

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57760; File No. SR-BSE-2008-02)

May 1, 2008

Self-Regulatory Organizations; Boston Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Amending the Certificate of Incorporation of Boston Stock Exchange, Incorporated

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 April 23, 2008, the Boston Stock Exchange, Incorporated (“BSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by BSE. 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 BSE proposes to amend its Certificate of Incorporation in order to make distributions to Exchange membership<sup>3</sup> owners under certain circumstances. Specifically, the amended Certificate of Incorporation will permit the Exchange to distribute the net proceeds from the Exchange’s intended sale of its equity interests in the Boston Options Exchange Group LLC (“BOX”) to the Bourse de Montréal (“MX”) by means of a pro rata redemption of a portion of each Exchange membership. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.bostonstock.com>), at the principal offices 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.

<sup>3</sup> As that term is defined in Article I, Section 3(h), and Article IX of the BSE Constitution.

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

In its filing with the Commission, BSE 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. BSE 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

On October 2, 2007, the Exchange announced that it had entered into an agreement to be acquired by The Nasdaq Stock Market, Inc., (n/k/a The NASDAQ OMX Group, Inc.) (“NASDAQ OMX”) in a transaction that is subject to approval by the Exchange’s members and by the Commission. The Exchange is being sold in its entirety to NASDAQ OMX, including all of its subsidiaries, with the exception of BOX. The sale will be structured as a merger of the Exchange with and into a wholly-owned subsidiary of NASDAQ OMX. The Exchange will be the surviving corporation and will become a wholly-owned subsidiary of NASDAQ OMX. Proposed rule changes, filed pursuant to Section 19 of the Act, relating to NASDAQ OMX’s planned acquisition of the Exchange must be approved by the Commission in order for the transaction to close and are the subject of a separate filing.<sup>4</sup> The sale of the Exchange’s equity interest in BOX to a third party is a condition precedent to completing the sale of the Exchange to NASDAQ OMX.

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<sup>4</sup> See Securities Exchange Act Release No. 57757 (May 1, 2008) (SR-BSE-2008-23).

Currently, BOX is owned by the Exchange, MX, and several other investors. On December 21, 2007, the Exchange announced that it had reached an agreement with MX to sell the Exchange's remaining equity interest in BOX to MX. Upon closing of this transaction, which is also subject to approval by the Commission, the Exchange will no longer have an equity interest in BOX, and MX will have increased its ownership interest in BOX from 31.4% to 53.24%.<sup>5</sup> Exchange membership owners<sup>6</sup> will be compensated for their equity interest in BOX as would be provided in Article Fourth of the Restated Certificate of Incorporation of Boston Stock Exchange, Incorporated ("Restated Certificate").

After completing the sale of all of its equity interests in BOX, the Exchange will continue to act as the self-regulatory organization for the BOX facility, and the Exchange's wholly-owned subsidiary Boston Options Exchange Regulation, LLC ("BOXR") will provide the regulatory framework for the BOX facility. BOXR, together with BOX, will continue to have regulatory responsibility for the activities of the BOX facility.

In order for the Exchange to distribute the net proceeds from the BOX sale to the Exchange's membership owners, the Exchange's Certificate of Incorporation must be amended in order to remove the existing provision that prevents the Exchange from making distributions to Exchange membership owners, and to add a provision that allows the Exchange to redeem a portion of each membership for a pro rata share of the net proceeds of the BOX sale.<sup>7</sup> The Exchange has been advised that the use of the redemption as a means to distribute proceeds from

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<sup>5</sup> See Securities Exchange Act Release No. 57714 (April 25, 2008) (SR-BSE-2008-25).

<sup>6</sup> All holders of outstanding BSE memberships, including lessors but not lessees, and excluding electronic access members ("EAMs"), will be entitled to receive their pro rata share of the equity interest in BOX based on the outstanding number of such BSE memberships.

<sup>7</sup> See Restated Certificate, Article Fourth.

the sale of its equity interest in BOX may provide beneficial tax treatment. Therefore, the Restated Certificate would permit the Exchange to make distributions to membership owners, and also would permit the use of such pro rata redemption. The Restated Certificate also would delete obsolete text regarding the incorporators of the Exchange.

If approved by the Commission, the Restated Certificate would be effective immediately prior to the closing of the BOX distribution upon the filing of the Restated Certificate with the Secretary of State of the State of Delaware. It is anticipated that the Restated Certificate would be amended again upon the closing of NASDAQ OMX's planned acquisition of the Exchange.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b)(5) of the Act,<sup>8</sup> that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest in that, if approved, the proposed rule change will provide a means for the Exchange to distribute the proceeds from the sale of the Exchange's equity interest in BOX to all of the Exchange's owners of memberships.

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

BSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve 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-BSE-2008-02 on the subject line.

#### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2008-02. 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 inspection and copying 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-BSE-2008-02 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>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).