

BROADPOINT SECURITIES GROUP, INC.
Form PRE 14C
April 09, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14C
(RULE 14c-101)

SCHEDULE 14C INFORMATION
INFORMATION STATEMENT PURSUANT TO SECTION 14(c) OF THE SECURITIES
EXCHANGE ACT OF 1934

Check the appropriate box:

- Preliminary Information Statement
 Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))
 Definitive Information Statement

BROADPOINT SECURITIES GROUP, INC.
(Name of Registrant As Specified in Charter)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14c-5(g) and 0-11.

(1) Title of each class of securities to which transaction applies: Common Stock, par value \$0.01 per share

(2) Aggregate number of securities to which transaction applies: 23,000,000

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined): \$3.66

(4) Proposed maximum aggregate value of transaction: \$84,180,000

(5) Total fee paid: \$4,697.24

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3)

Filing Party:

(4)

Date Filed:

BROADPOINT SECURITIES GROUP, INC.
12 East 49th Street, 31st Floor
New York, New York 10117

Dear Shareholder:

On March 2, 2009, we entered into an Agreement and Plan of Merger among Broadpoint Securities Group, Inc., a New York corporation (the “Company” or “we”), Magnolia Advisory LLC (our wholly-owned subsidiary), Gleacher Partners Inc., certain stockholders of Gleacher Partners Inc., and each of the holders of interests in Gleacher Holdings LLC (the “Merger Agreement”). Pursuant to the Merger Agreement, we will acquire Gleacher Partners Inc., an internationally recognized financial advisory boutique best known for advising major companies in mergers and acquisitions, for 23,000,000 shares of common stock and \$20 million in cash (of which \$10 million is to be paid at the closing of the transaction and \$10 million is to be paid five years after closing, subject to acceleration under certain circumstances). The number of shares of our common stock to be issued in the transaction, together with the shares currently outstanding and shares issued pursuant to outstanding warrants and employee arrangements, exceeds the number of shares currently authorized under the Amended and Restated Certificate of Incorporation of the Company (the “Certificate of Incorporation”). Accordingly, if the acquisition is completed, we will amend the Certificate of Incorporation to increase the authorized number of shares of our common stock from 100,000,000 shares to 200,000,000 shares. In addition, the issuance of the common stock in the transaction requires shareholder approval under NASD Marketplace Rule 4350(i)(1)(C)(ii)(a) because we are issuing more than 20% of our currently outstanding common stock. In connection with the acquisition, we also intend to amend our Certificate of Incorporation to change the name of the Company to “Broadpoint Gleacher Securities Group, Inc.” These actions were approved on March 2, 2009 by the Board of Directors of the Company and, to the extent shareholder approval was required for any action, on the same day by MatlinPatterson FA Acquisition LLC, the shareholder that holds a majority of our issued and outstanding common stock, by written consent in lieu of a special meeting in accordance with our Certificate of Incorporation and the New York Business Corporation Law.

WE ARE NOT ASKING YOU FOR A PROXY, AND YOU ARE REQUESTED NOT TO SEND US A PROXY.

No action is required by you. The accompanying information statement is furnished only to inform our shareholders of the actions described above before they take place in accordance with Rule 14c-2 of the Securities Exchange Act of 1934. This information statement is being mailed to you on or about [1].

Please feel free to call us at (212) 273-7178 if you have any questions regarding the enclosed Information Statement. We thank you for your continued interest in Broadpoint Securities Group, Inc.

