

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59571; File No. SR-BSECC-2009-02)

March 12, 2009

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend the Articles of Organization and By-Laws of Boston Stock Exchange Clearing Corporation

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 February 20, 2009, 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 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 the Substance of the Proposed Rule Change

BSECC is filing this proposed rule change with regard to proposed changes to its Articles of Organization and By-Laws to increase its authorized shares and to reflect a transfer in ownership of five percent of BSECC’s shares. BSECC is also proposing to amend its Articles of Organization and By-Laws to change its name to the Nasdaq Clearing Corporation and to make other miscellaneous changes. The proposed rule change will be implemented as soon as practicable following approval by the Commission. The text of the proposed rule change is available from the Commission’s public reference room and at <http://nasdaqomxbx.cchwallstreet.com>.

---

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

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

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

In its filing with the Commission, 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

On August 29, 2008, The NASDAQ OMX Group, Inc. ("NASDAQ OMX") completed its acquisition of Boston Stock Exchange, Incorporated (recently renamed NASDAQ OMX BX, Inc.) and several of its wholly owned subsidiaries, including BSECC. As a result, BSECC has become an indirect wholly owned subsidiary of NASDAQ OMX. On January 5, 2009, OMX AB, which is another indirect wholly owned subsidiary of NASDAQ OMX, entered into agreements with Fortis Bank Global Clearing N.V. ("Fortis") and European Multilateral Clearing Facility N.V. ("EMCF"), pursuant to which, among other things, OMX AB (i) has acquired a 22% equity stake in EMCF and (ii) has agreed to acquire a 5% equity stake in BSECC from NASDAQ OMX BX, Inc. and in turn to transfer this stake to EMCF.

The Articles of BSECC provide that:

All of the authorized shares of Common Stock of [BSECC] shall be issued and outstanding, and shall be held by Boston Stock Exchange, Incorporated, a Delaware corporation. Boston Stock Exchange, Incorporated may not transfer or assign any shares of stock of BSECC, in whole or in part, to any entity, unless

such transfer or assignment shall be filed with and approved by the U.S. Securities and Exchange Commission under Section 19 of the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder. Accordingly, in order to complete the transfer of shares of BSECC contemplated by the agreements, BSECC must amend the Articles to specify an additional stockholder in BSECC and must obtain Commission approval for the transfer of stock. In addition, BSECC is proposing to amend the Articles and its By-Laws to change its name to NASDAQ Clearing Corporation and to adopt other miscellaneous changes.

EMCF is a central counterparty clearinghouse for European equity trading on exchanges and multilateral trading facilities, including NASDAQ OMX Europe Ltd., Chi-X Europe Ltd., and BATS Trading Europe Ltd. In addition, EMCF has agreed to provide central counterparty clearing services to NASDAQ OMX exchanges in Stockholm, Helsinki, Copenhagen, and Iceland. EMCF clears stocks traded on multiple European markets, including stocks comprising the AEX, DAX, FTSE100, CAC40, and SMI20 indexes. Services offered by EMCF include novation, gross trade netting, settlement, margining, and fails and buy-in management. EMCF is headquartered in the Netherlands, and is subject to voluntary supervision by De Nederlandsche Bank and Autoriteit Financiële Markten. In addition to OMX AB, EMCF's stockholders are Fortis Bank Nederland (Holding) N.V. and Fortis Bank Global Clearing N.V. NASDAQ OMX and EMCF's other stockholders will seek to further broaden EMCF's ownership structure to include order flow providers and financial institutions. It is expected that this will increase the commitment of banks and flow providers towards EMCF, decrease EMCF's dependence on one shareholder, and demonstrate to the market that EMCF is a solid company with firm backing of shareholders with high standing and that EMCF is a

company that looks after the interests of all its interested parties. Also, a key purpose of the diversified shareholders' base is to facilitate the further development of EMCF into becoming the leading central counterparty services provider for European cash equities.

Under the Share Transfer Agreement dated January 5, 2009, among Fortis, OMX AB, and EMCF, OMX AB has agreed, subject to Commission approval, to transfer a 5% stake in BSECC to EMCF. The transfer of BSECC's shares is a portion of the consideration to be paid by OMX AB for obtaining a 22% stake in EMCF. Accordingly, OMX AB must obtain the shares from NASDAQ OMX BX, Inc. prior to transferring them to EMCF. OMX AB has agreed to undertake to use reasonable endeavors to obtain Commission approval for the transfer as soon as possible and in any event by July 5, 2009.

