

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63629; File No. SR-BSECC-2010-002)

January 3, 2011

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4² thereunder, notice is hereby given that on December 20, 2010, The Boston Stock Clearing Corporation (“BSECC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 Act³ and Rule 19b-4(f)(3)⁴ 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 proposes to amend its Articles of Organization, By-Laws, and Rules.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

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

The purpose of this rule filing is to amend BSECC's Articles of Organization ("Articles"), By-Laws, and Rules to: (i) change the name of BSECC; (ii) decrease the authorized share capital of BSECC; (iii) remove a stockholder; (iv) provide notice that certain amendments to the formation documents that were previously approved by the Commission were not implemented; and (v) suspend certain maintenance and reporting requirements during the period of inactivity of BSECC.

2. Prior Amendments to BSECC's Articles and By-Laws

In 2009, BSECC amended its Articles and By-Laws by, among other things: (i) increasing BSECC's authorized shares to 300 shares and to reflect a planned transfer in ownership of five percent of BSECC's shares; (ii) changing its name to "NASDAQ Clearing Corporation;" (iii) restating its Articles to consolidate prior amendments into a single document; (iv) amending the Articles and By-Laws to reflect the change in the name of "Boston Stock Exchange, Incorporated" to "NASDAQ OMX BX, Inc.;" and (v) correcting several typographical errors in Article X of the By-Laws.⁵

As explained in the Commission's order approving that 2009 proposed rule change, the purpose of those changes was to make various corporate and administrative modifications in BSECC's Articles and By-Laws in order to support the acquisition by The NASDAQ OMX Group, Inc. ("NASDAQ OMX") of Boston Stock Exchange, Incorporated, which was renamed

⁵ Securities Exchange Act Release No. 59839 (Apr. 28, 2008), 74 FR 21031 (May 6, 2009).

“NASDAQ OMX BX, Inc.,” and of several Boston Stock Exchange’s wholly owned subsidiaries, including BSECC, which was effective on August 29, 2008. As a result of the acquisitions, BSECC became 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”)⁶ whereby, among other things, OMX AB: (i) acquired a 22% equity stake in EMCF and (ii) agreed to acquire a 5% equity stake in BSECC from NASDAQ OMX BX, Inc., and in turn transfer this stake to EMCF.

While these changes were approved by the Commission in the 2009 proposed rule changes,⁷ the necessary paperwork was never filed with the Department of Corporations and Taxation of the Commonwealth of Massachusetts because NASDAQ OMX and its affiliates and EMCF decided not to complete the transfer of BSECC stock to OMX AB and EMCF.

3. Proposed Amendments to Articles and By-Laws

Under this proposed rule change, BSECC will amend its Articles and By-Laws to essentially reverse the 2009 amendments to its Articles and By-Laws thereby clarifying that the corporate changes were never fully effectuated. Thus, BSECC will, among other things, amend Article I to change the name from “NASDAQ Clearing Corporation” back to “Boston Stock

⁶ 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 provides 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.

⁷ Supra note 5.

Exchange Clearing Corporation;” amend Article III of its Articles to decrease the authorized share capital of BSECC back to 150 shares because the additional authorized shares are not necessary at this time; and amend Article V to remove OMX AB and European Multilateral Clearing Facility, N.V. because BSECC will not be adding such shareholders at this time.

4. Suspension of Provisions During Inactivity

Because BSECC is currently not conducting any business operations, BSECC will suspend certain maintenance and reporting requirements during such period of inactivity.

As background, BSECC determined in October 2009 that it would fully cease all operations and return the clearing fund deposits that were provided to BSECC by its members for the purpose of offsetting BSECC’s financial risk while operating a clearing agency for the member. BSECC returned all clearing funds to its members by September 30, 2010, and BSECC no longer maintains clearing members or has any other clearing operations as of that date. However, BSECC desires to maintain its registration as a clearing agency with the Commission for possible active operations in the future.

Currently, BSECC only conducts the administrative operations that are required to maintain its registration, which generally consist of tax and record maintenance obligations and various maintenance and reporting requirements of a clearing agency. Since BSECC no longer maintains members conducts clearing business operations, BSECC will suspend certain maintenance and reporting requirements of its By-Laws and Rules during any period in which BSECC is in an inactive status:

- (a) BSECC Article II Section 3: BSECC will suspend the requirement that the Board of Directors contain BSECC members or persons affiliated with the BSECC members.

- (b) BSECC Rule II, Section 1: BSECC will suspend the requirement to maintain a clearing fund and defines the term “inactive” as when it suspends clearing of security purchases or sales; has provided written notice to its Members of the suspension of its operations; and does not hold any deposits in the Clearing Fund.
- (c) BSECC Rule VI, Section 1: BSECC will suspend the requirement of furnishing annual audited financial statements prepared in accordance with generally accepted accounting standards during the inactive status. Since the only activity that BSECC conducted during the wind down of operations is the return of the clearing funds, BSECC also proposes to provide a review of business operations in lieu of an audit during the year in which all clearing funds were returned to the members.
- (d) BSECC Rule VI, Section 2: BSECC will suspend the requirement for the review of internal accounting controls during the inactive status. Additionally, since the only activity conducted by BSECC during the wind down of operations was the return of the clearing funds, BSECC proposes to suspend the same requirement for the review of internal accounting controls during the year in which all clearing funds were returned to the members.
- (e) BSECC Rule VI, Section 3: BSECC will suspend the requirements for providing annual audited financial statements and quarterly unaudited financial during the period of inactivity.

5. Statutory Basis

BSECC believes that the proposed rule change is consistent with the provisions of Section 17A of the Act,⁸ in general, and furthers the objectives of Section 17A(b)(3)(F) of the Act⁹ in particular, in that it is designed to remove impediments to and perfect the mechanism of the national market system for the clearance and settlement of securities transactions. The proposed rules seek to suspend maintenance and reporting requirements during the time when BSECC has suspended its business operations. None of these changes affect the investing public and rather are concerned solely with the administration of BSECC.

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

BSECC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

BSECC has not solicited or received written comments relating to the proposed rule change. BSECC will notify the Commission of any written comments it receives.

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 Rule 19b-4(f)(3)¹¹ thereunder because the proposed rule change is concerned solely with the administration of BSECC. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

⁸ 15 U.S.C. 78q-1.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ Supra note 3.

¹¹ Supra note 4.

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 may be submitted by using the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>), or send an e-mail to rule-comment@sec.gov. Please include File No. SR-BSECC-2010-002 on the subject line.
- Paper comments should be sent 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 No. SR-BSECC-2010-002. 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 Web site viewing and printing 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 BSECC's principal office and BSECC's Web site (<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 submission should refer to File No. SR-BSECC-2010-002 and should be submitted within [insert date 21 days from publication in the Federal Register] days after the date of publication.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹²

Elizabeth M. Murphy
Secretary

¹² 17 CFR 200.30-3(a)(12).