

ESPEED INC
Form DEFM14A
February 11, 2008
Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- | | |
|--|--|
| <input type="checkbox"/> Preliminary Proxy Statement | <input type="checkbox"/> Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2)) |
| <input checked="" type="checkbox"/> Definitive Proxy Statement | |
| <input type="checkbox"/> Definitive Additional Materials | |
| <input type="checkbox"/> Soliciting Material Pursuant to §240.14a-12 | |

eSpeed, Inc.

(Name of Registrant as Specified in its Charter)

Not Applicable

(Name of Person(s) Filing Proxy Statement if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

1) Title of each class of securities to which transaction applies:

Edgar Filing: ESPEED INC - Form DEFM14A

2) Aggregate number of securities to which transaction applies:

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):

4) Proposed maximum aggregate value of transaction:

5) Total fee paid:

x 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:

Table of Contents

February 11, 2008

Dear stockholder:

I am pleased to inform you that eSpeed, Inc. ("eSpeed" or the "Company") and BGC Partners, Inc. ("BGC Partners"), Cantor Fitzgerald, L.P. ("Cantor BGC Partners, L.P." ("BGC U.S."), BGC Global Holdings, L.P. ("BGC Global") and BGC Holdings, L.P. ("BGC Holdings") have entered into a definitive Agreement and Plan of Merger, dated as of May 29, 2007, as amended as of November 5, 2007 and February 1, 2008 (the "merger agreement"), pursuant to which BGC Partners will be merged (the "merger") with and into the Company. The surviving corporation in the merger will be renamed BGC Partners, Inc. (the "Combined Company"). In terms of revenues, BGC Partners is one of the largest and fastest growing inter-dealer brokers of financial instruments for wholesale market participants worldwide. The Company's electronic marketplaces, licensing activities and other operations will continue to operate under the eSpeed brand within the Combined Company.

To acquire BGC Partners, the Company has agreed to issue in the merger an aggregate of 133,860,000 shares of Combined Company common stock and rights to acquire shares of Combined Company common stock. Of these shares and rights to acquire shares, it is expected that 56,000,000 will be in the form of Combined Company Class B common stock or rights to acquire Combined Company Class B common stock, and the remaining 77,860,000 shares and rights to acquire shares will be in the form of Combined Company Class A common stock or rights to acquire Combined Company Class A common stock. Current stockholders of the Company will hold the same number and class of shares of Combined Company common stock that they held in the Company prior to the merger. As of January 24, 2008, eSpeed stockholders (excluding Cantor) held approximately 30.0 million shares and options to purchase shares of eSpeed common stock which represented 58.6% of the economics of eSpeed and 12.9% of the voting rights of eSpeed as of such date, and is expected to represent 41.2% of the economics of the Combined Company and 11.8% of the voting rights of the Combined Company immediately after the merger. Following the completion of the merger, it is expected that the Combined Company Class A common stock will trade on the NASDAQ Global Market under the symbol BGCP.

After the merger, the combined businesses of the Company and BGC Partners will be held in two operating subsidiaries: (1) BGC U.S., which will hold the U.S. businesses, and (2) BGC Global, which will hold the non-U.S. businesses. The stockholders of the Company as of immediately prior to the merger will hold their interests in BGC U.S. and BGC Global after the merger through Combined Company common stock. Cantor, which is currently the sole stockholder of BGC Partners, will hold its interests in BGC U.S. and BGC Global through a combination of Combined Company common stock and interests in BGC Holdings. In addition, prior to the merger, Cantor will provide a portion of its interest in BGC Holdings to partners of Cantor who provide services primarily or exclusively to BGC U.S., BGC Global and their respective subsidiaries (the "founding partners"). As a result of the merger:

the stockholders of the Company as of immediately prior to the merger (including Cantor) will own equity interests representing approximately 28.0% of the economics of BGC U.S. and BGC Global after the merger as a result of their ownership of eSpeed common stock prior to the merger; and

the equity owners of BGC Partners and its subsidiaries as of immediately prior to the merger (including Cantor and its founding partners) will own equity interests representing approximately 72.0% of the economics of BGC U.S. and BGC Global after the merger as a result of their ownership of BGC Partners and its subsidiaries prior to the merger.

Table of Contents

In addition, concurrently with the merger, and, in the future, as part of its compensation process, BGC Holdings intends to issue certain restricted equity units and BGC Partners intends to issue certain restricted stock units to certain employees of BGC Partners and other persons who provide services to BGC Partners. In addition, BGC Holdings is authorized to issue additional restricted equity interests or BGC restricted stock units in connection with acquisitions and the hiring of new employees prior to the merger. These issuances would be in addition to the 133,860,000 shares of Combined Company common stock and rights to acquire Combined Company common stock to be issued in the merger and be dilutive to both holders of BGC Holdings partnership interests and holders of Combined Company capital stock. After the merger, the equity interests in BGC U.S. and BGC Global will be held by the Combined Company and by BGC Holdings. Immediately after the merger, the Combined Company will hold approximately 39.8% of the equity in BGC U.S. and BGC Global, and BGC Holdings will hold approximately 60.2% of the equity in BGC U.S. and BGC Global.

The merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger, have been approved unanimously by the eSpeed board of directors, upon a unanimous recommendation by a special committee of the eSpeed board of directors consisting exclusively of eSpeed's independent directors (the Special Committee).

Completion of the merger requires adoption of the merger agreement by eSpeed's stockholders. To obtain this required adoption, the Company will hold a special meeting of its stockholders on March 14, 2008, at which the Company will ask its stockholders to adopt the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger (and consider the matters described below and other matters properly brought before the meeting). Holders of shares of eSpeed Class A common stock on the record date are each entitled to one vote per share of eSpeed Class A common stock, and holders of shares of eSpeed Class B common stock on the record date are each entitled to 10 votes per share of eSpeed Class B common stock on the matters to be considered at the special meeting. Adoption of the merger agreement requires the affirmative vote of a majority of the total combined voting power of eSpeed Class A common stock and eSpeed Class B common stock entitled to vote at the meeting, voting as a single class, in accordance with the eSpeed certificate of incorporation and Delaware law. Under the terms of the merger agreement, Cantor, which as of January 24, 2008 held 87.1% of the total combined voting power of the shares of eSpeed Class A common stock and shares of eSpeed Class B common stock, has agreed to vote its shares in favor of the merger so long as the eSpeed board of directors and the Special Committee recommend that the stockholders of eSpeed vote in favor of the merger. Accordingly, a sufficient number of the votes required to adopt the merger agreement and the transactions contemplated thereby is assured so long as the eSpeed board of directors and the Special Committee recommend that the stockholders of eSpeed vote in favor of the merger. Information about the meeting, the merger and the other business to be considered by eSpeed's stockholders is contained in the accompanying proxy statement and the documents incorporated by reference in the accompanying proxy statement, which we urge you to read. **In particular, see Risk Factors beginning on page 36.**

You are cordially invited to attend our special meeting of stockholders, which will be held at eSpeed, Inc., 499 Park Avenue, 3rd Floor, New York, New York, on March 14, 2008 commencing at 10:00 a.m. local time. We look forward to greeting as many of our stockholders as are able to be with us.

At the special meeting, in addition to the adoption of the merger agreement, pursuant to which BGC Partners will be merged with and into eSpeed, and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger, you will be asked to consider and vote upon:

- (1) the approval of the amendment to the eSpeed certificate of incorporation, to be in effect as of the closing of the merger as part of the Combined Company certificate of incorporation, to authorize additional shares of Combined Company Class A common stock;
- (2) the approval of the amendment to the eSpeed certificate of incorporation, to be in effect as of the closing of the merger as part of the Combined Company certificate of incorporation, effecting changes regarding corporate opportunities;

Table of Contents

(3) the approval of the amended and restated BGC Partners, Inc. Long Term Incentive Plan; and

(4) such other business as may properly come before the special meeting or any adjournment or postponement thereof.

We hope you will find it convenient to attend the special meeting in person. WHETHER OR NOT YOU EXPECT TO ATTEND THE SPECIAL MEETING, TO ENSURE YOUR REPRESENTATION AT THE MEETING AND THE PRESENCE OF A QUORUM, PLEASE COMPLETE, DATE, SIGN AND MAIL PROMPTLY THE ENCLOSED PROXY CARD, for which a return envelope is provided. No postage need be affixed to the return envelope if it is mailed in the United States.

Whether or not you are able to attend the special meeting in person, it is important that your shares be represented. You can vote your shares by completing and returning the enclosed proxy card by mail. Please vote as soon as possible.

The eSpeed board of directors unanimously recommends that eSpeed's stockholders vote **FOR** the adoption of the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger, and the other proposals to be considered at the special meeting as described above. I join our board of directors in its recommendations.

Sincerely,

Howard W. Lutnick
*Chairman of the Board of Directors,
Chief Executive Officer and President*

Neither the U.S. Securities and Exchange Commission nor any state securities regulatory agency has approved or disapproved the merger, passed upon the merits or fairness of the merger agreement or the transactions contemplated thereby, including the merger, or passed upon the adequacy or accuracy of the disclosure in the accompanying proxy statement. Any representation to the contrary is a criminal offense.

THE PROXY STATEMENT IS DATED FEBRUARY 11, 2008 AND IS FIRST BEING GIVEN OR SENT TO STOCKHOLDERS ON OR ABOUT FEBRUARY 12, 2008.

Table of Contents

eSpeed, Inc.