Sincerely yours,

Lee Fensterstock
Chairman of the Board and Chief Executive Officer

BROADPOINT SECURITIES GROUP, INC.
12 East 49th Street, 31st Floor
New York, New York 10117
Telephone (212) 273-7178

INFORMATION STATEMENT REGARDING
ACTION TO BE TAKEN BY WRITTEN CONSENT OF
THE MAJORITY SHAREHOLDER
IN LIEU OF A SPECIAL MEETING

WE ARE NOT ASKING YOU FOR A PROXY,
AND YOU ARE REQUESTED NOT TO SEND US A PROXY

GENERAL

This Information Statement is being furnished to the shareholders of Broadpoint Securities Group, Inc., a New York corporation (the “Company” or “we”), in connection with (i) the adoption of an amendment to our Certificate of Incorporation and (ii) the issuance of 23,000,000 shares of our common stock (the “Stock Issuance”) pursuant to the Merger Agreement, both actions having been approved by our Board of Directors and by the written consent of the holder of a majority of our issued and outstanding common stock in lieu of a special meeting.

On March 2, 2009, our Board of Directors approved an amendment to our Certificate of Incorporation (a) to change the name of the Company from “Broadpoint Securities Group, Inc.”, to “Broadpoint Gleacher Securities Group, Inc.” and (b) to increase the number of authorized shares of our common stock from 100,000,000 shares to 200,000,000 shares (the “Amendment”). The Amendment will become effective on the date of filing of the Certificate of Amendment with the New York Secretary of State (the “Effective Date”) in accordance with the relevant sections of the New York Business Corporation Law. We expect to file the Certificate of Amendment on the date that the acquisition of Gleacher Partners Inc. is completed. The acquisition is subject to regulatory approvals and other customary conditions. We currently expect the closing will occur before June 30, 2009. Although we expect the transactions contemplated by the Merger Agreement to close, there can be no assurances at this time that such transactions will be consummated.

As of April 3, 2009, there were 81,556,246 shares of our common stock issued and outstanding, 25,057,828 shares of our common stock reserved for issuance pursuant to outstanding warrants and employment agreements and 1,000,000 of our Series B Mandatory Redeemable Preferred Stock are issued and outstanding. MatlinPatterson FA Acquisition LLC, a shareholder that owned approximately 54% of our outstanding common stock on March 2, 2009, executed a written consent on March 2, 2009 approving the Amendment and the Stock Issuance.

The approval of these actions by written consent is made possible by Section 615 of the New York Business Corporation Law, which provides that the written consent of the holders of outstanding shares of voting stock, having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote

thereon were present and voted, may be substituted for such a meeting, and Article Tenth of our Amended and Restated Certificate of Incorporation.

Pursuant to Section 615 of the New York Business Corporation Law, we are required to provide notice of the taking of the corporate actions described above without a meeting of shareholders to all shareholders who did not consent in writing to such action. This Information Statement serves as this notice. This Information Statement will be mailed on or about [1] to shareholders of record, and is being delivered to inform you of the corporate actions described herein before they take effect in accordance with Rule 14c-2 of the Securities Exchange Act of 1934.

The entire cost of furnishing this Information Statement will be borne by the Company. We will request brokerage houses, nominees, custodians, fiduciaries and other like parties to forward this Information Statement to the beneficial owners of our voting securities held of record by them, and we will reimburse such persons for out-of-pocket expenses incurred in forwarding such material.

No Dissenter's Rights

No dissenter's rights are afforded to our shareholders under New York law as a result of the adoption of the Amendment or as a result of the Stock Issuance.

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Annex A – Agreement and Plan of Merger.

Annex B – Proposed Certificate of Amendment to the Certificate of Incorporation of Broadpoint Securities Group, Inc.

SUMMARY

Amendment to Certificate of Incorporation

As of April 3, 2009, we had 81,556,246 shares of our common stock outstanding, 25,057,828 shares of our common stock reserved for issuance pursuant to outstanding warrants and employee arrangements, and 1,000,000 of our Series B Mandatory Redeemable Preferred Stock issued and outstanding. We do not have a sufficient number of shares of common stock authorized to effect the Stock Issuance pursuant to the terms of the Merger Agreement. Therefore, we intend to amend our Certificate of Incorporation to increase the number of authorized shares of our common stock from 100,000,000 to 200,000,000, which will allow us to effect the Stock Issuance.

