; and (3) delete from Section 4.12(b) the parenthetical ''(or by telegram, telefax, cable, radio, wireless, email or other means of written electronic transmission and subsequently confirmed in writing or by electronic transmission).'' *See id.*

[47] *See* proposed Section 4.13(a) of the By-Laws. To effect this change, BSECC proposes to insert, as the first full sentence in Section 4.13(a) the words ''The Corporation has opted into Section 141(c)(2) of Delaware law.'' *See id.*

[48] *See* proposed Section 4.13(c) of the By-Laws. To effect this change, BSECC proposes to delete from Section 4.13(c) the words ''amending the Restated Certificate of Incorporation or the By-Laws of the Corporation; adopting an agreement of merger or consolidation; recommending to the stockholders the sale, lease, or exchange of all or substantially all the Corporation's property and assets; or recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution. Unless the resolution of the Board expressly so provides, no committee shall have the power or authority to authorize the issuance of stock.'' BSECC further proposes to amend Section 4.13(c) to insert, immediately after the words ''no committee shall have the power or authority of the Board with regard to:'' the following: ''(a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by Delaware law to be submitted to stockholders for approval or (b) adopting, amending or repealing any By-Law of the Corporation.'' *See id.*

[49] *See* Section 4.13(d)–(g) of By-Laws.

member shall hold office for a term of one year''; [50] (2) remove from Section 4.13(e) of the By-Laws the words ''[a] Finance Committee member shall hold office for a term of one year''; [51] (3) remove from Section 4.13(f) of the By-Laws the words ''[a] Management Compensation Committee member shall hold office for a term of one year''; [52] and (4) remove from Section 4.13(g) of By-Laws the words ''an Audit Committee member shall hold office for a term of one year.'' [53] BSECC believes that deleting all references to committee members having a limited term is appropriate because term limits are not customary in by-laws as they create unnecessary administrative burdens for and limit the flexibility of a board. BSECC notes that the proposed changes also align the By-Laws with current practice as the typical practice of the Board is to provide, in the annual resolutions regarding committee appointments, that committee members are appointed for one year or until their successors are duly elected.

BSECC further proposes to amend Section 4.13(g) of the By-Laws to delete language specifying the Chair of the Audit Committee must be a Public Director.[54] BSECC believes that this proposed change would eliminate unnecessary restrictions regarding, as well as provide the Corporation with greater flexibility with respect to, those who may serve as Audit Committee Chair since the Chair of the Audit Committee must in any event satisfy the independence standards in SEC as well as NASDAQ rules.[55] The proposed change would, for example, allow an issuer representative to be appointed as Chair of the Audit Committee. Finally, BSECC proposes a non-substantive, clarifying change to Section 4.13(g) to provide that the Audit and Risk Committee (or such committee as the same may be renamed from time to time or any successor of such committee delegated with similar duties) shall be known as the ''Audit Committee.'' [56] BSECC believes these proposed changes to Section 4.13(g) would provide greater flexibility to the Corporation with respect to those that may serve as Chair of the Audit Committee as well as enhance the clarity of and thus facilitate the application of the By-Laws by making the term ''Audit Committee'' a more clearly defined term.

BSECC proposes to amend Section 4.13(h)(ii) of the By-Laws to remove language providing that a ''majority vote of'' the Board is required to remove a member of the Nominating & Governance Committee.[57] This change removes duplicative language and reduces potential confusion since the voting standards for all decisions of the board are set forth separately in Section 4.9(b) of the By-Laws.

Section 4.13(j) of the By-Laws provides that, in general, a majority of a committee shall constitute a quorum for the transaction of business.[58] BSECC proposes to amend Section 4.13(j) to specify that a majority of the members of a committee then serving in office (rather than a majority of total directors on the committee as Section 4.13(j) currently provides) shall constitute a quorum for the transactions of business.[59] BSECC believes this proposed change would remove barriers to and facilitate the work of Board committees since a vacancy in a committee would not be a barrier to action, as the quorum would be based on the directors then serving rather than the total number of directors on the committee.

