

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58547; File No. SR-BSE-2008-45)

September 15, 2008

Self-Regulatory Organizations; Boston Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change to Amend By-Laws

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 September 5, 2008, the Boston Stock Exchange (the “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. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to amend its by-laws to make certain changes that the Exchange committed to make in SR-BSE-2008-23.<sup>3</sup> The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room, and is also available at [http://nasdaqtrader.com/Trader.aspx?id=Boston\\_Stock\\_Exchange](http://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange).

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 these statements may be examined at the places specified in Item IV

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

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

<sup>3</sup> Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008); Securities Exchange Act Release No. 57757 (May 1, 2008), 73 FR 26159 (May 8, 2008) (SR-BSE-2008-23).

below. The Exchange 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

On August 29, 2008, the Exchange was acquired by The NASDAQ OMX Group, Inc. (“NASDAQ OMX”). In SR-BSE-2008-23, the Exchange’s filing seeking approval of this acquisition, the Exchange committed that it would, immediately following closing of the acquisition, seek Board of Directors and Commission approval for several changes to its By-Laws. The changes, which were requested by Commission staff, could not be included in SR-BSE-2008-23 because Article XX of the Exchange’s former Constitution, which was replaced by the new By-Laws at the closing, provided that the Exchange’s members must approve amendments to the Exchange’s Constitution. The Exchange’s members voted, on December 7, 2007, to approve the By-Laws as originally submitted in SR-BSE-2008-23, and it would have been impracticable and unduly expensive to seek a second member vote for approval of these additional changes prior to closing. The changes in question are as follows:

- In Article I, the Exchange is amending the definition of “Voting Date” to make it clear that the Exchange Board of Directors must annually select a Voting Date for the selection of Member Representative Directors, although a vote will actually occur on that date only if members have nominated candidates for election other than those nominated by the Exchange’s Member Nominating Committee. Accordingly, the amended definition reads: “‘Voting Date’ means the date selected by the Board on an annual basis, on which Exchange Members may vote with respect to Member Representative Directors in the event of a Contested Vote.”

- In order to limit the influence that a single affiliated group of members might exercise over the Exchange, Section 4.4 of the By-Laws is being amended to provide that in a contested election for Member Representative Directors, an Exchange Member, either alone or together with its affiliates, may not cast votes representing more than 20% of the votes cast for a candidate, and any votes cast by the Exchange Member, either alone or together with its affiliates, in excess of such 20% limitation shall be disregarded.
- The Exchange is amending Section 4.14 of the By-Laws to make it clear that the Exchange's Nominating Committee must nominate the person nominated by Boston Options Exchange Regulation LLC's Nominating Committee for service on the Exchange Board as a representative of participants in the Boston Options Exchange unless that person is not eligible for service under Section 4.3 of the By-Laws (as would be the case, for example, if the nominee was subject to a statutory disqualification). Similarly, the Exchange is amending Section 3.1 of the By-Laws to make it clear that NASDAQ OMX, as the sole stockholder of the Exchange, shall vote for the election of the director candidates nominated or voted on through the processes established by Article IV of the By-Laws, except in the case of a person not eligible for service under Section 4.3 of the By-Laws.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(1) and (b)(5) of the Act,<sup>5</sup> in particular, in that the proposal enables the Exchange to be so organized as to have the capacity to be able to

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

<sup>5</sup> 15 U.S.C. 78f(b)(1), (5).

carry out the purposes of the Act and to comply with and enforce compliance by Exchange Members and persons associated with Exchange Members with provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange 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

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-2008-45 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-BSE-2008-45. 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 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-45 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>6</sup>

Florence E. Harmon  
Acting Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).