

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.<sup>32</sup> In particular, the Commission finds the proposed rule change, as amended, would integrate the supervision and compliance functions relating to member organizations' public customer options activities into the overall supervisory structure of a member organization, thereby eliminating any uncertainty over where supervisory responsibility lies. In addition, the proposed rule change would foster the strengthening of members' and member organizations' internal controls and supervisory systems. As such, the Commission finds the proposal to be consistent with the objectives of Section 6(b)(5) of the Act,<sup>33</sup> in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and in general, to protect investors and the public interest.

The Commission also finds good cause for approving Amendment No. 1 to the proposed rule change prior to the 30th day after its publication in the **Federal Register**. Amendment No. 1 corrects an internal cross-reference and does not contain any substantive modifications to the rule text. The Commission finds that it is in the public interest to approve the proposed rule change as soon as possible to expedite its implementation. Accordingly, the Commission believes good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

### IV. Solicitation of Comments Concerning Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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-Amex-2007-129 on the subject line.

#### *Paper comments*

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

All submissions should refer to File Number SR-Amex-2007-129. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office 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-Amex-2007-129 and should be submitted on or before May 28, 2008.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> that the proposed rule change (SR-Amex-2007-129), as amended by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>32</sup> In approving this rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>33</sup> 15 U.S.C. 78f(b)(5).

<sup>34</sup> 15 U.S.C. 78s(b)(2).

<sup>35</sup> 17 CFR 200.30-3(a)(12).

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57760; File No. SR-BSE-2008-02]

#### **Self-Regulatory Organizations; Boston Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Amending the Certificate of Incorporation of Boston Stock Exchange, Incorporated**

May 1, 2008.

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 April 23, 2008, the Boston Stock Exchange, Incorporated ("BSE" or "Exchange") 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 substantially prepared by BSE. 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**

The BSE proposes to amend its Certificate of Incorporation in order to make distributions to Exchange membership<sup>3</sup> owners under certain circumstances. Specifically, the amended Certificate of Incorporation will permit the Exchange to distribute the net proceeds from the Exchange's intended sale of its equity interests in the Boston Options Exchange Group LLC ("BOX") to the Bourse de Montréal ("MX") by means of a pro rata redemption of a portion of each Exchange membership. The text of the proposed rule change is available on the Exchange's Web site (<http://www.bostonstock.com>), at the principal offices of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, BSE 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. BSE has prepared

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

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

<sup>3</sup> As that term is defined in Article I, Section 3(h), and Article IX of the BSE Constitution.

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 October 2, 2007, the Exchange announced that it had entered into an agreement to be acquired by The Nasdaq Stock Market, Inc., (n/k/a The NASDAQ OMX Group, Inc.) ("NASDAQ OMX") in a transaction that is subject to approval by the Exchange's members and by the Commission. The Exchange is being sold in its entirety to NASDAQ OMX, including all of its subsidiaries, with the exception of BOX. The sale will be structured as a merger of the Exchange with and into a wholly-owned subsidiary of NASDAQ OMX. The Exchange will be the surviving corporation and will become a wholly-owned subsidiary of NASDAQ OMX. Proposed rule changes, filed pursuant to Section 19 of the Act, relating to NASDAQ OMX's planned acquisition of the Exchange must be approved by the Commission in order for the transaction to close and are the subject of a separate filing.<sup>4</sup> The sale of the Exchange's equity interest in BOX to a third party is a condition precedent to completing the sale of the Exchange to NASDAQ OMX.

Currently, BOX is owned by the Exchange, MX, and several other investors. On December 21, 2007, the Exchange announced that it had reached an agreement with MX to sell the Exchange's remaining equity interest in BOX to MX. Upon closing of this transaction, which is also subject to approval by the Commission, the Exchange will no longer have an equity interest in BOX, and MX will have increased its ownership interest in BOX from 31.4% to 53.24%.<sup>5</sup> Exchange membership owners<sup>6</sup> will be compensated for their equity interest in BOX as would be provided in Article Fourth of the Restated Certificate of Incorporation of Boston Stock Exchange, Incorporated ("Restated Certificate").

After completing the sale of all of its equity interests in BOX, the Exchange will continue to act as the self-

regulatory organization for the BOX facility, and the Exchange's wholly-owned subsidiary Boston Options Exchange Regulation, LLC ("BOXR") will provide the regulatory framework for the BOX facility. BOXR, together with BOX, will continue to have regulatory responsibility for the activities of the BOX facility.

In order for the Exchange to distribute the net proceeds from the BOX sale to the Exchange's membership owners, the Exchange's Certificate of Incorporation must be amended in order to remove the existing provision that prevents the Exchange from making distributions to Exchange membership owners, and to add a provision that allows the Exchange to redeem a portion of each membership for a pro rata share of the net proceeds of the BOX sale.<sup>7</sup> The Exchange has been advised that the use of the redemption as a means to distribute proceeds from the sale of its equity interest in BOX may provide beneficial tax treatment. Therefore, the Restated Certificate would permit the Exchange to make distributions to membership owners, and also would permit the use of such pro rata redemption. The Restated Certificate also would delete obsolete text regarding the incorporators of the Exchange.

If approved by the Commission, the Restated Certificate would be effective immediately prior to the closing of the BOX distribution upon the filing of the Restated Certificate with the Secretary of State of the State of Delaware. It is anticipated that the Restated Certificate would be amended again upon the closing of NASDAQ OMX's planned acquisition of the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under section 6(b)(5) of the Act,<sup>8</sup> that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest in that, if approved, the proposed rule change will provide a means for the Exchange to distribute the proceeds from the sale of the Exchange's equity interest in BOX to all of the Exchange's owners of memberships.