(iii) Article VII Officers, Agents, and Employees

Article VII of the By-Laws governs matters relating to the officers, agents, and employees of the Corporation. BSECC proposes to amend certain provisions in Article VII to delete references to a corporate structure that no longer reflects the structure at NASDAQ. Specifically, Article VII generally envisions a corporate structure where a President is a director and/or has executive authority over the entire company. BSECC proposes to amend certain sections of Article VII to delete references to such a structure and replace them with language suited for a corporate structure with multiple presidents, such as the current structure of NASDAQ. To effect these changes, BSECC proposes to amend several provisions of Article VII as follows.

Section 7.1 of the By-Laws governs matters relating to the principal officers of the Corporation. Section 7.1 specifies the principal officers to be elected by the Board, including, among others, a Chair, and a President. BSECC proposes to amend Section 7.1 to provide that the principal officers to be elected by the Board may—rather than must—include the roles set out in Section 7.1. BSECC further proposes to amend Section 7.1 to provide that one or more Presidents, rather than only a President, may elected by the Board, among other principal officers. Section 7.1 further provides that in part that one person may not hold the offices and perform the duties of both President and Vice President or of President and Secretary. BSECC proposes to amend Section 7.1 of the By-Laws to delete references to ''President and Vice President or of President'' and substitute therefor the words ''Chief Executive Officer.'' [60] As thus proposed, one person could not hold the offices and perform the duties of both Chief Executive Officer and Secretary (rather than of President and Vice President or of President and Secretary).[61]

For the reasons discussed above in connection with Article VII of the By-Laws more broadly, BSECC further proposes to amend Section 7.3 (Subordinate Officers, Agents, or Employees), Section 7.5 (Resignation and Removal of Officers), Section 7.9 (President), Section 7.10 (Vice President), Section 7.11 (Secretary), and Section 7.13 (Treasurer) of the By-Laws as follows.

First, BSECC proposes to delete from Sections 7.3 and 7.5(a) of the By-Laws the following: '', the President.''

With respect to Section 7.9 of the By-Laws, BSECC proposes to (1) delete the words ''[t]he President shall, in the absence of the Chair of the Board and the Chief Executive Officer, preside at all meetings of the Board and stockholders at which the President is present. The President shall have general supervision over the business and affairs of the Corporation,'' substituting therefor the words ''The Board or the Chief Executive Officer may appoint one or more Presidents and each.'' BSECC would further amend Section 7.9 to (1) delete from its final sentence the word ''The'' replacing it with ''Each''; (2) delete also from that final sentence the word ''the'' and replacing it with ''such''; and (3) insert, also in that final sentence and immediately after ''the Board'' the words ''or the Chief Executive Officer.''

[50] *See* proposed Section 4.13(d) of By-Laws.

[51] *See* proposed Section 4.13(e) of the By-Laws.

[52] *See* proposed Section 4.13(f) of the By-Laws.

[53] *See* proposed Section 4.13(g) of the By-Laws.

[54] See proposed Section 4.13(g) of the By-Laws.

[55] *See* proposed Section 4.13(g) of the By-Laws. To effect this change, BSECC proposes to insert in the first full sentence of Section 4.13(g) of the By-Laws and immediately after the words ''[t]he Audit'' the words and symbol ''& Risk'' and further insert, immediately following the word ''Committee'' a parenthetical reading as follows: ''(such committee as the same may be renamed from time to time or any successor of such committee delegated with similar duties, the ''Audit Committee'').''BSECC also proposes to renumber Section 4.13(g)(i) to delete the ''(i)'' and subsume the text of Section 4.13(g)(i) with that of proposed Section 4.13(g). *See* proposed Section 4.13(g) of the By-Laws.

[56] *See* proposed Section 4.13(g) of the By-Laws.

[57] *See* Section 4.13(h) of the By-Laws.

[58] *See* Section 4.13(j) of the By-Laws.

[59] *See* proposed Section 4.13(j) of the By-Laws.