Currently, the authorized share capital of BSECC is 150 shares, par value \$100. Because 5% of 150 is 7.5, BSECC must increase its authorized share capital and pay a 2 for 1 stock dividend to NASDAQ OMX BX, Inc. such that it will own 300 shares and be able to transfer 15 of them. Accordingly, BSECC also proposes to amend its Articles in order to increase its authorized share capital. BSECC proposes to amend its Articles to reflect either OMX AB or EMCF as one of its stockholders (as well as the name change of NASDAQ OMX BX, Inc.).

The amended provisions would state:

All of the authorized shares of Common Stock of [BSECC] shall be issued and outstanding, and shall be held by NASDAQ OMX BX, Inc., a Delaware corporation, and either OMX AB, a corporation organized under the laws of Sweden, or European Multilateral Clearing Facility, N.V., a public company with limited liability incorporated under the laws of the Netherlands.

The language in the Articles providing that a stockholder may not transfer or assign shares of stock of BSECC without approval of the Commission would remain in place, such that all of the stockholders of BSECC would be bound by that restriction.

The Share Transfer Agreement also provides that under certain circumstances, EMCF may transfer the shares of BSECC back to OMX AB or NASDAQ OMX BX, Inc., thereby unwinding this aspect of the transaction. In order to avoid the need to seek approval for such an unwinding in the future, BSECC requests that the Commission approve at this time both the initial transfer and any future unwinding.

Finally, at the time of the transfer EMCF and NASDAQ OMX BX, Inc. will enter into a Shareholders Agreement to govern their relationship with respect to BSECC. The key provisions of the Shareholders Agreement are as follows. First, EMCF will grant BSECC a right of first refusal to purchase all or any portion of its shares that EMCF may propose to transfer. Second, if NASDAQ OMX BX, Inc. proposes to transfer any of its shares of BSECC to any person, it must provide EMCF with the right to substitute EMCF's shares in such transfer in proportion to EMCF's percentage share of ownership in BSECC. Third, if NASDAQ OMX BX, Inc. proposes to enter into a transaction under which it would no longer own a majority of BSECC's outstanding shares or a sale of all or substantially all of the assets of BSECC ("Sale Transaction"), EMCF will in most circumstances take such actions as are necessary to support the consummation of the Sale Transaction. Fourth, if BSECC issues new securities it must first offer them to NASDAQ OMX BX, Inc. and EMCF. Finally, the Shareholders Agreement provides for rights of the stockholders to obtain information from BSECC about its financial performance and operations.

Because the share transfers described by the Shareholders Agreement would require Commission approval under the Articles, the Agreement also provides that “[n]othing in the Agreement shall be construed to authorize [BSECC] or any stockholder of [BSECC] to transfer any share or other interests in [BSECC] unless such transfer is approved in accordance with the restrictions contained in the [Articles] of [BSECC] and such other restrictions as may be imposed by the ... Commission or other governmental authority having jurisdiction over [BSECC].”

BSECC is also proposing changing its name from Boston Stock Exchange Clearing Corporation to NASDAQ Clearing Corporation. The change reflects BSECC’s changed status as a subsidiary of NASDAQ OMX. In addition, BSECC is proposing the following miscellaneous changes to its Articles and By-Laws. First, BSECC is restating its Articles to consolidate prior amendments into a single document. Under Massachusetts law, the form for restatement of the Articles necessitates nonsubstantive changes to citations to Massachusetts statutes in the title of the Articles, changes to prefatory language in Article IV of the Articles, and the addition of nonsubstantive language regarding date of effectiveness as a new Article VII. Second, BSECC is amending the Articles and By-Laws to reflect the change in the name of Boston Stock Exchange, Incorporated to NASDAQ OMX BX, Inc. Finally, BSECC is correcting several typographical errors in Article X of the By-Laws.

## 2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 17A of the Act,<sup>3</sup> in general, and with Section 17A(b)(3)(A) of the Act,<sup>4</sup> in particular, in that it is

---

<sup>3</sup> 15 U.S.C. 78q-1.

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. The change will allow investment in BSECC by EMCF, a central counterparty clearinghouse with substantial expertise in clearing of equity trades on exchanges and multilateral trading facilities. At the same time, the changes are structured to allow the Commission ongoing oversight over any further transfers of BSECC's common stock that may be proposed in the future.

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

Written comments were neither solicited nor received.

III. 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-2009-02 on the subject line.

---

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(A).

Paper comments:

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

All submissions should refer to File Number SR-BSECC-2009-02. 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 am and 3:00 pm. The text of the proposed rule change is available at BSECC, the Commission's Public Reference Room, and <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/pdf/bsecc-filings/2009/SR-BSECC-2009-002.pdf>. 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-2009-02 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>5</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>5</sup> 17 CFR 200.30-3(a)(12).