110 East 59th Street

New York, New York 10022

Notice of Special Meeting of Stockholders

NOTICE IS HEREBY GIVEN that our special meeting of stockholders will be held at eSpeed, Inc., 499 Park Avenue, 3rd Floor, New York, New York, on March 14, 2008 commencing at 10:00 a.m. local time, for the following purposes:

- (1) To consider and vote upon a proposal to adopt the Agreement and Plan of Merger, dated as of May 29, 2007, as amended as of November 5, 2007 and February 1, 2008, which we refer to as the merger agreement, by and among BGC Partners, Inc., which we refer to as BGC Partners, Cantor Fitzgerald, L.P., which we refer to as Cantor, eSpeed, Inc., which we refer to as eSpeed, Company, we, our and us, BGC Partners, L.P., which we refer to as BGC U.S., BGC Global Holdings, L.P., which we refer to as BGC Global and BGC Holdings, L.P., which we refer to as BGC Holdings, pursuant to which, among other things, BGC Partners will be merged with and into eSpeed, with eSpeed surviving the merger and renamed as BGC Partners, Inc., which we refer to as the Combined Company, and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger;
- (2) To approve the amendment to the eSpeed certificate of incorporation, to be in effect as of the closing of the merger as part of the Combined Company certificate of incorporation, to authorize additional shares of Class A common stock;
- (3) To approve the amendment to the eSpeed certificate of incorporation, to be in effect as of the closing of the merger as part of the Combined Company certificate of incorporation, effecting changes regarding corporate opportunities;
- (4) To approve the amendment and restatement of the BGC Partners, Inc. Long Term Incentive Plan, as described in the accompanying proxy statement; and
- (5) To transact such other business as may properly come before the special meeting or any adjournment or postponement thereof. The eSpeed board of directors has unanimously approved the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger, upon the recommendation by a special committee of the eSpeed board of directors consisting exclusively of eSpeed's independent directors, which we refer to as the Special Committee, and is submitting it to the stockholders for their adoption. Pursuant to the merger agreement, BGC Partners will be merged with and into eSpeed. The merger is described in the accompanying proxy statement, which you are urged to read carefully. In particular, the section of the accompanying proxy statement entitled Risk Factors contains a description of risks that you should consider in evaluating the proposed merger. A copy of:

the merger agreement is attached to the accompanying proxy statement as Annex A and is referred to in the accompanying proxy statement as the merger agreement;

the form of separation agreement by and among Cantor, BGC Partners, BGC U.S., BGC Global and BGC Holdings is attached to the accompanying proxy statement as Annex B and is referred to in the accompanying proxy statement as the separation agreement;

Edgar Filing: ESPEED INC - Form DEFM14A

the form of amended and restated limited partnership agreement of BGC Holdings is attached to the accompanying proxy statement as Annex C and is referred to in the accompanying proxy statement as the BGC Holdings limited partnership agreement;

the form of amended and restated limited partnership agreement of BGC U.S. is attached to the accompanying proxy statement as Annex D and is referred to in the accompanying proxy statement as the BGC U.S. limited partnership agreement;

Table of Contents

the form of amended and restated limited partnership agreement of BGC Global is attached to the accompanying proxy statement as Annex E and is referred to in the accompanying proxy statement as the BGC Global limited partnership agreement;

the form of registration rights agreement by and between Cantor and BGC Partners is attached to the accompanying proxy statement as Annex F and is referred to in the accompanying proxy statement as the separation registration rights agreement;

the form of administrative services agreement between Cantor and BGC Partners is attached to the accompanying proxy statement as Annex G and is referred to in the accompanying proxy statement as the administrative services agreement;

the form of administrative services agreement among Tower Bridge International Services L.P., BGC International (formerly known as Cantor Fitzgerald International) and Cantor is attached to the accompanying proxy statement as Annex H and is referred to in the accompanying proxy statement as the Tower Bridge administrative services agreement, and together with the administrative services agreement, as the administrative services agreements;

the form of BGC Holdings, L.P. Participation Plan is attached to the accompanying proxy statement as Annex I and is referred to in the accompanying proxy statement as the Participation Plan;

the fairness opinion of Sandler O'Neill + Partners, L.P. is attached to the accompanying proxy statement as Annex J;

the form of amended and restated certificate of incorporation of the Combined Company is attached to the accompanying proxy statement as Annex K and is referred to in the accompanying proxy statement as the Combined Company certificate of incorporation;

the form of amended and restated by-laws of the Combined Company is attached to the accompanying proxy statement as Annex L and is referred to in the accompanying proxy statement as the Combined Company by-laws; and

the form of amended and restated BGC Partners, Inc. Long Term Incentive Plan is attached to the accompanying proxy statement as Annex M.

Only holders of record of the Company Class A common stock or Class B common stock at the close of business on January 31, 2008, the record date, are entitled to notice of, and to vote at, the special meeting or any adjournment or postponement thereof. Holders of shares of Company Class A common stock on the record date are each entitled to one vote per share of Company Class A common stock, and holders of shares of Company Class B common stock on the record date are each entitled to 10 votes per share of Company Class B common stock, on the matters to be considered at the special meeting. A list of stockholders entitled to vote at the special meeting will be open for examination by any stockholder for any purpose germane to the meeting during ordinary business hours for a period of 10 days prior to the special meeting at the offices of eSpeed, 110 East 59th Street, New York, New York 10022. A copy of the list of stockholders entitled to vote at the special meeting will also be available at the special meeting.

Adoption of the merger agreement and the transactions contemplated thereby requires the affirmative vote of a majority of the total combined voting power of Company Class A common stock and Class B common stock entitled to vote at the meeting, voting as a single class, in accordance with the eSpeed certificate of incorporation and Delaware law. Under the terms of the merger agreement, Cantor, which as of January 24, 2008 held 87.1% of the total combined voting power of the shares of Company Class A common stock and shares of Company Class B common stock, has agreed to vote its shares in favor of the adoption of the merger agreement and the transactions contemplated thereby so long as the eSpeed board of directors and the Special Committee recommend that the stockholders of eSpeed vote in favor of the adoption of the merger agreement and the transactions contemplated thereby. Accordingly, a sufficient number of the votes required to adopt the merger agreement and the transactions contemplated thereby is assured so long as the eSpeed board of directors and the Special Committee recommend that the stockholders of eSpeed vote in favor of the adoption of the merger agreement and the transactions contemplated thereby. Information about the meeting, the merger and the other

Table of Contents

business to be considered by eSpeed stockholders is contained in the accompanying proxy statement and the documents incorporated by reference into the accompanying proxy statement, which we urge you to read. **In particular, see Risk Factors beginning on page 36.**

The eSpeed board of directors is not aware of any matters that may be brought before the special meeting other than those set forth in this Notice of Special Meeting of Stockholders. If other matters properly come before the special meeting, the proxies named in the accompanying proxy card will vote the shares represented by all properly executed proxy cards on such matters in accordance with any recommendation of the eSpeed board of directors or, in the absence of such recommendation, in their discretion.

Whether or not you plan to attend the special meeting in person, please complete, sign, date and return the enclosed proxy card to ensure that your shares will be represented at the special meeting. A return envelope (which is postage prepaid if mailed in the United States) is enclosed for that purpose. If you do attend the special meeting and wish to vote in person, you may withdraw your proxy and vote in person. Please note, however, that if your shares are held of record by a broker, bank or other nominee and you wish to vote in person at the meeting, you must obtain from your nominee a proxy issued in your name.

The Special Committee recommended that the eSpeed board of directors approve the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger, and recommends that eSpeed's stockholders vote in favor of the adoption of the merger agreement and the transactions contemplated thereby.

The eSpeed board of directors has unanimously approved the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger, and recommends that eSpeed's stockholders vote:

- (1) **FOR** the proposal to adopt the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger;
- (2) **FOR** the approval of the amendment to the eSpeed certificate of incorporation to authorize additional shares of Class A common stock;
- (3) **FOR** the approval of the amendment to the eSpeed certificate of incorporation effecting changes regarding corporate opportunities; and
- (4) **FOR** the approval of the amended and restated BGC Partners, Inc. Long Term Incentive Plan.

By Order of the Board of Directors,

Stephen M. Merkel
*Executive Vice President,
General Counsel and Secretary*

February 11, 2008

YOUR VOTE IS IMPORTANT.

PLEASE COMPLETE, DATE AND SIGN THE ENCLOSED

PROXY CARD AND RETURN IT IN THE ENCLOSED ENVELOPE.