We also intend to amend our Certificate of Incorporation to change the name of the Company from “Broadpoint Securities Group, Inc.” to “Broadpoint Gleacher Securities Group, Inc.”

MatlinPatterson FA Acquisition LLC, a shareholder that owned approximately 54% of our outstanding common stock on March 2, 2009, executed a written consent approving the Amendment on March 2, 2009.

Stock Issuance

Our common stock is listed on the NASDAQ Stock Market under the Symbol “BPSG” and we are subject to the NASD Marketplace rules. Under NASD Marketplace Rule 4350(i)(1)(C)(ii)(a), shareholder approval is required for issuances of securities in an amount that is 20% or more of the Company’s outstanding common stock before the issuance (the “NASD Rule”). The shares of common stock to be issued pursuant to the Stock Issuance constitute more than 20% of our outstanding common stock before the Stock Issuance. As a result, in order to comply with the NASD Rule, we were required to obtain shareholder approval prior to the Stock Issuance.

MatlinPatterson FA Acquisition LLC, a shareholder that owned approximately 54% of our outstanding common stock on March 2, 2009, executed a written consent approving the Stock Issuance on March 2, 2009.

Terms of the Merger Agreement

On March 2, 2009, the Company and Magnolia Advisory LLC (“Merger Sub”), a wholly-owned subsidiary of the Company that was formed to facilitate the transactions contemplated by the Merger Agreement, entered into an Agreement and Plan of Merger (the “Merger Agreement”), among the Company, Merger Sub, Gleacher Partners Inc. (“Gleacher”), certain stockholders of Gleacher (the “Signing Stockholders”) and each of the holders of interests in Gleacher Holdings LLC, a Gleacher subsidiary owned 90.85% by Gleacher, other than Gleacher (the “Holders”, and together with the Signing Stockholders, the “Selling Parties”). Under the terms of the Merger Agreement:

- following the consummation of the transactions contemplated by the Merger Agreement, Merger Sub (which will be the successor to Gleacher under the terms of the Merger Agreement) and Gleacher Holdings LLC will become wholly-owned subsidiaries of the Company;
- the Company will issue 23,000,000 shares of common stock of the Company to the stockholders of Gleacher and the Holders;
- the stock consideration will be subject to a five year lock-up period, subject to acceleration under certain circumstances;
- at the closing of the transactions contemplated by the Merger Agreement, the Company will pay to the stockholders of Gleacher and the Holders \$10,000,000 in cash;
- the Company will pay an additional \$10,000,000 in cash after five years, subject to acceleration under certain circumstances;
 - the cash consideration is subject to adjustment as provided in the Merger Agreement;
 - the Company will appoint Eric Gleacher as a director and Chairman of its Board of Directors;
 - the Company will change its name to Broadpoint Gleacher Securities Group, Inc.;
 - the Company will enter into a Registration Rights Agreement with Mr. Gleacher; and
- the Company will enter into a Trade Name and Trademark Agreement with Mr. Gleacher and certain other parties related to Mr. Gleacher.

Concurrently with the execution of the Merger Agreement, the Company and its wholly-owned subsidiary Broadpoint Capital, Inc. (“Broadpoint Capital”), entered into an employment agreement and non-competition and non-solicitation agreement with Mr. Gleacher, Chairman of Gleacher. Mr. Gleacher’s employment agreement has a duration of three years, commencing on the closing date of the Transaction (as defined below). Pursuant to his employment agreement, Mr. Gleacher will be appointed as Chairman of the Board of Directors of the Company and as a senior member of the Investment Banking Division of the Company.

Registration under Securities Act

The Stock Issuance is intended to be exempt from registration under the Securities Act of 1933, as amended (the “Securities Act”), pursuant to Section 4(2) thereof and, as such, the Company’s shares of common stock issued in the Transaction may not be offered or sold unless they are registered under the Securities Act, or an exemption from the registration requirements of the Securities Act is available. Subject to the transfer restrictions described above, Mr. Gleacher will have the right to have his shares registered in registration statements that we file, and the right to require us to file a shelf registration for his shares three years after the closing.

