

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59496; File No. SR-BSECC-2009-01)

March 3, 2009

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Certificate of Incorporation of The NASDAQ OMX Group, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on February 17, 2009, Boston Stock Exchange Clearing Corporation (“BSECC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by BSECC. BSECC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(3) thereunder<sup>3</sup> so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

BSECC is filing this proposed rule change with regard to proposed changes to the Restated Certificate of Incorporation (“Certificate”) of its parent corporation, The NASDAQ OMX Group, Inc. (“NASDAQ OMX”). The proposed rule change will be implemented as soon as practicable following filing with the Commission. The text of the proposed rule change is available at <http://www.nasdaqtrader.com/Trader.aspx?id=BSECCIE2009> 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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(3).

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 these statements.<sup>4</sup>

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

1. Purpose

NASDAQ OMX is proposing to make amendments to its Certificate. As provided in Articles XI and XII of the NASDAQ OMX By-Laws, proposed amendments to the Certificate are to be reviewed by the Board of Directors of each self-regulatory subsidiary of NASDAQ OMX, and if any such proposed amendment must be filed with or filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder before such amendment may be effective, then such amendment shall not be effective until filed with or filed with and approved by the Commission as the case may be. The governing boards of the NASDAQ Stock Market LLC ("NASDAQ Exchange"), NASDAQ OMX BX, Inc. ("BX"), NASDAQ OMX Phlx, Inc. ("Phlx"), BSECC, and Stock Clearing Corporation of Philadelphia ("SCCP") have each reviewed the proposed change and determined that it should be filed with

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<sup>4</sup> The Commission has modified the text of the summaries prepared by BSECC.

the Commission.<sup>5</sup> The changes to the Certificate are limited in scope, and under Delaware law, they do not require approval by the stockholders of NASDAQ OMX.

Specifically, NASDAQ OMX proposes to eliminate its Certificate of Designations, Preferences and Rights of Series D Preferred Stock, and all matters set forth therein. NASDAQ OMX's Series D Stock was created in 2005 for the purpose of allowing National Association of Securities Dealers, Inc. to retain voting control over NASDAQ OMX's predecessor, The Nasdaq Stock Market, Inc. In connection with the NASDAQ Exchange commencing operations as a national securities exchange, the sole share of Series D Stock was redeemed in December 2006. Under Delaware law, both a certificate of designations (designating a series of preferred stock) and a certificate of elimination (eliminating a previously adopted designation) are deemed to be amendments to NASDAQ OMX's Certificate.

## 2. Statutory Basis

BSECC believes that the proposed rule change is consistent with provisions of Section 17A of the Act,<sup>6</sup> in general, and with Section 17A(b)(3)(A) of the Act,<sup>7</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. The proposed change will enhance the clarity of NASDAQ OMX's governance documents by eliminating provisions relating to a series of preferred stock that is no longer outstanding.

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<sup>5</sup> The NASDAQ Exchange, Phlx, BX, BSECC, and SCCP have each submitted this proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(A).

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(3)<sup>9</sup> thereunder because the proposal is concerned solely with the administration of BSECC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(3).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSECC-2009-01 on the subject line.

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-2009-01. 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 10:00 am and 3:00 pm. The text of the proposed rule change is available at BSECC, the Commission's Public Reference Room, and <http://www.nasdaqtrader.com/Trader.aspx?id=BSECCIE2009>. 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-2009-01 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>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).