[60] *See* proposed Section 7.1 of the By-Laws.

[61] *See* proposed Section 7.1 of the By-Laws.

With respect to Section 7.11 and Section 7.13 of the By-Laws, BSECC proposes to amend these two sections to delete, from their respective final sentences, the words ''or the President,'' substituting therefore the words ''or any other person delegated such power by the Board or Chief Executive Officer.'' Consistent with similarly proposed changes to Article VII of the By-Laws, BSECC believes that the proposed changes to Sections 7.11 and Section 7.13 of the By-Laws would remove impediments to the proper administration of the By-Laws as they would more closely align such By-Laws with the current corporate structure at NASDAQ as well as provide the Corporation with greater flexibility in the application of these provisions.

BSECC believes the proposed changes to these provisions of Article VII of the By-Laws would enhance the transparency of and facilitate the application of the By-Laws because they replace obsolete or inaccurate textual references to an outdated corporate structure with updated text designed to more closely reflect the current structure of NASDAQ.

Section 7.10 of the By-Laws governs the selection of Vice Presidents. BSECC proposes to amend Section 7.10 of the By-Laws to provide greater clarity with respect to the duties of as well as the process for selecting Vice Presidents of the Corporation. Specifically, BSECC proposes to amend Section 7.10 of the By-Laws to provide that the Board, the Chief Executive Officer, or any other person delegated such power by the Board or Chief Executive Officer, may appoint one or more Vice Presidents. BSECC further proposes to clarify that, any Vice President may have such additional designations in such Vice President's title as the Board, the Chief Executive Officer, or the authorized person appointing such Vice President may determine.[62] As proposed, each Vice President would have all powers and duties usually incident to the office of a Vice President, except as specifically limited by the Board, the Chief Executive Officer or the authorized person appointing such Vice President.[63] BSECC also proposes to clarify in the next to final sentence of Section 7.10 that, in addition to the Board and the Chief Executive, as provided under this section, the authorized person appointing such Vice President may also assign such Vice President other duties and powers as the Vice Presidents shall be authorized to exercise and perform pursuant to the By-Laws.[64] BSECC believes that the proposed changes to Section 7.10 of the By-Laws would provide greater clarity with respect to the duties of and the process for selecting the Vice Presidents, thereby facilitating the application of the By-Laws with respect to Vice Presidents of the Corporation.

(iv) Article VIII Indemnification

Section 8.1 of Article VIII of the By-Laws governs indemnification of Directors, officers, employees, and agents of the Corporation. Subsection (j) of Section 8.1 addresses circumstances in which a claim for indemnification or advancement of expenses is not paid in full within 60 days after a written claim under this provision has been received by the Corporation. BSECC proposes to amend Section 8.1(j) to clarify that the Corporation will not be required to pay claims or expenses under this provision if prohibited by law. To effect this change, BSECC proposes to insert within the first full sentence and immediately after ''[the indemnified person] shall be entitled to be paid the expense of prosecuting such claim'' the words ''to the fullest extent permitted by law.'' [65] BSECC believes this proposed change is appropriate as it would enhance the clarity of this provision by specifying that the extent of the Corporation's obligation to pay claims or expenses under this provision is limited to those claims or expenses not prohibited by law.

(v) IX Capital Stock

Section 9.2(a) of Article IX of the By-Laws governs requirements for signatures on stock certificates of the Corporation. Section 9.2(a) provides in part that shares of capital stock of the Corporation represented by certificates shall be signed in the name of the Corporation by two officers, with one being the Chair of the Board, the Chief Executive Officer, the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board.

BSECC proposes to amend Section 9.2(a) to broaden the scope of officers authorized to sign stock certificates. Specifically, BSECC proposes to provide that Shares of capital stock of the Corporation represented by certificates shall be signed in the name of the Corporation by two authorized officers which shall include, without limitation, the Chair of the Board, the Chief Executive Officer, the President, any Vice President, the Secretary, and the Treasurer.[66] BSECC believes the proposed changes to Section 9.2(a) would remove unnecessary limitations on officers authorized to sign stock certificates thereby providing greater flexibility in the By-Laws with respect to officers authorized to perform this important function.