Accounting Treatment

The Transaction will be accounted for by us under the purchase method of accounting. Under the purchase method, the purchase price for Gleacher will be allocated to identifiable assets (including intangible assets) and liabilities of Gleacher with any excess being treated as goodwill. Since intangible assets are amortized over their useful lives, we will incur accounting charges from the Transaction. In addition, intangible assets and goodwill are both subject to periodic impairment tests and could result in potential write-down charges in future periods.

A final determination of required purchase accounting adjustments, including the allocation of the purchase price to the assets acquired and liabilities assumed based on their respective fair values, has not yet been made. The pro-forma financial information included herein contains an initial estimate of this allocation and the final estimate will be made once the study to determine the fair value of certain of Gleacher's assets and liabilities is completed. For financial reporting purposes, the results of operations of Gleacher will be included in our consolidated statement of income following the time that the Transaction is effective under applicable law. Our financial statements for prior periods will not be restated as a result of the Transaction.

THE AMENDMENT

The Amendment will change the name of the Company from “Broadpoint Securities Group, Inc.” to “Broadpoint Gleacher Securities Group, Inc.” The Amendment will also increase the number of shares of our common stock, par value \$0.01 per share, that we may issue from 100,000,000 to 200,000,000 shares. A copy of the proposed Certificate of Amendment to our Certificate of Incorporation is attached to this Information Statement as Annex B.

Effects of the Amendment

The Company’s name will change from “Broadpoint Securities Group, Inc.” to “Broadpoint Gleacher Securities Group, Inc.”

We currently have 100,000,000 shares of common stock, par value \$0.01 per share, authorized for issuance, of which 81,556,246 shares were issued and outstanding and 25,057,828 shares reserved for issuance pursuant to outstanding warrants and employee arrangements, as of April 3, 2009. After amending our Certificate of Incorporation, we will have 200,000,000 shares of common stock authorized for issuance.

The increase in the number of authorized shares of our common stock does not affect the number of shares of stock presently outstanding, nor does it affect the number of shares that you own. However, our issuance of additional shares in the Transaction will dilute your percentage ownership of the Company, and any issuance of additional shares subsequent to the consummation of the transactions contemplated by the Merger Agreement may further dilute your percentage ownership of the Company. We do not intend to solicit authorization from our shareholders for the future issuance of the newly authorized shares unless we are required to obtain such authorization by law or by the rules of any securities exchange on which our shares are listed.

MatlinPatterson FA Acquisition LLC, a shareholder that owned approximately 54% of our outstanding common stock on March 2, 2009, executed a written consent approving the Amendment on March 2, 2009. The Amendment will become effective at the time of the closing of the transactions contemplated by the Merger Agreement. However, we do not intend to file the Certificate of Amendment that effects the Amendment if the transactions contemplated by the Merger Agreement are not consummated. Although we expect the transactions contemplated by the Merger Agreement to be consummated, there can be no assurances at this time that the transactions contemplated by the Merger Agreement will be consummated.

THE STOCK ISSUANCE

The Stock Issuance is being effected in connection with, and as part of the consideration for, the transactions contemplated by the Merger Agreement. The Stock Issuance was agreed upon between the Company and the Selling Parties in connection with the negotiation of the Merger Agreement. Following the Stock Issuance, holders of our outstanding common stock prior to the Stock Issuance will own approximately 78.0% of our outstanding common stock (assuming we do not issue additional shares before the Stock Issuance).

Our common stock is listed on the NASDAQ Stock Market under the symbol "BPSG" and we are subject to the NASD Marketplace rules. Under the NASD Rule, shareholder approval is required for issuances of securities in an amount that is 20% or more of the Company's outstanding common stock before the issuance. The shares of common stock to be issued pursuant to the Stock Issuance constitute more than 20% of our outstanding common stock before the Stock Issuance. As a result, in order to comply with the NASD Rule, we were required to obtain shareholder approval prior to the Stock Issuance.