Table of Contents

TABLE OF CONTENTS

<u>QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MATTERS TO BE CONSIDERED</u>	1
<u>SUMMARY</u>	6
<u>SUMMARY HISTORICAL AND PRO FORMA FINANCIAL DATA</u>	25
<u>RISK FACTORS</u>	36
<u>Risks Related to the Merger</u>	36
<u>Risks Related to the Combined Company's Business</u>	42
<u>Risks Related to the Combined Company's Relationship with Cantor and Its Affiliates</u>	62
<u>Risks Related to the Combined Company's Capital Structure</u>	65
<u>FORWARD-LOOKING STATEMENTS</u>	67
<u>THE SPECIAL MEETING OF STOCKHOLDERS</u>	69
<u>Time and Place of the Special Meeting</u>	69
<u>Recommendations</u>	70
<u>Method of Voting; Record Date; Stock Entitled to Vote; Quorum</u>	70
<u>Required Vote</u>	71
<u>Voting Commitment</u>	71
<u>PROPOSAL 1 THE MERGER</u>	72
<u>History of eSpeed</u>	72
<u>History, Formation, Separation and Pre-Merger Structure of BGC Partners</u>	72
<u>Structure of the Combined Company</u>	76
<u>Background of the Merger</u>	82
<u>Reasons for the Merger; Recommendation of the Merger by the Special Committee and the eSpeed Board of Directors</u>	90
<u>Certain Projections</u>	94
<u>Opinion of Financial Advisor to the Special Committee</u>	95
<u>Interests of Directors, Executive Officers and Certain Beneficial Owners in the Merger</u>	104
<u>Material U.S. Federal Income Tax Consequences</u>	111
<u>Regulatory Approvals</u>	111
<u>Absence of Dissenters' Rights of Appraisal</u>	111
<u>Accounting Treatment</u>	112
<u>THE MERGER AGREEMENT</u>	113
<u>Certain Actions Prior to the Merger</u>	113
<u>The Merger</u>	113
<u>Closing; Effective Time</u>	113

Table of Contents

<u>Merger Consideration and Contribution</u>	113
<u>Representations and Warranties</u>	114
<u>Conduct of Business Prior to Closing</u>	116
<u>Agreement To Use Reasonable Best Efforts</u>	119
<u>Transaction Documents; Termination of Joint Services Agreement and Administrative Services Agreements</u>	120
<u>License</u>	120
<u>Corporate Governance Matters</u>	121
<u>Conditions to the Merger</u>	121
<u>Termination of the Merger Agreement</u>	123
<u>Fees and Expenses</u>	123
<u>Indemnification and Allocation of Losses</u>	123
<u>Amendment and Waiver</u>	124
<u>Specific Performance, Venue and Jury Trial Waiver</u>	124
<u>Publicity; Confidentiality</u>	124
<u>Value of the Transaction</u>	125
<u>RELATED AGREEMENTS</u>	126
<u>Separation Agreement</u>	126
<u>Amended and Restated BGC Holdings Limited Partnership Agreement</u>	133
<u>Amended and Restated Limited Partnership Agreements of BGC U.S. and BGC Global</u>	148
<u>Separation Registration Rights Agreement</u>	152
<u>Administrative Services Agreements</u>	152
<u>Tax Receivable Agreement</u>	153
<u>BGC Holdings Participation Plan</u>	154
<u>MANAGEMENT BEFORE AND AFTER THE MERGER</u>	156
<u>Directors and Executive Officers Before and After the Merger</u>	156
<u>Committees of the Board of Directors Before and After the Merger</u>	158
<u>Nominating Process</u>	159
<u>Executive Sessions</u>	160
<u>Annual Meetings</u>	160
<u>Communications with the Board of Directors</u>	160
<u>Compensation of Directors and Executive Officers Before and After the Merger</u>	160
<u>Compensation Discussion and Analysis</u>	160
<u>Compensation Committee Report</u>	172
<u>Arrangements with Founding/Working Partners</u>	172
<u>BGC U.S., BGC Global and BGC Holdings Interests; Distribution Rights</u>	173
<u>Executive Compensation</u>	173

Table of Contents

<u>Option Exercises and Stock Vested; Pension Benefits and Nonqualified Deferred Compensation</u>	176
<u>Employment Agreements</u>	176
<u>Compensation of Directors</u>	177
<u>Compensation Committee Interlocks and Insider Participation</u>	179
<u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT BEFORE AND AFTER THE MERGER</u>	180
<u>Equity Compensation Plan Information as of December 31, 2007</u>	184
<u>CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS BEFORE AND AFTER THE MERGER</u>	185
<u>Review, Approval and Ratification of Transactions with Related Persons</u>	185
<u>Independence of Directors</u>	185
<u>The Formation Transactions</u>	185
<u>Aqua</u>	188
<u>Software Solutions Services</u>	189
<u>Intellectual Property</u>	189
<u>Non-Competition and Market Opportunity Provisions</u>	189
<u>Existing Administrative Services Agreements</u>	190
<u>New Administrative Services Agreements</u>	191
<u>Registration Rights Agreements</u>	191
<u>Tower Bridge</u>	191
<u>Municipal Partners</u>	192
<u>Freedom</u>	192
<u>CO2e</u>	193
<u>Additional Previous Transactions with Cantor</u>	193
<u>Indemnification by Cantor</u>	194
<u>Other Transactions</u>	194
<u>Potential Conflicts of Interest and Competition between the Combined Company and Cantor</u>	195
<u>Key Separation Agreements</u>	198
<u>Leases</u>	198
<u>Certain Acquisitions and Dispositions of Interests in eSpeed and Combined Company Capital Stock by Cantor</u>	198
<u>Repayment of Existing Loans and Required Capital Contributions</u>	199
<u>BGC U.S. s, BGC Global s and BGC Holdings Partnership Interests</u>	199
<u>Exchangeability of Founding Partner Interests</u>	199
<u>Exchangeability of Working Partner Interests</u>	200
<u>Exchangeability of REU Interests</u>	200
<u>BGC Partners Restricted Stock Units</u>	201
<u>Continuing Interests in Cantor</u>	201
<u>INFORMATION ABOUT eSPEED S BUSINESS</u>	203
<u>eSPEED S SELECTED HISTORICAL FINANCIAL DATA</u>	203

Table of Contents

<u>INFORMATION ABOUT BGC PARTNERS BUSINESS</u>	203
<u>Overview of BGC Partners Business</u>	203
<u>BGC Partners Industry</u>	205
<u>BGC Partners Product Offerings</u>	208
<u>Customers</u>	210
<u>Sales and Marketing</u>	210
<u>Technology</u>	211
<u>Risk Management</u>	211
<u>Relationship between BGC Partners and Cantor</u>	212
<u>Relationship between BGC Partners and eSpeed</u>	212
<u>Regulation</u>	213
<u>Employees</u>	217
<u>Properties</u>	217
<u>Legal Proceedings</u>	217
<u>BGC PARTNERS SELECTED HISTORICAL COMBINED FINANCIAL DATA</u>	220
<u>BGC PARTNERS MANAGEMENT S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u>	222
<u>Restatement</u>	222
<u>Overview</u>	222
<u>Business Environment</u>	223
<u>Financial Highlights</u>	227
<u>Results of Operations</u>	228
<u>Liquidity and Capital Resources</u>	239
<u>Contractual Obligations and Commitments</u>	243
<u>Off-Balance Sheet Arrangements</u>	243
<u>Critical Accounting Policies and Estimates</u>	244
<u>Recently Adopted Accounting Pronouncements</u>	245
<u>Quantitative and Qualitative Disclosures About Market Risk</u>	247
<u>INFORMATION ABOUT THE COMBINED COMPANY</u>	252
<u>Overview</u>	252
<u>Competitive Strengths</u>	252
<u>Strategy</u>	254
<u>Dividend Policy</u>	255
<u>Competition</u>	257
<u>UNAUDITED PRO FORMA FINANCIAL DATA</u>	259
<u>DESCRIPTION OF THE COMBINED COMPANY CAPITAL STOCK</u>	283

Table of Contents

<u>Combined Company Capital Stock</u>	283
<u>Anti-Takeover Effects of the Combined Company Certificate of Incorporation and By-laws and Delaware Law</u>	285
<u>Corporate Governance</u>	287
<u>Other Rights</u>	287
<u>Registration Rights</u>	287
<u>Transfer Agent and Registrar</u>	287
<u>PROPOSAL 2 APPROVAL OF AMENDMENT TO CERTIFICATE OF INCORPORATION REGARDING AUTHORIZED CLASS A COMMON STOCK</u>	288
<u>Vote Required for Approval</u>	289
<u>Recommendation of the Board of Directors</u>	289
<u>PROPOSAL 3 APPROVAL OF AMENDMENT TO CERTIFICATE OF INCORPORATION REGARDING CORPORATE OPPORTUNITIES</u>	290
<u>Vote Required for Approval</u>	291
<u>Recommendation of the Board of Directors</u>	291
<u>PROPOSAL 4 APPROVAL OF AMENDED AND RESTATED BGC PARTNERS, INC. LONG TERM INCENTIVE PLAN</u>	292
<u>Description of the Equity Plan as Proposed to be Amended</u>	293
<u>Material Federal Income Tax Consequences</u>	297
<u>Vote Required for Approval</u>	298
<u>Recommendation of the Board of Directors</u>	298
<u>REPORT OF THE AUDIT COMMITTEE</u>	299
<u>INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FEES</u>	301
<u>EXPENSES OF SOLICITATION</u>	301
<u>STOCKHOLDER PROPOSALS</u>	301
<u>SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE</u>	302
<u>CODE OF ETHICS AND WHISTLEBLOWER PROCEDURES</u>	302
<u>MISCELLANEOUS</u>	302
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	302
<u>DOCUMENTS INCORPORATED BY REFERENCE</u>	302
<u>INDEX TO COMBINED FINANCIAL STATEMENTS</u>	FIN-1

Table of Contents

ANNEXES*

ANNEX A	Agreement and Plan of Merger, dated as of May 29, 2007, by and among BGC Partners, Inc., Cantor Fitzgerald, L.P., eSpeed, Inc., BGC Partners, L.P., BGC Global Holdings, L.P. and BGC Holdings, L.P. (including Amendment No. 1 thereto, dated as of November 5, 2007, and Amendment No. 2 thereto, dated as of February 1, 2008)
ANNEX B	Form of the Separation Agreement by and among Cantor Fitzgerald, L.P., BGC Partners, LLC, BGC Partners, L.P., BGC Global Holdings, L.P. and BGC Holdings, L.P.
ANNEX C	Form of Amended and Restated Limited Partnership Agreement of BGC Holdings, L.P.
ANNEX D	Form of Amended and Restated Limited Partnership Agreement of BGC Partners, L.P.
ANNEX E	Form of Amended and Restated Limited Partnership Agreement of BGC Global Holdings, L.P.
ANNEX F	Form of Registration Rights Agreement by and between Cantor Fitzgerald, L.P. and BGC Partners, LLC
ANNEX G	Form of the Administrative Services Agreement between Cantor Fitzgerald, L.P. and BGC Partners, Inc.
ANNEX H	Form of the Administrative Services Agreement among Tower Bridge International Services L.P., BGC International and Cantor Fitzgerald, L.P.
ANNEX I	Form of the BGC Holdings, L.P. Participation Plan
ANNEX J	Opinion of Sandler O'Neill + Partners, L.P.
ANNEX K	Form of Amended and Restated Certificate of Incorporation of BGC Partners, Inc.
ANNEX L	Form of Amended and Restated By-laws of BGC Partners, Inc.
ANNEX M	Form of Amended and Restated BGC Partners, Inc. Long Term Incentive Plan

* eSpeed, Inc. hereby agrees to supplementally furnish the staff of the U.S. Securities and Exchange Commission, on a confidential basis, with a copy of any omitted schedule or exhibit upon the staff's request.