Section 9.3 of the By-Laws governs matters relating to holders of record as shown on the stock ledger of the Corporation. Section 9.3(b) of the By-Laws provides that the Corporation shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. That subsection further provides that the Corporation shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not the Corporation shall have express or other notice thereof.[67] BSECC proposes to amend Section 9.3(b) to provide for the possibility that applicable law might require a different outcome. Specifically, BSECC proposes

[62] *See* proposed Section 7.10 of the By-Laws.

[63] *See* proposed Section 7.10 of the By-Laws.

[64] *See* proposed Section 7.10 of the By-Laws. To effect the proposed changes to Section 7.10, BSECC proposes to (1) delete therefrom the words ''The Board shall elect'' and substitute therefor the words ''The Board, the Chief Executive Officer or any other person delegated such power by the Board or Chief Executive Officer, may appoint''; (2) delete, from the second sentence of Section 7.10 the words ''[i]n the absence or disability of the President or if the office of President becomes vacant, the Vice Presidents in the order determined by the Board, or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board at any time to extend or restrict such powers and duties or to assign them to others''; (3) insert, in the third sentence of Section 7.10 of the By-Laws and immediately following the words ''as the Board'' the words ''the Chief Executive Officer, or the authorized person appointing such Vice President''; (4) delete, from the fourth sentence of Section 7.10 the words ''The Vice Presidents shall generally assist the President in such manner as the President shall direct'' substituting therefor the words ''Each Vice President shall have all powers and duties usually incident to the office of a Vice President, except as specifically limited by the Board, the Chief Executive Officer or the authorized person appointing such Vice President.''; and (5) insert in the final sentence of Section 7.10 of the By-Laws and immediately after the words ''the Chief Executive Officer or the'' the words ''authorized person appointing such Vice.'' *See id.*

[65] *See* proposed Section 8.1(j) of the By-Laws.

[66] *See* proposed Section 9.2 of the By-Laws. To effect this change as well as make conforming changes to Section 9.2 of the By-Laws, BSECC proposes to (1) insert, immediately after ''certificates shall be signed in the name of the Corporation by two'' the word ''authorized''; (2) insert, immediately after ''officers'' the words ''which shall include, without limitation,''; and (3) delete the words ''with one being,'' as well as ''or a,'' ''and the other being,'' and '', or such other officer that may be authorized by the Board.'' *See id.*

[67] *See* Section 9.3(b) of the By-Laws.

to provide that the Corporation shall, to the fullest extent permitted by law, be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. As further proposed, Section 9.3 would provide that the Corporation shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not the Corporation shall have express or other notice thereof, except as required by law.[68] BSECC believes the proposed changes to Section 9.3 of the By-Laws would ensure the enforceability of this provision by recognizing that there may be circumstances where its application would be subject to and possibly limited or otherwise affected by applicable law.

Section 9.6 of the By-Laws governs matters relating to lost, stolen, destroyed, and mutilated certificates for shares of stock of the Corporation. Section 9.6 sets out procedures for addressing the issuance of a new certificate or uncertified shares in the event that any certificate for stock of the Corporation becomes mutilated, lost, stolen, or destroyed. BSECC proposes to amend Section 9.6 to delete language providing that the Board or a committee thereof is authorized to take action to address each such instance of lost, stolen, destroyed, or mutilated certificates and in its place provide that the Corporation (rather than solely the Board) shall have the authority to do so.[69] BSECC believes this proposed change would remove obstacles to and facilitate the reissuance of new certificates under the specified circumstances by providing that the Corporation is authorized to act under those circumstances and by removing unnecessary requirements for the Board to take action in each and every instance that that a new certificate to replace a mutilated, lost, stolen, or destroyed certificate is sought.

