

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57782; File No. SR-BSECC-2008-01)

May 6, 2008

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange Clearing Corporation Relating to Amendment of its Articles of Organization and By-Laws in Connection with the Planned Acquisition by The NASDAQ OMX Group, 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 April 24, 2008, the Boston Stock Exchange Clearing Corporation (“BSECC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BSECC proposes to amend its Articles of Organization and its By-Laws to reflect the planned acquisition of BSECC by The NASDAQ OMX Group, Inc. (“NASDAQ OMX”) and to update the By-Laws in certain other respects.<sup>3</sup> The text of the proposed rule change is available from the principal office of BSECC, at <http://www.bostonstock.com/BSECC/Pending/BSECC-2008-01.pdf>, 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> BSECC is currently organized under the laws of the Commonwealth of Massachusetts. The Articles of Organization of a Massachusetts corporation are comparable to the Certificate of Incorporation of a Delaware corporation.

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 self-regulatory organization 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 self-regulatory organization 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

The Merger

On October 2, 2007, Boston Stock Exchange, Inc. (“BSE”), announced that it had entered into an agreement with The Nasdaq Stock Market, Inc. (now NASDAQ OMX) pursuant to which NASDAQ OMX would acquire all of the outstanding membership interests in BSE and BSE would be merged with and into Yellow Merger Corporation, a Delaware corporation and wholly owned subsidiary of NASDAQ OMX, with BSE surviving the merger. As a result of the merger, BSE would become a Delaware stock corporation with 100% of its outstanding stock owned by NASDAQ OMX. BSECC is now and following the merger will continue to be a wholly owned subsidiary of BSE. BSECC proposes to adopt (1) Articles of Amendment to its Articles of Organization, and (2) amendments to its By-Laws for the purpose of reflecting its acquisition by NASDAQ OMX and of modernizing its governance documents.

BSECC’s Articles of Organization

In order to amend its Articles of Organization, BSECC would adopt Articles of Amendment that would amend its existing Articles of Organization as follows:

1. amend Article III to provide that the total number of shares of each class of stock that BSECC is authorized to issue is 150 shares of common stock. This amendment reflects a reduction in the total authorized share capital of BSECC from 1000 shares of common stock to the 150 shares of Common Stock currently held by BSE. Thus, following the amendment, all of the authorized shares of common stock of BSECC would be outstanding and would be owned by BSE;
2. amend Article V to provide that BSE may not transfer or assign any shares of stock of BSECC unless such transfer or assignment has been filed with and approved by the Commission under Section 19 of the Act;<sup>4</sup> and
3. adopt new Article VI to provide that in accordance with modern practice for Massachusetts corporations, directors of BSECC are not personally liable to it for breaches of fiduciary duty except for breaches involving (i) a breach of the duty of loyalty, (ii) acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law, (iii) distributions of assets that would render BSECC insolvent, or (iv) any transaction from which the director derived an improper personal benefit.

#### BSECC's By-Laws

BSECC proposes several changes to its By-Laws, which are primarily for the purpose of updating the By-Laws in accordance with modern corporate practice for Massachusetts corporations. The amendments proposed are:

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<sup>4</sup> 15 U.S.C. 78s.

1. eliminate the offices of “clerk” and “vice-chairman” from BSECC and delete references to those offices from the By-Laws;
2. clarify the time periods allowed or required for notice to stockholders of meetings, the permissible duration of stockholder proxies, and the setting of a record date in accordance with modern Massachusetts law and remove a provision allowing close of the transfer books of BSECC that is no longer consistent with Massachusetts law;<sup>5</sup>
3. provide that stockholders, as well as directors, may fill vacancies on the Board, in accordance with Massachusetts law;
4. clarify that directors of BSECC who also serve on BSE’s Board of Directors must tender resignations from BSECC’s Board if they cease to be directors of BSE;
5. clarify the requirements for action by the Board of Directors and the stockholders to be taken without a meeting;
6. establish that the officers of BSECC are all appointed by and subject to removal by its Board of Directors;
7. adopt modern provisions stipulating the conditions under which BSECC may indemnify its officers and directors and the scope of such indemnification;
8. stipulate that the By-Laws may be amended only upon approval by the Commission and in accordance with the rules of BSECC;<sup>6</sup> and

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<sup>5</sup> This change would not limit the effectiveness of the change to the Articles of Organization requiring Commission approval of transfers of BSECC’s stock.

<sup>6</sup> Rule XII of BSECC, requires notice to clearing members of amendments to the By-Laws.

9. clarify the meaning of several provisions in accordance with modern Massachusetts law and correct several typographical errors.

BSECC believes that the proposed rule change is consistent with the provisions of Section 17A of the Act<sup>7</sup> in general and with Section 17A(b)(3)(A) and (C) of the Act<sup>8</sup> in particular in that it is designed to ensure that BSECC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and to assure a fair representation of BSECC's members in the selection of its directors and the administration of its affairs.

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

BSECC does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

BSECC has neither solicited nor received comments on the proposed rule change.

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

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which BSECC consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule

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<sup>7</sup> 15 U.S.C. 78q-1.

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(A) and(C).

change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules.sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSECC-2008-01 on the subject line.

##### Paper Comments

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

All submissions should refer to File Number SR-BSECC-2008- 01. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BSECC. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSECC–2008-01 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).