Table of Contents

QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MATTERS TO BE CONSIDERED

The following questions and answers address briefly some questions you may have regarding the special meeting of stockholders and the matters to be considered at such meeting. Please refer to the more detailed information contained elsewhere in this proxy statement, the annexes to this proxy statement and the documents incorporated by reference in this proxy statement. Please refer to [Summary](#) [Glossary](#) for a glossary of certain defined terms.

All information contained in this proxy statement concerning BGC Partners, BGC U.S., BGC Global and BGC Holdings, and their affiliates and designees, has been supplied by BGC Partners and has not been independently verified by us. All information contained in this proxy statement concerning Cantor (our majority stockholder) has been supplied by Cantor and has not been independently verified by us.

Our principal executive offices are located at 110 East 59th Street, New York, New York 10022, and our telephone number is (212) 610-2200.

Q: Why am I receiving this proxy statement?

A: eSpeed and BGC Partners have agreed to combine their businesses under the terms of the merger agreement that is described in this proxy statement. A copy of the merger agreement is attached to this proxy statement as Annex A. In order to complete the merger, eSpeed stockholders must adopt the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger. Pursuant to the NASDAQ rules, stockholder approval is required when the issuance may equal or exceed 20% of the outstanding shares of eSpeed common stock, or rights to acquire eSpeed common stock, prior to the merger. eSpeed stockholders are also being asked to vote on the other proposals described below, most of which are typically considered at our annual meeting.

Q: On what matters am I being asked to vote on at the special meeting?

A: As an eSpeed stockholder, you are being asked to vote on:

- (1) the adoption of the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger;
- (2) the approval of the amendment to the eSpeed certificate of incorporation to authorize additional shares of Class A common stock;
- (3) the approval of the amendment to the eSpeed certificate of incorporation effecting changes regarding corporate opportunities;
- (4) the approval of the amended and restated BGC Partners, Inc. Long Term Incentive Plan; and
- (5) such other business as may properly come before the special meeting or any adjournment or postponement thereof.

Q: How does the eSpeed board of directors recommend that I vote on the matters to be considered at the special meeting?

Edgar Filing: ESPEED INC - Form DEFM14A

- A: A special committee of the eSpeed board of directors, consisting exclusively of eSpeed's independent directors, which we refer to as the Special Committee, recommended that the eSpeed board of directors approve the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger, and recommends that eSpeed's stockholders vote in favor of the adoption of the merger agreement and the transactions contemplated thereby.

Table of Contents

The eSpeed board of directors has unanimously approved the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger, and recommends that eSpeed's stockholders vote:

- (1) **FOR** the proposal to adopt the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger;
- (2) **FOR** the approval of the amendment to the eSpeed certificate of incorporation to authorize additional shares of Class A common stock;
- (3) **FOR** the approval of the amendment to the eSpeed certificate of incorporation effecting changes regarding corporate opportunities; and
- (4) **FOR** the approval of the amended and restated BGC Partners, Inc. Long Term Incentive Plan.

Q: What will happen in the merger?

A: In the merger, BGC Partners will merge with and into eSpeed, and eSpeed will be the surviving corporation, which will be renamed BGC Partners, Inc. eSpeed stockholders will continue to hold the same number and class of shares of Combined Company common stock as they did in eSpeed immediately prior to the merger. As of January 24, 2008, eSpeed stockholders (excluding Cantor) held approximately 30.0 million shares and options to purchase shares of eSpeed common stock which represented 58.6% of the economics of eSpeed and 12.9% of the voting rights of eSpeed as of such date, and is expected to represent 41.2% of the economics of the Combined Company and 11.8% of the voting rights of the Combined Company immediately after the merger. The former stockholders of BGC Partners (including Cantor, the founding partners and the restricted equity partners, which we refer to as restricted equity partners), will own approximately 72.0% of the economics of the Combined Company. eSpeed stockholders, other than Cantor and its affiliates, will have a reduced economic and voting interest in the Combined Company after the merger, which will be further reduced upon exchange of BGC Holdings limited partnership interests exchangeable for Combined Company Class A common stock or Combined Company Class B common stock. References to economics of an entity in this proxy statement refer to an interest in the income stream of such entity. Following the completion of the merger, it is expected that the Combined Company Class A common stock will trade on the NASDAQ Global Market under the symbol BGC.P. Following the closing of the merger, we currently expect to conduct a primary and secondary offering of the Combined Company Class A common stock. The timing, the size and the price of such offering have not yet been determined.

Q: What vote of stockholders is required to adopt the merger agreement and the transactions contemplated thereby?

A: Stockholders holding a majority of the collective voting power represented by the shares of our Class A common stock and Class B common stock issued and outstanding on the record date, voting as a single class, which we refer to as the Total Voting Power, must vote **FOR** the adoption of the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger, for the merger agreement and the transactions contemplated thereby to be adopted.

Under the terms of the merger agreement, Cantor, which as of January 24, 2008 held 87.1% of the Total Voting Power, has agreed to vote its shares in favor of the adoption of the merger agreement and the transactions contemplated thereby so long as the eSpeed board of directors and the Special Committee recommend that eSpeed's stockholders vote in favor of the adoption of the merger agreement and the transactions contemplated thereby. Accordingly, a sufficient number of the votes required to adopt the merger agreement and the transactions contemplated thereby is assured so long as the eSpeed board of directors and the Special Committee recommend that the stockholders of eSpeed vote in favor of the adoption of the merger agreement and the transactions contemplated thereby.

Table of Contents

Q: What vote of stockholders is required to approve the other matters to be considered at the special meeting?

A: The affirmative vote of the holders of a majority of the Total Voting Power present in person or represented by proxy at the special meeting and entitled to vote is required to approve the other matters to be considered at the special meeting.

Q: When and where is the special meeting?

A: The special meeting will be held at eSpeed, Inc., 499 Park Avenue, New York, New York on March 14, 2008, at 10:00 a.m. local time.

Q: Who is entitled to vote?

A: Stockholders of record as of the close of business on January 31, 2008, the record date for the special meeting, are entitled to receive notice of and to vote at the special meeting. On the record date, approximately 31,300,863 shares of our Class A common stock, held by approximately 375 stockholders of record, and 19,497,800 shares of our Class B common stock, held by one stockholder of record, were outstanding and entitled to vote at the special meeting. You may vote all shares you owned as of the close of business on the record date. All shares of Class A common stock are entitled to one vote per share. All shares of Class B common stock are entitled to 10 votes per share.

Q: If my shares are held in street name by my broker, bank or other nominee, will it vote my shares for me?

A: Yes, but only if you provide instructions to your broker, bank or other nominee on how to vote. You should follow the proxy submission instructions provided by your nominee regarding how to instruct it to vote your shares. Without those instructions, your shares will not be voted.

Q: How do I cause my shares to be voted without attending the special meeting?

A: If you hold shares in your name as the stockholder of record, then you received this proxy statement and a proxy card from us. To submit a proxy by mail, complete, sign and date the proxy card and return it in the postage-paid envelope provided. If you hold shares in street name through a broker, bank or other nominee, then you received this proxy statement from your nominee, along with the nominee's form of proxy submission instructions. In either case, you may submit a proxy for your shares by mail without attending the special meeting.

Q: What does it mean if I get more than one proxy card or form of proxy submission instructions?

A: If you have shares of our Class A common stock or Class B common stock that are registered differently or are in more than one account, you will receive more than one proxy card or form of proxy submission instructions. Please follow the directions for submitting a proxy on each of the proxy cards or form of proxy submission instructions you receive to ensure that all of your shares are voted.

Q: How do I vote in person at the special meeting?

Edgar Filing: ESPEED INC - Form DEFM14A

A: If you hold shares in your name as the stockholder of record, you may vote those shares in person at the special meeting by giving us a signed proxy card or ballot before voting is closed. If you want to do that, please bring proof of identification with you to the special meeting. Even if you plan to attend the special meeting, we recommend that you submit a proxy card for your shares in advance as described above, so your vote will be counted even if you later decide not to attend.

If you hold shares in street name through a broker, bank or other nominee, you may vote those shares in person at the special meeting only if you obtain and bring with you a signed proxy from your nominee giving you the right to vote the shares. To do this, you should contact your nominee.

Table of Contents

Q: Can I change my vote?

A: After you submit a proxy card for your shares, you may change your vote at any time before voting is closed at the special meeting. If you hold shares in your name as the stockholder of record, you should write to our Secretary at our principal executive offices, eSpeed, Inc., Attention: Secretary, 110 East 59th Street, New York, New York 10022, stating that you want to revoke your proxy and that you need another proxy card. Attendance at the special meeting will not by itself constitute revocation of a proxy. If you hold your shares in street name through a broker, bank or other nominee, you should follow your nominee's proxy submission instructions. If you attend the special meeting, you may vote by ballot as described above, which will cancel your previous vote. Your last proxy submission or vote, as the case may be, before voting is closed at the special meeting is the vote that will be counted.