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

BSE does not believe that the proposed rule change will impose any burden on competition that is 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*

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

**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-BSE-2008-02 on the subject line.

*Paper comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-BSE-2008-02. 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

<sup>4</sup> See Securities Exchange Act Release No. 57757 (May 1, 2008) (SR-BSE-2008-23).

<sup>5</sup> See Securities Exchange Act Release No. 57714 (April 25, 2008) (SR-BSE-2008-25).

<sup>6</sup> All holders of outstanding BSE memberships, including lessors but not lessees, and excluding electronic access members ("EAMs"), will be entitled to receive their pro rata share of the equity interest in BOX based on the outstanding number of such BSE memberships.

<sup>7</sup> See Restated Certificate, Article Fourth.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office 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-BSE-2008-02 and should be submitted on or before May 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57747; File No. SR-CBOE-2008-49]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Off-Floor LMMs

April 30, 2008.

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 April 24, 2008, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 substantially prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and

Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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

The Exchange proposes to amend CBOE rules relating to Lead Market-Makers ("LMMs"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Exchange's Office of the Secretary and at the Commission.

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

In its filing with the Commission, the Exchange 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

Last year, CBOE amended its rules to provide Designated Primary Market-Makers ("DPMs") with the flexibility to operate remotely away from CBOE's trading floor as a so-called "Off-Floor DPM."<sup>5</sup> CBOE is now proposing to provide LMMs with the same flexibility to operate remotely away from CBOE's trading floor. Specifically, CBOE proposes to amend Rule 8.15A, *Lead Market-Makers in Hybrid Classes*, to provide the following:

- An LMM generally will operate on CBOE's trading floor ("On-Floor LMM"). However, an LMM can request that the Exchange authorize the LMM to function remotely away from CBOE's trading floor ("Off-Floor LMM") on a class-by-class basis.

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 55531 (March 26, 2007), 72 FR 15736 (April 2, 2007) (SR-CBOE-2006-94). See also Securities Exchange Act Release No. 57568 (March 26, 2008), 73 FR 18016 (April 2, 2008) (SR-CBOE-2008-32) (immediately effective rule change expanding the Off-Floor DPM program, which had originally been limited to equity option classes to include all option classes traded on the Hybrid Trading System and Hybrid 2.0 Platform (collectively "Hybrid")).

- An LMM can request that the Exchange authorize it to operate as an Off-Floor LMM in one or more Hybrid classes. The Exchange will consider the factors specified in Rule 8.15A(a)(i)(A),<sup>6</sup> as well as the factors applicable to Off-Floor DPMs specified in paragraph (g) of Rule 8.83, *Approval to Act as a DPM*,<sup>7</sup> in determining whether to permit an LMM to operate as an Off-Floor LMM. If an LMM is approved to operate as an Off-Floor LMM in one or more Hybrid classes, the Off-Floor LMM can have an LMM designee trade in open outcry in the option classes allocated to the Off-Floor LMM, but the Off-Floor LMM shall not receive a participation entitlement under Rule 8.15B, *Participation Entitlement of LMMs*, with respect to orders represented in open outcry.<sup>8</sup>

- An LMM that is approved to operate as an Off-Floor LMM in one or more Hybrid classes can request that the Exchange authorize it to operate as an On-Floor LMM in those option classes. In making a determination pursuant to this paragraph, the Exchange should evaluate whether the change is in the best interests of the Exchange, and may

<sup>6</sup> CBOE Rule 8.15A(a)(i) provides that the factors to be considered in selecting LMMs include: Adequacy of capital; experience in trading index options or options on ETFs; presence in the trading crowd; adherence to CBOE Rules; and ability to meet the obligations specified in the Rule. An individual may be appointed as an LMM for one expiration month at a time. When individual members are associated with one or more other members, only one member may receive an LMM appointment.

<sup>7</sup> CBOE Rule 8.83(g) provides that the factors to be considered in determining whether to permit a DPM to operate as an Off-Floor DPM include, but are not limited to, any one or more of the following: (i) Adequacy of capital; (ii) operational capacity; (iii) trading experience of and observance of generally accepted standards of conduct by the applicant, its associated persons, and the DPM Designees who will represent the applicant in its capacity as a DPM; (iv) number and experience of support personnel of the applicant who will be performing functions related to the applicant's DPM business; (v) regulatory history of and history of adherence to CBOE Rules by the applicant, its associated persons, and the DPM Designees who will represent the applicant in its capacity as a DPM; (vi) willingness and ability of the applicant to promote the Exchange as a marketplace; (vii) performance evaluations conducted pursuant to CBOE Rule 8.60, *Evaluation of Trading Crowd Performance*; and (viii) in the event that one or more shareholders, directors, officers, partners, managers, members, DPM Designees, or other principals of an applicant is or has previously been a shareholder, director, officer, partner, manager, member, DPM Designee, or other principal in another DPM, adherence by such DPM to the requirements set forth in Section C of Chapter VIII of the CBOE Rules respecting DPM responsibilities and obligations during the time period in which such person(s) held such position(s) with the DPM.

<sup>8</sup> In addition to the changes to CBOE Rule 8.15A, CBOE is proposing related updates to paragraph (b) of CBOE Rule 8.15B, *Participation Entitlement of LMMs*, and subparagraphs (d)(v) and (vii) of CBOE Rule 6.74, *Crossing Orders*.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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

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