

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61000; File No. SR-BSECC-2009-005)

November 13, 2009

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder² notice is hereby given that on October 1, 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 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>.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

NASDAQ OMX is proposing to file the Certificate of Designation described below. Under Article Fourth, Paragraph B of the Certificate, NASDAQ OMX's Board of Directors may authorize the issuance of preferred stock, establish the number of shares to be included in such series, and fix the designation, powers, preferences and rights of the shares of such series, and the qualifications, limitations, and restrictions thereof. 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 under Section 19 of the Act and the rules promulgated thereunder be filed with, or filed with and approved by the Commission 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. Senior management of NASDAQ, PHLX, and BX, through delegated authority of their governing boards, have determined that the proposed change should be filed with the Commission, and the governing boards of BSECC and SCCP have each reviewed the proposed change and determined that it should be filed with the Commission.³ Under Delaware law, the amendment of the Certificate by the

³ NASDAQ, PHLX, BX, BSECC, and SCCP are each submitting this filing pursuant to Section 19(b)(3)(A)(iii) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

filing of a Certificate of Designation does not require approval by the stockholders of NASDAQ OMX.

The issuance of the Series A Preferred is part of a transaction between NASDAQ OMX and one of its existing shareholders, Silver Lake Partners (“Silver Lake”), whereby Silver Lake agreed to convert all of the 3.75% Series A Convertible Notes due 2012 (“Notes”) held by certain of its affiliates (“Silver Lake Affiliates”) into shares of NASDAQ OMX common stock (“Common Stock”) prior to the maturity date of such Notes.⁴ As an inducement to convert the Notes, NASDAQ OMX has delivered a cash payment and has agreed to deliver 1,600,000 shares of Series A Preferred to the Silver Lake Affiliates (“Transaction”). Effective September 28, 2009, the Silver Lake Affiliates converted Notes into 8,246,680 shares of Common Stock. As a result, Silver Lake no longer holds any Notes and through certain of the Silver Lake Affiliates currently is the beneficial owner of shares of Common Stock that equal less than five percent (5%) of the outstanding voting securities of NASDAQ OMX.

Under the Certificate of Designation, up to two million shares will be designated for issuance as shares of Series A Preferred. The Series A Preferred will be senior in preference and priority to the Common Stock and on parity with all other classes and series of preferred stock.

The Series A Preferred will have limited voting rights and will not have the right to vote on any matters that are subject to the vote of the holders of Common Stock. The approval of at least a majority of the then outstanding shares of Series A Preferred will be

⁴ Under Article Fourth, Section C.1(b) of the Certificate, the Notes are entitled to vote on an as-converted basis on matters that are submitted to a vote of the stockholders of NASDAQ OMX, voting together with the holders of the Common Stock and any other shares of capital stock entitled to vote.

required to approve any amendment to the Certificate or the NASDAQ OMX By-Laws that would adversely affect the rights, preferences, or privileges of the Series A Preferred (including any change in the dividends payable or liquidation preference). In addition, any amendments to reduce the dividend payable to the Series A Preferred, to increase the number of authorized shares of the Series A Preferred, or to change certain specified provisions of the Certificate of Designation will require the written consent of 75% of the then outstanding shares of Series A Preferred, voting together as a class.

The shares of Series A Preferred will be convertible into shares of Common Stock. Under the applicable NASDAQ listing rules, approval by the stockholders of NASDAQ OMX (“Shareholder Approval”) is required to permit the conversion of the Series A Preferred.⁵ NASDAQ OMX intends to seek Shareholder Approval at the company’s 2010 annual meeting of stockholders.

Upon the date of Shareholder Approval, the Series A Preferred will mandatorily convert into shares of Common Stock as provided in the Certificate of Designation.⁶ In the event that Shareholder Approval is not obtained, the Series A Preferred will accrue cumulative dividends, accrued on a daily basis and compounded quarterly, at a per

⁵ Pursuant to NASDAQ Listing Rule 5635(c), shareholder approval is required when an equity compensation arrangement is made pursuant to which stock may be acquired by an issuer’s officers, directors, employees, or consultants. Pursuant to agreements relating to the issuance of the Notes, a Silver Lake representative currently serves on the NASDAQ OMX Board of Directors.

⁶ The number of shares of Common Stock to be issued upon conversion is variable. To the extent that the conversion results in Silver Lake obtaining beneficial ownership of shares of voting securities in excess of five percent (5%) of the then-outstanding shares of stock entitled to vote, Silver Lake will be subject to the existing voting restrictions in Article Fourth, Section C.3 of the Certificate. This provision provides that no person who is the beneficial owner of voting securities of NASDAQ OMX in excess of five percent (5%) of the then-outstanding shares of stock generally entitled to vote (“Excess Securities”) may vote such Excess Securities.

annum rate equal to 12%. In addition, in the event that Shareholder Approval is not obtained, the Series A Preferred will be subject to optional redemption by NASDAQ OMX subject to the terms of the Certificate of Designation. The Series A Preferred will be mandatorily redeemable by NASDAQ OMX on the fourth anniversary of the original issuance date and will be redeemable at the option of the holders upon a Fundamental Change (as defined in the Certificate of Designation).

The issuance of Series A Preferred will result in no substantive change in the ownership or governance structure of NASDAQ OMX since the Series A Preferred will have no voting rights other than the limited rights described above. The Transaction also has resulted in the conversion of most of the outstanding Notes into Common Stock.⁷

2. Statutory Basis

BSECC believes that the proposed rule change is consistent with the provisions of Section 17A of the Act,⁸ in general, and with Section 17A(b)(3)(A) of the Act,⁹ 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. BSECC believes that the proposed rule change and the issuance of Series A Preferred to existing investors will result in no substantive change to the corporate ownership structure of its parent NASDAQ OMX.

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

⁷ Prior to the Transaction, the Silver Lake Affiliates held approximately \$119.5 million in aggregate principal amount of the outstanding Notes. Another holder continues to hold approximately \$500,000 in aggregate principal amount of the outstanding Notes.

⁸ 15 U.S.C. 78q-1.

⁹ 15 U.S.C. 78q-1(b)(3)(A).

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 pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and subparagraph (f)(3) of Rule 19b-4 thereunder.¹¹ At any time within 60 days of the filing of the proposed 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, as amended, 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

¹⁰ 15 U.S.C. 78s(b)(3)(a)(iii).

¹¹ 17 CFR 240.19b-4(f)(3).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BSECC-2009-005 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-2009-005. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-BSECC-2009-005, 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).