Q: What is a quorum for the special meeting?

A: A quorum of the holders of the outstanding shares of our Class A common stock and Class B common stock, treated as one class, must be present for the special meeting to be held. A quorum is present if a majority of the Total Voting Power is present, in person or represented by proxy, at the special meeting.

Q: How are votes counted?

A: You may vote **FOR**, **AGAINST** or **ABSTAIN** on the vote with respect to the matters to be considered at the special meeting. An abstention will not count as a vote cast **FOR** a proposal, but will count for the purpose of determining whether a quorum is present. A broker non-vote generally occurs when a broker, bank or other nominee holding shares on your behalf does not vote on a proposal because the nominee has not received your voting instructions and lacks discretionary power to vote the shares. Like abstentions, broker non-votes will not count as votes cast **FOR** a proposal, but will count for the purpose of determining whether a quorum is present.

The affirmative vote of a majority of the Total Voting Power is required to adopt the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger. As a result, abstentions and broker non-votes on the proposal to adopt the merger agreement and the transactions contemplated thereby will have the same effect as a vote **AGAINST** the adoption of the merger agreement and the transactions contemplated thereby. Under the terms of the merger agreement, Cantor, which as of January 24, 2008 held 87.1% of the Total Voting Power, has agreed to vote its shares in favor of the adoption of the merger agreement and the transactions contemplated thereby so long as the eSpeed board of directors and the Special Committee recommend that the stockholders of eSpeed vote in favor of the adoption of the merger agreement and the transactions contemplated thereby. Accordingly, a sufficient number of the votes required to adopt the merger agreement and the transactions contemplated thereby is assured so long as the eSpeed board of directors and the Special Committee recommend that the stockholders of eSpeed vote in favor of the adoption of the merger agreement and the transactions contemplated thereby.

The affirmative vote of the holders of a majority of the Total Voting Power present in person or represented by proxy at the special meeting and entitled to vote is required to approve the matters to be considered at the special meeting.

If you sign your proxy card without indicating your vote, your shares will be voted **FOR** the proposal to adopt the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger, **FOR** the approval of the amendment to the eSpeed certificate of incorporation to authorize additional shares of Class A common stock, **FOR** the approval of the amendment to the eSpeed certificate of incorporation effecting changes regarding corporate opportunities, **FOR** the approval of the amended and restated BGC Partners, Inc. Long Term Incentive

Table of Contents

Plan and in accordance with any recommendation of the eSpeed board of directors or, in the absence of such recommendation, in the discretion of the proxies named in the enclosed proxy card on any other matter properly brought before the special meeting for a vote.

Q: Who will bear the cost of this solicitation?

A: We will pay the cost, if any, of soliciting stockholder proxies. We will, upon request, reimburse stockholders who are brokers, banks or other nominees for their reasonable expenses in sending proxy materials to the beneficial owners of the shares they hold of record. We will solicit proxies by mail and may also solicit them in person or by telephone, e-mail, facsimile or other electronic means of communication.

Q: What should I do now?

A: You should carefully read and consider the information contained in this proxy statement. You should then complete and sign your proxy card and return it in the enclosed envelope so that your shares will be represented at the special meeting. You may also vote in person at the special meeting or through the other means described in this proxy statement.

Q: When do you expect the merger to be completed?

A: The merger is expected to close in the first quarter of 2008.

Q: Where can I find additional information about eSpeed and the merger?

A: eSpeed files annual, quarterly and current reports, proxy statements and other information with the U.S. Securities and Exchange Commission, which we refer to as the SEC, under the Securities Exchange Act of 1934, as amended, which we refer to as the Exchange Act. You may read and copy these reports and other information filed by eSpeed at the Public Reference Section of the SEC, Room 1580, 100 F Street, N.E., Washington, D.C. 20549, at prescribed rates. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

The SEC also maintains an Internet website that contains reports, proxy statements and other information about issuers, like eSpeed, who file electronically with the SEC through the Electronic Data Gathering, Analysis and Retrieval system. The Internet address of this site is <http://www.sec.gov>.

This proxy statement incorporates by reference important business and financial information about eSpeed that is not included in or delivered with this document. You may request this information from eSpeed, without charge, excluding all exhibits, unless we have specifically incorporated by reference an exhibit in this proxy statement.

Q: Who can help answer my other questions?

A: If you have more questions about the special meeting or the matters to be considered at the special meeting, you should contact eSpeed, Inc., Attention: Secretary, 110 East 59th Street, New York, New York 10022, telephone number (212) 610-2200.

Table of Contents**SUMMARY**

The following summary highlights material information contained in this proxy statement but does not contain all of the information that may be important to you. You are urged to read the entire proxy statement carefully, including the annexes. In addition, we encourage you to read the information incorporated by reference in this proxy statement, which includes important business and financial information about eSpeed that has been filed with the SEC. You may obtain the information incorporated by reference in this proxy statement without charge by following the instructions in the section entitled "Where You Can Find More Information" beginning on page 302. The information contained in this summary is qualified in its entirety by reference to the more detailed information contained in this proxy statement and the annexes, and which are incorporated herein by reference.

The Companies***eSpeed, Inc. (see page 203)***

eSpeed is a leader in developing and deploying electronic marketplaces and related trading technology that offers traders access to the most liquid, efficient and neutral financial markets in the world. eSpeed operates multiple buyer, multiple seller real-time electronic marketplaces for the global capital markets, including the world's largest government bond markets and other fixed income and foreign exchange marketplaces. eSpeed's suite of marketplace tools provides end-to-end transaction solutions for the purchase and sale of financial products over eSpeed's global private network or via the Internet. eSpeed's neutral platform, reliable network, straight-through processing and superior products make it a trusted source for electronic trading at the world's largest fixed income and foreign exchange trading firms and major exchanges. eSpeed's principal executive offices are located at 110 East 59th Street, New York, New York 10022 and its telephone number is (212) 610-2200. The Internet address for eSpeed is <http://www.espeed.com>.

Pre-Merger BGC Partners (see page 203)

BGC Partners is a leading full-service inter-dealer broker, providing integrated voice and electronic execution brokerage services to many of the world's largest and most creditworthy banks that regularly trade in capital markets, brokerage houses and investment banks for a broad range of global financial products, including fixed income securities, foreign exchange, equity derivatives, credit derivatives, futures, structured products and other instruments, as well as market data products for selected financial instruments. Named in honor of B. Gerald Cantor, Cantor's founder and a pioneer in screen brokerage services and fixed income market data products, BGC Partners has offices in London, New York, Toronto, Mexico City, Paris, Nyon, Copenhagen, Hong Kong, Tokyo, Beijing (representative office), Singapore, Sydney, Seoul and Istanbul. BGC Partners' principal executive offices are located at 199 Water Street, New York, New York 10038 and its telephone number is (646) 346-7000. The Internet address for BGC Partners is <http://www.bgcpartners.com>.

Post-Merger Combined Company (see page 252)

The Combined Company, which will be named BGC Partners, Inc., will be a leading inter-dealer broker, offering integrated voice, hybrid and fully electronic execution and other brokerage services to banks, brokerage houses and investment banks for a broad range of global financial products, including fixed income securities, foreign exchange, equity derivatives, credit derivatives, futures, structured products and other instruments, as well as market data, analytics and financial technology solutions related to selected financial instruments and markets. The Combined Company's principal executive offices will be located at 199 Water Street, New York, New York 10038 and its telephone number will be (646) 346-7000. The Internet address for the Combined Company will be <http://www.bgcpartners.com>.

Table of Contents

Value of the Transaction (see page 125)

The dollar value of the merger is based on the number of shares of Combined Company common stock and rights to acquire shares of Combined Company common stock being issued multiplied by the average price of eSpeed common stock at the closing date of the transaction. As the price of eSpeed common stock fluctuates, the total dollar value of the transaction fluctuates, and therefore, the dollar value of the merger will not be fixed until the merger closes. As of May 29, 2007 (the date of execution of the merger agreement) and as of January 24, 2008, the dollar value of the transaction was \$1,231,512,000 and \$1,560,807,600, respectively, based on the average price of eSpeed Class A common stock on such dates.

The Special Meeting (see page 69)

The special meeting will be held at eSpeed, Inc., 499 Park Avenue, 3rd Floor, New York, New York on March 14, 2008, starting at 10:00 a.m. local time. You are entitled to notice of, and to vote at, the special meeting if you owned eSpeed Class A common stock or Class B common stock at the close of business on January 31, 2008, the record date. As of the record date, there were 31,300,863 shares of eSpeed Class A common stock issued and outstanding and 19,497,800 shares of eSpeed Class B common stock issued and outstanding.

Each share of eSpeed Class A common stock is entitled to one vote on each proposal at the special meeting, and each share of eSpeed Class B common stock is entitled to 10 votes on each proposal at the special meeting. Stockholders holding a majority of the Total Voting Power must vote **FOR** the adoption of the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger, for the merger agreement and the transactions contemplated thereby to be adopted. The affirmative vote of the holders of a majority of the Total Voting Power present in person or represented by proxy at the special meeting and entitled to vote is required to approve the other matters to be considered at the special meeting. A quorum will be present if a majority of the Total Voting Power is present, in person or represented by proxy, at the special meeting.