(vi) Article X Miscellaneous Provisions

Section 10.4 of Article X of the By-Laws governs procedures relating to the execution of instruments, contracts, and the like. BSECC proposes to delete Section 10.4 in its entirety and provide new text to better align the provisions of this section with NASDAQ's policies and procedures on signature authority. Specifically, BSECC proposes to provide that, except as otherwise provided by law, all contracts and other documents requiring signature entered into by or on behalf of the Corporation, including, without limitation, all (i) checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money, (ii) deeds, bonds, mortgages, contracts, and other obligations or instruments, and (iii) applications, instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, shall, in each case, be executed by such officer(s), employee(s), agent(s), or other person(s) as the Board, a duly authorized committee thereof, or the Chief Executive Officer may designate from time to time. As further proposed, the authority to execute any contract or document in the name and on behalf of the Corporation granted in accordance with this Section may (1) be general or confined to specific instances, (2) be designated by name, title, or role, (3) include the power to delegate signature authority further to one or more other persons, whether by name, title, or role, to the extent authorized by the Board, a duly authorized committee thereof, or the Chief Executive Officer, and (4) be revoked at any time by the Board, any committee thereof, or the Chief Executive Officer.[70] BSECC believes that the proposed changes to Section 10.4 of the By-Laws would enhance clarity and facilitate the application of the By-Laws by removing language that has become obsolete and replacing it with provisions that more closely reflect NASDAQ's current policies and procedures on signature authority.

Section 10.5 of the By-Laws governs the form of records of the Corporation. BSECC proposes to delete Section 10.5 in its entirety and insert in its place new text that would conform this provision with the updated Delaware statute governing signature authority. Specifically, BSECC proposes to provide that any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time and otherwise comply with applicable law.[71]

(vii) Article XI Amendments; Emergency By-Laws

Section 11.4 of Article XI of the By-Laws addresses the adoption of emergency by-laws. BSECC proposes to update Section 11.4 to reflect amendments to the emergency by-law provision of the Delaware General Corporation Law. Specifically, BSECC proposes to provide that as provided in Section 11.4, the Board may adopt emergency by-laws which shall be operative during any emergency resulting from ''any emergency resulting from an attack on the United States or on a locality in which the Corporation conducts its business or customarily holds meetings of its Board of Directors or its stockholders, or during any nuclear or atomic disaster or during the existence of any catastrophe, including, but not limited to, an epidemic or pandemic, and a declaration of a national emergency by the United States government, or other similar emergency condition, irrespective of whether a quorum of the Board of Directors or a standing committee thereof can be readily convened for action.'' [72] In addition, and consistent with Delaware General Corporation Law, BSECC proposes to update Section 11.4 to provide, in a final sentence to Section 11.4 of the By-Laws, that ''[n]othing contained in this Section 11.4 shall be deemed exclusive of any other provisions for emergency powers consistent with other sections of Delaware law which have been or may be adopted by corporations created under Delaware law.'' [73]

(viii) Article XIII Forum Selection

BSECC proposes to adopt new language to provide the By-Laws with a customary forum selection provision. To effect this change, BSECC proposes to add a new Article XIII titled ''Forum Selection'' providing as follows: [74]

Unless the Corporation consents in writing to the selection of an alternative forum, (A) (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any

[68] *See* proposed Section 9.3(b) of the By-Laws.

[69] *See* proposed Section 9.6 of the By-Laws. To effect his change, BSECC proposes to (1) delete from the fourth sentence of Section 9.6 the words ''Board or such committee'' and substitute therefor the word ''Corporation'' and (2) delete from the fifth sentence the word ''Board,'' substituting therefor the word ''Corporation.'' *See id.*

[70] *See* proposed Section 10.4 of the By-Laws.

[71] *See* proposed Section 10.5 of the By-Laws.

[72] *See* proposed Section 11.4 of the By-Laws.

