

“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to retroactively apply its revenue sharing program (“RSP”) for Designated Amex Remote Traders (“DARTs”), ETF specialists, and registered traders (collectively, “ETF quoting participants”). The proposal was published for comment in the **Federal Register** on April 4, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The RSP was first put in place by the Exchange for ETF specialists and registered traders, effective July 1, 2007, and was to last through December 31, 2007 unless otherwise extended.<sup>4</sup> The Exchange inadvertently failed to file to extend the RSP at the expiration of that time period, but, upon realizing the error, promptly filed to reinstate the RSP for all ETF quoting participants, effective March 18, 2008.<sup>5</sup> The RSP is now in effect through the end of September 2008.

The Exchange now seeks to retroactively apply the RSP for the time period January 1, 2008 through March 17, 2008 (the “retroactive period”) in order to provide continuity in the RSP for all ETF quoting participants on the Exchange, who continued to quote aggressively during the retroactive period in the expectation of receiving RSP payments. RSP payments for the retroactive period will be made pursuant to the same terms established in the RSP Release.<sup>6</sup>

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the

Act,<sup>8</sup> which requires the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using Exchange facilities. In approving this proposal, the Commission notes the Exchange’s statements that ETF quoting participants have relied on the expectation of RSP payments during the retroactive period, and that the Exchange does not believe it fair to withhold RSP payments from ETF quoting participants for the retroactive period solely because of the Exchange’s inadvertent failure to extend the RSP.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-Amex-2008-34) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Nancy M. Morris,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57782; File No. SR-BSECC-2008-01]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange Clearing Corporation Relating to Amendment of Its Articles of Organization and By-Laws in Connection With the Planned Acquisition by The NASDAQ OMX Group, Inc.

May 6, 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 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 the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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.

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

BSECC proposes to amend its Articles of Organization and its By-Laws to reflect the planned acquisition of BSECC by The NASDAQ OMX Group, Inc. (“NASDAQ OMX”) and to update the By-Laws in certain other respects.<sup>3</sup> The text of the proposed rule change is available from the principal office of BSECC, at <http://www.bostonstock.com/BSECC/Pending/BSECC-2008-01.pdf>, 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, the self-regulatory organization 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. The self-regulatory organization 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

##### The Merger

On October 2, 2007, Boston Stock Exchange, Inc. (“BSE”), announced that it had entered into an agreement with The Nasdaq Stock Market, Inc. (now NASDAQ OMX) pursuant to which NASDAQ OMX would acquire all of the outstanding membership interests in BSE and BSE would be merged with and into Yellow Merger Corporation, a Delaware corporation and wholly owned subsidiary of NASDAQ OMX, with BSE surviving the merger. As a result of the merger, BSE would become a Delaware stock corporation with 100% of its outstanding stock owned by NASDAQ OMX. BSECC is now and following the merger will continue to be a wholly owned subsidiary of BSE. BSECC proposes to adopt (1) Articles of Amendment to its Articles of Organization, and (2) amendments to its By-Laws for the purpose of reflecting its acquisition by NASDAQ OMX and of modernizing its governance documents.

<sup>3</sup> BSECC is currently organized under the laws of the Commonwealth of Massachusetts. The Articles of Organization of a Massachusetts corporation are comparable to the Certificate of Incorporation of a Delaware corporation.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 57578 (March 28, 2008), 73 FR 18592.

<sup>4</sup> See Securities Exchange Act Release No. 55893 (June 29, 2007), 72 FR 37059 (July 6, 2007) (SR-Amex-2007-68) (“RSP Release”).

<sup>5</sup> See Securities Exchange Act Release No. 57541 (March 20, 2008) (SR-Amex-2008-25), 73 FR 16400 (March 27, 2008) (reinstating RSP for all ETF quoting participants); see also Securities Exchange Act Release No. 57540 (March 20, 2008), 73 FR 16399 (March 27, 2008) (SR-Amex-2008-23) (expanding RSP to DARTs).

<sup>6</sup> See *supra* note 4.

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

### BSECC's Articles of Organization

*In order to amend its Articles of Organization, BSECC would adopt Articles of Amendment that would amend its existing Articles of Organization as follows:*

1. Amend Article III to provide that the total number of shares of each class of stock that BSECC is authorized to issue is 150 shares of common stock. This amendment reflects a reduction in the total authorized share capital of BSECC from 1000 shares of common stock to the 150 shares of Common Stock currently held by BSE. Thus, following the amendment, all of the authorized shares of common stock of BSECC would be outstanding and would be owned by BSE;

2. Amend Article V to provide that BSE may not transfer or assign any shares of stock of BSECC unless such transfer or assignment has been filed with and approved by the Commission under Section 19 of the Act;<sup>4</sup> and

3. Adopt new Article VI to provide that in accordance with modern practice for Massachusetts corporations, directors of BSECC are not personally liable to it for breaches of fiduciary duty except for breaches involving (i) a breach of the duty of loyalty, (ii) acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law, (iii) distributions of assets that would render BSECC insolvent, or (iv) any transaction from which the director derived an improper personal benefit.