MatlinPatterson FA Acquisition LLC, a shareholder that owned approximately 54% of our outstanding common stock on March 2, 2009, executed a written consent approving the Stock Issuance on March 2, 2009.

The Stock Issuance is intended to be exempt from registration under the Securities Act, pursuant to Section 4(2) thereof. As such, the Company's shares of common stock issued in the Transaction may not be offered or sold unless they are registered under the Securities Act, or an exemption from the registration requirements of the Securities Act is available. No registration statement covering these securities has been filed with the United States Securities and Exchange Commission or with any state securities commission in respect of the Transaction. However, at the closing of the Transaction we will be entering into a registration rights agreement with Mr. Gleacher which will allow Mr. Gleacher to register for public resale the shares issued to him in the Transaction.

THE MERGER AGREEMENT AND RELATED AGREEMENTS

The Merger Agreement

The following is a summary of certain material provisions of the Merger Agreement, a copy of which is attached to this Information Statement as Annex A, and which is incorporated by reference into this Information Statement. This summary does not purport to be complete and may not contain all of the information about the Merger Agreement that is important to you. The Company encourages you to carefully read the Merger Agreement in its entirety, as the rights and obligations of the parties are governed by the express terms of the Merger Agreement and not by this summary or any other information contained in this Information Statement.

The Parties

The parties to the Merger Agreement are the Company, Merger Sub, Gleacher, the Signing Stockholders and the Holders.

The Transaction

The Transaction is comprised of: (i) the acquisition by Merger Sub of all the membership interests in Gleacher Holdings LLC not owned by Gleacher (the “Interests Purchase”) and (ii) (a) the merger of Augusta Advisory Inc. (“Merger Corp”), a wholly-owned subsidiary of the Company that was formed to facilitate the transactions contemplated by the Merger Agreement, with and into Gleacher, with Gleacher continuing as the surviving company, and (b) promptly thereafter, the merger of Gleacher with and into Merger Sub, with Merger Sub continuing as the surviving company (clauses (ii) (a) and (ii) (b), collectively, the “Merger”, and together with the Interests Purchase, the “Transaction”).

Gleacher’s financial advisory business is carried out by Gleacher Partners LLC, which is a registered broker-dealer. Gleacher Partners LLC is a wholly owned subsidiary of Gleacher Holdings LLC. Gleacher Holdings LLC is owned 90.85% by Gleacher, with the remaining 9.15% owned by the Holders. The following diagram illustrates the Gleacher ownership structure before giving effect to the Transaction:

The Merger is intended to be treated as a “reorganization” within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the “Code”), in which Gleacher is treated as merging directly with and into the Company. Immediately prior to the Merger, Merger Sub will acquire the 9.15% of membership interests of Gleacher Holdings LLC that are not owned by Gleacher. At the effective time of the Merger, Merger Corp will merge with and into Gleacher, with Gleacher continuing as the surviving company and the separate existence of Merger Corp ceasing, and promptly thereafter, Gleacher will merge with and into Merger Sub, with Merger Sub as the surviving company and the separate existence of Gleacher ceasing. Accordingly, after giving effect to the Transaction, Gleacher Holdings LLC will be a wholly-owned subsidiary of Merger Sub, and an indirect wholly-owned subsidiary of the Company. The following diagram illustrates the Gleacher ownership structure after giving effect to the Transaction:

The Interests Purchase Consideration and the Merger Consideration

As consideration for the shares held by the stockholders of Gleacher and the interests held by the Holders, the Company will:

- issue 23,000,000 shares of common stock of the Company to the stockholders of Gleacher and the Holders, subject to a five-year lock up period which may be accelerated in certain circumstances described below, and an escrow arrangement with respect to 2,300,000 shares also described below;

•