[73] *See* proposed Section 11.4 of the By-Laws. BSECC further proposes to delete from Section 11.4 the following language as it has become obsolete: ''nuclear or atomic disaster, an attack on the United States or on a locality in which the Corporation conducts its business or customarily holds meetings of the Board or the stockholders, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action.'' *See id.*

[74] *See* proposed Article XIII of the By-Laws.

action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of Delaware law, the Restated Certificate of Incorporation or these By-Laws (as either may be amended or restated) or as to which Delaware law confers jurisdiction on the Court of Chancery of the State of Delaware or (iv) any action asserting a claim governed by the internal affairs doctrine of the law of the State of Delaware shall, to the fullest extent permitted by law, be exclusively brought in the Court of Chancery of the State of Delaware or, if such court does not have subject matter jurisdiction thereof, the federal district court of the State of Delaware; and (B) the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. Notwithstanding the foregoing, This Section 13.1 shall not apply to claims seeking to enforce any liability or duty created by the Act. To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 13.1.

BSECC believes that this proposed addition of Article XIII to the By-Laws is appropriate as it would provide the Corporation as well as litigants with greater certainty with respect to the applicable judicial forum for addressing claims or actions involving the Corporation.[75]

(ix) Non-Substantive Changes

The remaining proposed amendments to the By-Laws are non-substantive changes designed to simplify and streamline the document. Specifically, BSECC proposes to (1) amend Article I(k) and Article I(m) to correct typographical errors by deleting a period and substituting in its place a semicolon and by inserting a missing parenthesis respectively; (2) make non-substantive clarifying changes to subparagraph (p) of Article I; (3) amend Article I(s) to correct a typographical error by removing a period after ''and'''; and (4) delete from Section 3.1(a) the term ''shareholder'' and substitute therefor the word ''stockholder.'' the latter which more closely reflects established terminology of the By-Laws. BSECC believes the proposed non-substantive changes are either administrative or clarifying in nature, and that, as such, they are in the public interest as they are designed to avoid confusion with respect to the operation of the By-Laws thus facilitating their use.

2. Statutory Basis

BSECC believes that the proposed changes are consistent with Section 6(b) of the Act,[76] in general, and furthers the objectives of Section 6(b)(1) of the Act,[77] in particular, in that they enable BSECC to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of BSECC. BSECC also believes that the proposed changes are consistent with Section 6(b) of the Act,[78] in general, and furthers the objectives of Section 6(b)(5) of the Act,[79] in particular, in that they are 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.

(a) Proposed Changes to the Certificate

BSECC believes the proposed changes to paragraphs A and B of Article Sixth of the Certificate are in the public interest as they would update the Certificate, consistent with developments in Delaware General Corporation Law that enable companies incorporated in Delaware, such as NASDAQ, to limit the liability of certain of their officers in narrow circumstances, as discussed above. BSECC notes that amendments providing for officer exculpation are increasingly common for public companies, and that the number of shareholder proposals calling for such amendments have continued to increase since 2022 when the Delaware law was passed.[80]

(b) Proposed Changes to the By-Laws

BSECC believes that changes proposed for Article III of the By-Laws are in the public interest as they would update the By-Laws and conform them to current practices and developments in the law with respect to corporate matters such as procedures governing the annual and special meetings of stockholders, the conduct of such meetings, and the invocation of proxy access. The proposed changes to Article IV of the By-Laws are either clarifying in nature or otherwise purport to refine governance practices by providing the Corporation with greater flexibility with respect to such matters as the qualifications of Directors, quorum and voting, or otherwise update such provisions to make them more consistent with current governance practices as well as the policies and procedures of NASDAQ. BSECC believes that proposed changes to Articles VII through XIII are in the public interest and consistent with the protection of investors as they are designed to accomplish several objectives, including updating the By-Laws to conform with current practices or recent developments in Delaware General Corporation Law, aligning the By-Laws with current NASDAQ policies and procedures, and enhancing the clarity of the By-Laws thus facilitating their proper application and use. Finally, the remaining changes can be characterized as non-substantive, because they are designed to either correct typographical errors, conform NASDAQ governance documents to terminology in the By-Laws, remove obsolete text, or otherwise make non-substantive revisions to the By-Laws to make them clearer and easier to use.