### BSECC's By-Laws

BSECC proposes several changes to its By-Laws, which are primarily for the purpose of updating the By-Laws in accordance with modern corporate practice for Massachusetts corporations. The amendments proposed are:

1. Eliminate the offices of "clerk" and "vice-chairman" from BSECC and delete references to those offices from the By-Laws;

2. Clarify the time periods allowed or required for notice to stockholders of meetings, the permissible duration of stockholder proxies, and the setting of a record date in accordance with modern Massachusetts law and remove a provision allowing close of the transfer books of BSECC that is no longer consistent with Massachusetts law;<sup>5</sup>

3. Provide that stockholders, as well as directors, may fill vacancies on the Board, in accordance with Massachusetts law;

4. Clarify that directors of BSECC who also serve on BSE's Board of Directors must tender resignations from BSECC's Board if they cease to be directors of BSE;

5. Clarify the requirements for action by the Board of Directors and the stockholders to be taken without a meeting;

6. Establish that the officers of BSECC are all appointed by and subject to removal by its Board of Directors;

7. Adopt modern provisions stipulating the conditions under which BSECC may indemnify its officers and directors and the scope of such indemnification;

8. Stipulate that the By-Laws may be amended only upon approval by the Commission and in accordance with the rules of BSECC;<sup>6</sup> and

9. Clarify the meaning of several provisions in accordance with modern Massachusetts law and correct several typographical errors.

BSECC believes that the proposed rule change is consistent with the provisions of Section 17A of the Act<sup>7</sup> in general and with Section 17A(b)(3)(A) and (C) of the Act<sup>8</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 and to assure a fair representation of BSECC's members in the selection of its directors and the administration of its affairs.

### *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*

BSECC has neither solicited nor received comments on the proposed rule change.

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

Within thirty-five 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 ninety 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 BSECC 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-BSECC-2008-01 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-BSECC-2008-01. 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 a.m. and 3 p.m. 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

<sup>4</sup> 15 U.S.C. 78s.

<sup>5</sup> This change would not limit the effectiveness of the change to the Articles of Organization requiring Commission approval of transfers of BSECC's stock.

<sup>6</sup> Rule XII of BSECC, required notice to clearing members of amendments to the By-Laws.

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

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(A) and (C).

Number SR-BSECC-2008-01 and should be submitted on or before June 3, 2008.

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

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57793; File No. SR-CBOE-2008-52]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Temporary Membership Status Access Fee

May 7, 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 30, 2008, the Chicago Board Options Exchange, Incorporated (“CBOE” 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 prepared by the Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal 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

CBOE proposes to adjust the monthly access fee for persons granted temporary CBOE membership status (“Temporary Members”) pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 (“Rule 3.19.02”). 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’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, CBOE 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. CBOE 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 current access fee for Temporary Members under Rule 3.19.02<sup>5</sup> is \$8,260 per month and took effect on April 1, 2008. The Exchange proposes to revise the access fee to be \$10,079 per month commencing on May 1, 2008.

The Exchange used the following process to set the proposed access fee: The Exchange polled each of the clearing firms that assists in facilitating at least 10% of the transferable CBOE membership leases and obtained the Clearing Firm Floating Monthly Rate<sup>6</sup> designated by each of these clearing firms for the month of May 2008. The Exchange then set the proposed access fee at an amount equal to the highest of these Clearing Firm Floating Monthly Rates.

The Exchange used the same process to set the proposed access fee that it used to set the current access fee. The only difference is that the Exchange used Clearing Firm Floating Monthly Rate information for the month of May 2008 to set the proposed access fee (instead of Clearing Firm Floating Monthly Rate information for the month of April 2008 as was used to set the current access fee) in order to take into account changes in Clearing Firm Floating Monthly Rates for the month of May 2008.

The Exchange believes that the process used to set the proposed access fee and the proposed access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR-CBOE-

2008-12 in support of that process and the original access fee for Temporary Members under Rule 3.19.02.<sup>7</sup>

The proposed access fee will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> to modify the proposed access fee or the Temporary Membership status under Rule 3.19.02 is terminated. Accordingly, the Exchange may further adjust the proposed access fee in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of the proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions regarding the assessment of the current access fee. However, the Exchange is proposing to delete the current reference in the Fee Schedule which notes that the first month for which an access fee will be assessed to Temporary Members under Rule 3.19.02 is February 2008 because the commencement of the assessment of this access fee is now past.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>10</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

CBOE 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

No written comments were solicited or received with respect to the proposed rule change.

<sup>7</sup> See Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR-CBOE-2008-12), which established the original access fee for Temporary Members under Rule 3.19.02, for detail regarding the rationale in support of the original access fee and the process used to set that fee, which is also applicable to this proposed rule change as well.

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

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<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).

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

<sup>5</sup> See Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR-CBOE-2007-107) for a description of the Temporary Membership status under Rule 3.19.02.

<sup>6</sup> The term “Clearing Firm Floating Monthly Rate” refers to the floating monthly rate that a clearing firm designates, in connection with transferable membership leases that the clearing firm assisted in facilitating, for leases that utilize that floating monthly rate.