Under the terms of the merger agreement, Cantor, which as of January 24, 2008 held 87.1% of the Total Voting Power, has agreed to vote its shares in favor of the adoption of the merger agreement and the transactions contemplated thereby so long as the eSpeed board of directors and the Special Committee recommend that the stockholders of eSpeed vote in favor of the adoption of the merger agreement and the transactions contemplated thereby. Accordingly, a sufficient number of the votes required to adopt the merger agreement and the transactions contemplated thereby is assured so long as the eSpeed board of directors and the Special Committee recommend that the stockholders of eSpeed vote in favor of the adoption of the merger agreement and the transactions contemplated thereby.

Reasons for the Merger; Risks of the Merger (see pages 90 and 36)

The Special Committee, by unanimous vote, at a meeting held on May 29, 2007, determined that the merger agreement and the transactions contemplated by the merger agreement, including the merger, are fair to, advisable and in the best interests of the Company and the holders of eSpeed Class A common stock (other than Cantor and its affiliates). In addition, the Special Committee recommended that the eSpeed board of directors approve the merger agreement and the transactions contemplated thereby, including the merger and the issuance of shares of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger, and recommended that the Company's common stockholders vote in favor of the adoption of the merger agreement and the transactions contemplated thereby. In reaching its conclusion, the Special Committee consulted with its financial and legal advisors, considered eSpeed's prospects, including the uncertainties and risks facing it, considered the prospects of BGC Partners and considered the interests of the holders of eSpeed Class A common stock (other than Cantor and its affiliates).

Table of Contents

In reaching such determination and recommendation, the Special Committee considered a variety of factors that it believed weighed favorably towards the merger, including the following material factors (which are not listed in any relative order of importance):

financial terms of the merger;

challenges facing eSpeed;

prospects of BGC Partners;

financial benefits;

continuation of interests of holders of eSpeed Class A common stock;

certain provisions of the merger agreement and the related agreements; and

alignment of management interests.

In addition to the above mentioned benefits, the Special Committee also considered the following factors in the course of its deliberations:

intentions of eSpeed's controlling stockholder;

expected impact of the announcement of the merger in the market and on business operations of eSpeed; and

results of due diligence investigation.

The Special Committee weighed these factors against a number of other material factors identified in its deliberations as potentially weighing negatively against the merger, including the following factors (which are not listed in any relative order of importance):

the risk of not realizing all the anticipated cost savings and revenue enhancements;

the challenges inherent in the operation of the businesses of eSpeed in conjunction with those of BGC Partners;

the transaction costs associated with the merger and costs relating to the operation of the businesses of eSpeed in conjunction with those of BGC Partners;

Edgar Filing: ESPEED INC - Form DEFM14A

the risk of liabilities associated with the BGC business, including certain regulatory and litigation matters and other contingent liabilities;

the continuing role of Cantor as controlling stockholder and the known and potential conflicts of interests of certain of the directors and executive officers of the Combined Company;

certain terms of the merger agreement and the related agreements;

that the merger is not subject to a vote by the holders of a majority of the shares of Company Class A common stock other than those held by Cantor and its affiliates;

the possibility that the merger might not be consummated despite the parties' efforts or that the closing of the merger may be unduly delayed; and

the fact that the eSpeed Class A common stock had traded in the past at prices in excess of \$9.75 per share.

As discussed in Proposal 1 The Merger Reasons for the Merger; Recommendation of the Merger by the Special Committee and the eSpeed Board of Directors, after consideration of these material factors, the Special Committee determined such risks could be mitigated or managed by eSpeed or BGC Partners or, following the

Table of Contents

merger, by the Combined Company, were reasonably acceptable under the circumstances, or, in light of the anticipated benefits, and that, overall, these risks were significantly outweighed by the potential benefits of the merger.

Despite the reasons for the merger, there are risks related to the merger, as discussed under the heading "Risk Factors - Risks Related to the Merger" immediately following this summary, and these risks may cause us not to realize the full benefits of the merger, and could adversely impact our revenues and as a result could adversely affect our business, financial condition and results of operations. See "Risk Factors - Risks Related to the Merger."

Interests of Directors, Executive Officers and Certain Beneficial Owners in the Merger (see page 104)

The current directors and executive officers of eSpeed, the future directors and executive officers of the Combined Company and certain beneficial owners of eSpeed common stock may have interests in the merger that are different from, or in addition to, yours and the interests of the current directors and executive officers of eSpeed, the future directors and officers of the Combined Company and certain beneficial owners of eSpeed common stock may conflict with the interests of the unaffiliated eSpeed stockholders, including the following:

The merger agreement provides that, prior to completion of the merger, upon the request of BGC Partners, eSpeed will provide each of Howard W. Lutnick, Lee M. Amaitis, Shaun D. Lynn, Stephen M. Merkel and Robert K. West with a letter agreement setting forth an annual base salary of \$1,000,000 per year (except for Mr. West whose letter shall provide for an annual base salary of \$550,000) and annual cash target bonuses of up to the percentages set forth below:

400% of annual base salary for Mr. Lutnick;

375% of annual base salary for Mr. Amaitis;

300% of annual base salary for Mr. Lynn;

100% of annual base salary for Mr. Merkel; and

100% of annual base salary for Mr. West.

In addition to the target cash bonuses set forth above, the executive officers will be eligible for incentive compensation to be paid in the form of equity, partnership units or otherwise.

The merger agreement provision described in the preceding bullet point with respect to Messrs. Amaitis and Lynn is expected to be implemented prior to the merger through employment agreements between BGC Partners and each of Messrs. Amaitis and Lynn, which agreements will be assumed at completion of the merger by the Combined Company, with base salary and bonus provisions consistent with the letter agreements described above.

BGC Partners and eSpeed have agreed that, prior to the completion of the merger, BGC Partners may enter into (which it is expected to do) change of control employment agreements with each of Messrs. Lutnick, Lynn, Merkel and Amaitis, which agreements will be assumed at completion of the merger by the Combined Company, and will relate to a change of control of BGC Partners, or, after the merger, the Combined Company, other than the merger contemplated by the merger agreement.

Edgar Filing: ESPEED INC - Form DEFM14A

Prior to the completion of the merger, Cantor will redeem all of the Cantor limited partnership interests held by founding partners in exchange for (1) a portion of the BGC Holdings limited partnership interests that Cantor will receive in the separation, and (2) rights to receive from Cantor, over time, shares of Combined Company Class A common stock, which we refer to as the distribution rights.

In connection with the separation, Cantor will receive BGC Holdings limited partnership interests. After the first anniversary of the completion of the merger, the BGC Holdings limited partnership interests held by Cantor will be exchangeable with the Combined Company for Combined Company

Table of Contents

Class B common stock (or, at Cantor's option or if there are no additional authorized but unissued shares of Combined Company Class B common stock, Combined Company Class A common stock) on a one-for-one basis (subject to customary anti-dilution adjustments). Cantor will, however, be able to exchange up to 20 million of its BGC Holdings limited partnership interests prior to the first anniversary of the completion of the merger for shares of Combined Company Class A common stock in connection with a broad-based public offering including all the shares of Combined Company Class A common stock received upon such exchange, underwritten by a nationally recognized investment banking firm.

Cantor intends to provide all founding partners with the right to immediately exchange 20% of their BGC Holdings founding partner interests for restricted shares of Combined Company Class A common stock, on a one-for-one basis (subject to customary anti-dilution adjustments), with one-third of the shares received by a founding partner upon exchange becoming saleable on each of the first, second and third anniversaries of the completion of the merger, subject to applicable law. Cantor has also agreed to provide certain additional exchange rights to Messrs. Amaitis and Lynn. From time to time, Cantor may provide founding partners with the right to exchange their remaining BGC Holdings founding partner interests for Combined Company Class A common stock, on a one-for-one basis (subject to customary anti-dilution adjustments), on terms and conditions to be determined by Cantor, provided that the terms and conditions of such exchange cannot in any way diminish or adversely affect the rights of the Combined Company or its subsidiaries (it being understood that an obligation by the Combined Company to deliver shares of Combined Company Class A common stock upon exchange will not be deemed to diminish or adversely affect the rights of the Combined Company or its subsidiaries).

In connection with the separation and prior to the merger, Messrs. Amaitis, Lynn and Merkel as well as two other individuals who are employed by one or more of our affiliates, will use some of the proceeds that they receive in respect of the redemption of their Cantor limited partnership interests to repay certain loans made or guaranteed by Cantor. See Certain Relationships and Related Transactions Before and After the Merger Repayment of Existing Loans and Required Capital Contributions.

Concurrently with the merger, BGC Holdings expects to issue certain restricted equity interests (which we refer to as REUs) to certain employees of BGC Partners and other persons who provide services to BGC Partners. REUs may also be issued in connection with acquisitions or the hiring of new employees. In addition, BGC Partners will issue to certain employees and other persons who provide services to BGC Partners certain BGC Partners restricted stock units, which we refer to as BGC RSUs.

The eSpeed board of directors has determined that Cantor is a deputized director of eSpeed and the Combined Company for purposes of Rule 16b-3 under the Exchange Act with respect to the transactions contemplated by the separation and the merger. The eSpeed board of directors' intent in determining that Cantor is a deputized director is that Cantor's acquisitions or dispositions of shares of eSpeed or Combined Company capital stock or interests in eSpeed or Combined Company capital stock from or to eSpeed or the Combined Company or their respective majority-owned subsidiaries will be eligible for the Rule 16b-3 exemption from the short-swing profits liability provisions of Section 16(b) of the Exchange Act.