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

Because the proposed rule change relates to the governance of NASDAQ 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. 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

[75] BSECC notes that the bylaws of Cboe Global Markets, Inc. as well as those of CME Group, Inc., contain forum selection provisions similar to those proposed by BSECC. *See* Article 11 (''Forum for Adjudication of Disputes'') of the Eight Amended and Restated Bylaws of Cboe Global Markets, Inc. (2024) *https://s202.q4cdn.com/174824971/files/doc_governance/2024/Dec/04/Cboe-Global-Markets-Eighth-AR-Bylaws-2ffa4c.pdf;* Article IX, Section 9.1 (''Forum for Adjudication of Certain Disputes'') of the Seventeenth Amended and Restated Bylaws of CME Group, Inc. (2022) *https://www.sec.gov/Archives/edgar/data/1156375/000119312522301477/d412380dex31.htm.*

[76] 15 U.S.C. 78f(b).

[77] 15 U.S.C. 78f(b)(1).

[78] 15 U.S.C. 78f(b).

[79] 15 U.S.C. 78f(b)(5).

[80] *See supra* note 3 and accompanying text.

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.

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–BSECC–2025–001 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–2025–001. 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 website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of BSECC. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BSECC–2025–001 and should be submitted on or before October 24, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[81]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–19450 Filed 10–2–25; 8:45 am]

BILLING CODE 8011–01–P

[81] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104154; File No. SR–MSRB–2025–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change To Amend MSRB Rules A–11 and A–13 Pursuant to a Multi-Year Rate Card and To Make Related Technical Amendments

September 30, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2025, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') 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 MSRB. 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 MSRB filed with the Commission a proposed rule change to amend MSRB Rule A–11, on assessments for municipal advisor professionals (''Rule A–11''), and Rule A–13, on underwriting and transaction assessments for brokers, dealers, and municipal securities dealers (''Rule A–13''), to establish new rates of certain assessments on municipal advisors under Rule A–11 and brokers, dealers and municipal securities dealers (collectively, ''dealers'' and, together with municipal advisors, ''regulated entities'') under Rule A–13 pursuant to a multi-year rate card, as well as to make certain related technical amendments (the ''proposed rule change''). The MSRB requests that the proposed rule change be approved with an effective date of January 1, 2026, provided that if approved by the Commission after January 1, 2026, the proposed rule change be made effective as of the first day of the month following Commission approval.

The text of the proposed rule change is available on the MSRB's website at *https://msrb.org/2025-SEC-Filings* and at the MSRB's principal office.

[1] 15 U.S.C. 78s(b)(1).

[2] 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 MSRB 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 MSRB 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

Background

Rule A–13 currently requires dealers to pay (a) an underwriting fee under Rule A–13(b) (the ''Underwriting Fee'') for municipal securities purchased from an issuer by or through such dealer as part of a primary offering,[3] (b) a transaction fee under Rule A–13(d)(i) and (ii) (the ''Transaction Fee'') based on the par amount traded in inter-dealer trades and customer sales, and (c) a trade count fee under Rule A–13(d)(iv)(a) and (b) (the ''Trade Count Fee'') based on the number of inter-dealer trades and customer sales (collectively, the ''Market Activity Fees''). Rule A–11 currently requires municipal advisors to pay to the MSRB a recurring annual fee (the ''Municipal Advisor Professional Fee'' and, together with the Market Activity Fees, the ''Rate Card Fees'') for each associated person qualified as a municipal advisor representative under MSRB Rule G–3 and for whom the municipal advisor has on file with the Commission an active Form MA–I as of January 31 of the applicable year (''covered professional''). The purpose of the proposed rule change is to amend the rates of assessment for the Rate Card Fees and to revise the MSRB's existing model for establishing Rate Card Fees from an annual process to a multi-year process based on the factors described below.

[3] Underwriting assessments charged pursuant to Rule A–13(c) to dealers acting as underwriters of certain municipal fund securities are not included in the assessment rates that would be amended by this proposed rule change.