

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59818; File No. SR-BSECC-2009-03)

April 23, 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 April 2, 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 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)<sup>3</sup> thereunder 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 persons.

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>, at BSECC's principal office, 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-1(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 such 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 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. The governing boards of NASDAQ OMX BX, Inc. ("BX"), NASDAQ OMX PHLX, Inc. ("PHLX"), The NASDAQ Stock Market LLC ("NASDAQ Exchange"), BSECC, and Stock Clearing Corporation of Philadelphia ("SCCP") have each reviewed the proposed change and determined that it should be filed with 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.

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<sup>4</sup> The Commission has modified parts of these statements.

<sup>5</sup> The NASDAQ Exchange, 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).

Specifically, NASDAQ OMX is proposing to restate without amendment its Certificate. The Certificate is composed of a previous Restated Certificate of Incorporation adopted in 2003 and numerous subsequent amendments, which under Delaware law are adopted as freestanding documents. However, Delaware law allows the various documents comprising a certificate of incorporation to be consolidated into a single restated certificate upon approval of a corporation's board of directors. The change will assist interested persons, including NASDAQ OMX stockholders and Commission staff, in reading the Certificate without having to review multiple documents. The restated Certificate reflects the deletion of both the Certificate of Designations, Preferences and Rights of Series D Preferred Stock and the Certificate of Elimination that was recently filed with respect to it.<sup>6</sup> Since the latter component of the Certificate cancels the former, they are both deleted from the restated Certificate.

## 2. Statutory Basis

The proposed rule change is consistent with Section 17A of the Act<sup>7</sup> in general and with Section 17A(b)(3)(A) of the Act<sup>8</sup> in particular because 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 restating the various documents comprising the Certificate as a single document.

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<sup>6</sup> Securities Exchange Act Release No. 59460 (February 26, 2009), 74 FR 9841 (March 6, 2009) (SR-NASDAQ-2009-010, SR-BX-2009-009, SR-Phlx-2009-14); Securities Exchange Act Release No. 59496 (March 3, 2009), 74 FR 10626 (March 11, 2009) (SR-BSECC-2009-01); Securities Exchange Act Release No. 59494 (March 3, 2009), 74 FR 10642 (March 11, 2009) (SR-SCCP-2009-01).

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

<sup>8</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 pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(3)<sup>10</sup> promulgated thereunder because the proposal change is concerned solely with the administration of BSECC. At any time within sixty 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 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-2009-03 on the subject line.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(3).

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-2009-03. 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. 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-2009-03 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>11</sup>

Elizabeth M. Murphy  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).