Upon the termination of employment or bankruptcy of a founding partner, or upon mutual agreement of Cantor and the general partner of BGC Holdings, BGC Holdings will redeem any BGC Holdings founding partner interests held by such founding partner (to the extent they have not become exchangeable). However, in such circumstances, Cantor has a right of first refusal to acquire such founding partner interests. Any BGC Holdings founding partner interests acquired by Cantor, while not exchangeable in the hands of the founding partner absent a determination by Cantor to the contrary (as Cantor is expected to do from time to time as described above), will be exchangeable by Cantor, generally commencing one year after the completion of the merger, for shares of Combined Company

Table of Contents

Class B common stock, or at Cantor's election, shares of Combined Company Class A common stock, in each case, on a one-for-one basis (subject to customary anti-dilution adjustments) on the same basis as the Cantor interests and will be designated as BGC Holdings exchangeable limited partnership interests when acquired by Cantor. In addition, Cantor will have a right of first refusal with respect to any BGC Holdings working partner interests and REU interests (in each case that have not become exchangeable), that (A) are called for redemption upon termination of employment or bankruptcy of a working partner or termination of employment or bankruptcy of a restricted equity partner or (B) are called for redemption by BGC Holdings, in each case if BGC Holdings elects to transfer the right to purchase such interest to a BGC Holdings partner rather than redeem such interest itself.

Opinion of Financial Advisor to eSpeed's Special Committee (see page 95)

The financial advisor to eSpeed's Special Committee, Sandler O'Neill + Partners, L.P., which we refer to as Sandler O'Neill, delivered an opinion, as of May 29, 2007 and subject to the assumptions and qualifications stated in the opinion, regarding the fairness from a financial point of view of the Exchange Ratios (as defined below under Proposal 1 The Merger Opinion of Financial Advisor to the Special Committee) to holders of eSpeed Class A common stock other than Cantor and its affiliates. The opinion does not, and will not be updated to, take into account subsequent events, including fluctuations in the market value of eSpeed's common stock or changes to the merger included in the amendments to the merger agreement and related transaction agreements. See Proposal 1 The Merger Background of the Merger.

The full text of this fairness opinion is attached as Annex J to this proxy statement. You are urged to read the opinion carefully and in its entirety for a description of the procedures followed, matters considered and limitations on the review undertaken.

Structure of the Merger (see page 76)

The merger agreement provides that BGC Partners will be merged with and into eSpeed, with eSpeed surviving the merger. The Combined Company will be renamed BGC Partners, Inc. Following the completion of the merger, it is expected that the Combined Company Class A common stock will trade on the NASDAQ Global Market under the symbol BGCP. The dollar value of the merger is based on the number of shares of Combined Company common stock and rights to acquire shares of Combined Company common stock being issued multiplied by the average price of eSpeed Class A common stock at the closing date of the transaction. As the price of eSpeed common stock fluctuates, the total dollar value of the transaction fluctuates, and therefore, the dollar value of the merger will not be fixed until the merger closes. As of May 29, 2007 (the date of the merger agreement) and as of January 24, 2008, the dollar value of the transaction was \$1,231,512,000 and \$1,560,807,600, respectively, based on the average price of eSpeed Class A common stock on such dates.

To acquire BGC Partners, eSpeed has agreed to issue in the merger an aggregate of 133,860,000 shares of Combined Company common stock and rights to acquire shares of Combined Company common stock. Of these shares and rights to acquire shares, 56,000,000 will be in the form of Combined Company Class B common stock or rights to acquire Combined Company Class B common stock, and the remaining 77,860,000 will be in the form of Combined Company Class A common stock or rights to acquire Combined Company Class A common stock. Specifically, in the merger:

each of the BGC Partners Class A units, 21,968,971 of which will be outstanding immediately prior to the merger, will be converted into Combined Company Class A common stock (and the issued and outstanding shares of eSpeed Class A common stock and options to purchase eSpeed Class A common stock will remain outstanding as Combined Company Class A common stock, 32,451,646 (including 1,150,783 of stock options) of which were issued and outstanding as of January 24, 2008);

all of the issued and outstanding shares of eSpeed Class B common stock will remain outstanding as Combined Company Class B common stock or, at Cantor's election prior to the closing of the merger, be converted into shares of Combined Company Class A common stock, 19,497,800 of which were issued and outstanding as of January 24, 2008;

Table of Contents

the one BGC Partners Class C unit which will be issued and outstanding immediately prior to the merger will be converted into 100 shares of Combined Company Class B common stock or, at Cantor's election prior to the closing of the merger, 100 shares of Combined Company Class A common stock; and

- (1) the 68,073,666 units of BGC Holdings exchangeable limited partnership interests which will be issued and outstanding immediately prior to the merger will be exchangeable with the Combined Company for Combined Company Class B common stock or Combined Company Class A common stock in accordance with the terms of the BGC Holdings limited partnership agreement and
- (2) the 43,817,263 units of BGC Holdings founding partner interests which will be issued and outstanding immediately prior to the merger will not be exchangeable with the Combined Company unless otherwise determined by Cantor in accordance with the terms of the BGC Holdings limited partnership agreement.

Cantor currently intends to elect to have the BGC Partners Class B units and the BGC Partners Class C unit converted in the merger into Combined Company Class A common stock.

Concurrently with or immediately after the merger, the Combined Company will contribute its assets and liabilities to BGC U.S. and BGC Global in exchange for limited partnership interests in these entities. As a result of this contribution, the Combined Company will receive limited partnership interests in each of these entities.

Current stockholders of the Company will hold the same number and class of shares of Combined Company common stock that they held in the Company prior to the merger. As of January 24, 2008, eSpeed stockholders (excluding Cantor) held approximately 30.0 million shares and options to purchase shares of eSpeed common stock which represented 58.6% of the economics of eSpeed and 12.9% of the voting rights of eSpeed as of such date, and is expected to represent 41.2% of the economics of the Combined Company and 11.8% of the voting rights of the Combined Company immediately after the merger. eSpeed stockholders, other than Cantor and its affiliates, will have a reduced economic and voting interest in the Combined Company after the merger, which will be further reduced upon exchange of BGC Holdings limited partnership interests that are exchangeable for Combined Company Class A common stock or Combined Company Class B common stock. Following the closing of the merger, we currently expect to conduct a primary and secondary offering of the Combined Company Class A common stock. The timing, the size and the price of such offering have not yet been determined.

Immediately after the merger, it is expected there will be approximately 54,420,617 fully diluted shares of Combined Company Class A common stock outstanding, of which 23,989,120 shares will be held by Cantor. Each share of Class A common stock will generally be entitled to one vote on matters submitted to the Combined Company's stockholders. In addition, immediately after the merger, Cantor will hold 19,497,900 shares of Combined Company Class B common stock (which represents all of the outstanding Combined Company Class B common stock), representing, together with the Combined Company Class A common stock held by Cantor, approximately 88.2% of the Combined Company's voting power. Each share of Class B common stock will generally be entitled to the same rights as a share of Class A common stock, except that, on matters submitted to a vote of the Combined Company's stockholders, each share of Class B common stock will be entitled to 10 votes. The Class B common stock generally will vote together with the Class A common stock on all matters submitted to a vote of the Combined Company's stockholders.

Immediately after the merger, the Combined Company will hold, directly or indirectly, the BGC Holdings general partnership interest and the BGC Holdings special voting limited partnership interest, which entitles the holder thereof to remove and appoint the general partner of BGC Holdings, and will serve as the general partner of BGC Holdings, which will entitle the Combined Company to control BGC Holdings. BGC Holdings, in turn, will hold the BGC U.S. general partnership interest and the BGC U.S. special voting limited partnership interest, which

Table of Contents

entitles the holder thereof to remove and appoint the general partner of BGC U.S., and the BGC Global general partnership interest and the BGC Global special voting limited partnership interest, which entitles the holder thereof to remove and appoint the general partner of BGC Global, and will serve as the general partner of each of BGC U.S. and BGC Global, which will entitle BGC Holdings (and thereby the Combined Company) to control each of BGC U.S. and BGC Global. BGC Holdings will hold its BGC Global general partnership interest through a company incorporated in the Cayman Islands, BGC Global Holdings GP Limited. In addition, it is expected the Combined Company will indirectly through wholly-owned subsidiaries hold BGC U.S. limited partnership interests and BGC Global limited partnership interests consisting of approximately 73,918,517 units and 73,918,517 units, representing approximately 39.8% and 39.8% of the outstanding BGC U.S. limited partnership interests and BGC Global limited partnership interests, respectively. The Combined Company will be a holding company that will hold these interests, will serve as the general partner of BGC Holdings, and, through BGC Holdings, will act as the general partner of each of BGC U.S. and BGC Global. As a result of the Combined Company's ownership of the general partnership interest in BGC Holdings and BGC Holdings' general partnership interest in each of BGC U.S. and BGC Global, it is anticipated that the Combined Company will consolidate BGC U.S.'s and BGC Global's results for financial reporting purposes.

Founding partners and working partners, which we refer to collectively as founding/working partners and as BGC Holdings founding/working partners, and restricted equity partners will directly and Cantor will indirectly hold BGC Holdings limited partnership interests. BGC Holdings, in turn, will hold BGC U.S. limited partnership interests and BGC Global limited partnership interests and, as a result, founding/working partners, restricted equity partners and Cantor will indirectly have interests in BGC U.S. limited partnership interests and BGC Global limited partnership interests.

After the first anniversary of the completion of the merger, the BGC Holdings limited partnership interests held by Cantor will be exchangeable with the Combined Company for Combined Company Class B common stock (or, at Cantor's option or if there are no additional authorized but unissued shares of Combined Company Class B common stock, Combined Company Class A common stock) on a one-for-one basis (subject to customary anti-dilution adjustments). Cantor will, however, be able to exchange up to an aggregate of 20 million of its BGC Holdings limited partnership interests prior to the first anniversary of the completion of the merger for shares of Combined Company Class A common stock in connection with a broad-based public offering including all shares of Combined Company Class A common stock received upon such exchange, underwritten by a nationally recognized investment banking firm.

The BGC Holdings limited partnership interests that Cantor transfers to founding partners in redemption of their current limited partnership interests in Cantor at the time of the separation will not be exchangeable with the Combined Company unless (1) Cantor reacquires such interests from the founding partners (which it has the right to do under certain circumstances), in which case such interests will be exchangeable with the Combined Company for Combined Company Class A common stock or Class B common stock, or (2) Cantor determines that such interests can be exchanged by such founding partners with the Combined Company for Combined Company Class A common stock, generally on a one-for-one basis (subject to customary anti-dilution adjustments), on terms and conditions to be determined by Cantor, provided that such terms and conditions do not have an adverse effect on the Combined Company (which exchange of certain interests Cantor expects to permit from time to time). Cantor intends to provide all founding partners with the right to immediately exchange 20% of their BGC Holdings founding partner interests for restricted shares of Combined Company Class A common stock on a one-for-one basis (subject to customary anti-dilution adjustments), with one-third of the shares received by a founding partner upon exchange becoming saleable on each of the first, second and third anniversaries of the completion of the merger, subject to applicable law. Cantor has also granted certain additional exchange rights to Messrs. Amaitis and Lynn. No working partner interests will be issued at the time of the separation and merger. Any working partner interests that are issued will not be exchangeable with the Combined Company unless otherwise determined by BGC Partners with the written consent of the affirmative vote of the majority of units underlying BGC Holdings

Table of Contents

exchangeable limited partnership interests outstanding as of the applicable record date, which we refer to as a BGC Holdings exchangeable limited partnership interest majority in interest, in accordance with the terms of the BGC Holdings limited partnership agreement.

With each exchange, BGC Partners' indirect interest in BGC U.S. and BGC Global will proportionately increase because, immediately following an exchange, BGC Holdings will redeem the BGC Holdings unit so acquired for the BGC U.S. limited partnership interest and the BGC Global limited partnership interest underlying such BGC Holdings unit. The acquired BGC U.S. limited partnership interest and BGC Global limited partnership interest will be appropriately adjusted to reflect the impact of certain litigation matters and the intention of the parties to the BGC Holdings limited partnership agreement for BGC Holdings (and not BGC Partners) to realize the economic benefits and burdens of such litigation matters.

The profit and loss of BGC U.S., BGC Global and BGC Holdings, as the case may be, will generally be allocated based on the total number of BGC U.S. units, BGC Global units and BGC Holdings units, as the case may be, outstanding, other than in the case of certain litigation matters, as described in Related Agreements Amended and Restated Limited Partnership Agreements of BGC U.S. and BGC Global.

Table of Contents

The following diagram illustrates the expected ownership structure of the Combined Company after the merger. References to economics of an entity in this proxy statement refer to an interest in the income stream of such entity. References to Public Stockholders includes Combined Company stockholders other than Cantor. The following diagram does not reflect the various subsidiaries of the Combined Company, BGC U.S., BGC Global, BGC Holdings or Cantor, the issuance of BGC Holdings REUs or BGC RSUs or the results of any exchange of BGC Holdings exchangeable limited partnership interests, or, to the extent applicable, BGC Holdings founding partner interests or BGC Holdings REUs:

* Shares of Class B common stock are convertible into shares of Class A common stock at any time in the discretion of the holder on a one-for-one basis. Accordingly, if Cantor converted all of its Class B common stock into Class A common stock, Cantor would hold 59.8% of the voting power and the public stockholders would hold 40.2% of the voting power (and the indirect economic interests in BGC U.S. and BGC Global would remain unchanged).

Table of Contents

Please see **Risk Factors** **Risks Related to the Merger** eSpeed stockholders, other than Cantor and its affiliates, will have a reduced ownership and voting interest after the merger and will be further diluted upon exchange of BGC Holdings limited partnership interest into Combined Company common stock and **Risk Factors** **Risks Related to the Combined Company's Business** The market price of eSpeed Class A common stock has fluctuated and the market price of Combined Company Class A common stock may fluctuate in the future. In addition, future sales of shares of Combined Company Class A common stock, including in any public offering, could adversely affect the market price of Combined Company Class A common stock. eSpeed has also repurchased its shares from time to time, and, after the merger, the Combined Company may cease doing so at any time, for a discussion of possible dilution and future sales of shares of Combined Company Class A common stock.

You should read **Risk Factors** **Risks Related to the Combined Company's Capital Structure**, **Proposal 1 The Merger** **History, Formation, Separation and Pre-Merger Structure of BGC Partners**, **Proposal 1 The Merger** **Structure of the Combined Company**, **Related Agreements** and **Description of the Combined Company Capital Stock** for additional information about the Combined Company's capital structure and the risks posed by this structure.

Material U.S. Federal Income Tax Consequences (see page 111)

Because eSpeed common stock held by eSpeed stockholders immediately prior to the merger will not be exchanged in the merger, eSpeed stockholders will not recognize any gain or loss for U.S. federal income tax purposes as a result of the merger. In addition, we do not anticipate that eSpeed will currently recognize any material amount of income or gain for U.S. federal income tax purposes as a result of the merger.

Accounting Treatment (see page 112)

The merger will be accounted for by eSpeed as a combination of entities under common control in accordance with generally accepted accounting principles in the United States, which we refer to as U.S. GAAP.

Regulatory Approvals (see page 111)

The merger is subject to the receipt of approvals of certain regulatory agencies, including the Financial Industry Regulatory Authority, which we refer to as FINRA, and the U.K. Financial Services Authority, which we refer to as the FSA (in respect of the change of control for all FSA-regulated entities and the conversion of BGC Financial, Inc. into a limited liability company). Consents from the Sydney Futures Exchange and the Hong Kong Monetary Authority are also required to consummate the separation transactions in Australia and Hong Kong, respectively. Consummation of the merger is also subject to approvals of, or filings with, securities commissions of certain states and other jurisdictions in which subsidiaries of BGC Partners and eSpeed conduct business.

Conditions to the Merger (see page 121)

A number of conditions to each party's obligation to close must be satisfied or waived before the merger will be completed. These include among others:

the adoption of the merger agreement and the transactions contemplated thereby, including the merger and the issuance of Combined Company common stock and rights to acquire Combined Company common stock as consideration in the merger, by the eSpeed stockholders;

Table of Contents

the NASDAQ listing of the Combined Company Class A common stock to be issued in the merger;

the receipt of required governmental approvals, including the approval of FINRA, the FSA and other regulatory approvals;

the lack of any order, injunction, ruling, decree or judgment by a court or agency;

the absence of legal prohibitions restraining, enjoining or preventing the consummation of the merger or any of the transactions contemplated by the merger agreement being in effect;

the separation occurring according to the terms of the separation agreement;

the accuracy and correctness of the other party's or parties' representations and warranties, subject to certain qualifications described in the merger agreement, and the receipt of a certificate from the other party to that effect; and

the other party or parties' covenants and agreements having been performed on or before the closing date of the merger in accordance with the merger agreement, and the receipt of a certificate from the other party to that effect.

The obligations of eSpeed to complete the merger are also subject to the following conditions:

the estimated closing net equity and the estimated closing cash of BGC Partners being at least equal to the target closing net equity of \$146.5 million and the target closing cash of \$25.0 million of BGC Partners, respectively, and the receipt of a certificate from BGC Partners to that effect; and

the estimated closing indebtedness of BGC Partners being equal to or less than the \$150.0 million target closing indebtedness of BGC Partners.

The obligations of BGC Partners to complete the merger are also subject to the receipt of an opinion from BGC Partners' counsel, Wachtell, Lipton, Rosen & Katz, dated the closing date of the merger, confirming that the merger qualifies as an exchange for purposes of Section 351(a) of the Internal Revenue Code, as amended, which we refer to as the Code.

Each of the parties may waive the conditions to the performance of its obligations under the merger agreement.

Absence of Dissenters' Rights of Appraisal (see page 111)

Under the Delaware General Corporation Law, which we refer to as the DGCL, which governs the merger, eSpeed stockholders are not entitled to dissenters' rights of appraisal in connection with the merger.

Management Before and After the Merger (see page 156)

Following the merger, the Combined Company board of directors will consist of six directors, all of whom will be the directors of eSpeed immediately prior to the merger. The initial term of the directors will end with the first annual meeting of stockholders to be held by the Combined Company. Thereafter, if re-elected, the directors will serve one year terms.

Upon completion of the merger, Howard W. Lutnick, Chairman, Chief Executive Officer and President of the Company, will be appointed Chairman and Co-Chief Executive Officer of the Combined Company; Lee M. Amaitis, Chairman and Chief Executive Officer of BGC Partners and Vice Chairman of the Company, will be appointed Co-Chief Executive Officer of the Combined Company; Shaun D. Lynn, President of

Edgar Filing: ESPEED INC - Form DEFM14A

BGC Partners, will be appointed to the same position with the Combined Company; Stephen M. Merkel, Executive Vice President, General Counsel and Secretary of the Company, will be appointed to the same positions with the Combined Company; and Robert K. West, Chief Financial Officer of BGC Partners, will be appointed to the same position with the Combined Company.

Table of Contents

Termination of the Merger Agreement (see page 123)

BGC Partners and eSpeed (acting at the direction of the Special Committee) may mutually agree in writing by action of their respective boards of directors, at any time before the effective time of the merger, whether before or after eSpeed stockholder adoption, to terminate the merger agreement. Also, either BGC Partners or eSpeed (acting at the direction of the Special Committee) may terminate the merger agreement in several circumstances, including if:

the merger is not consummated on or before April 30, 2008, which we refer to as the Outside Date, unless either BGC Partners or eSpeed exercises its option to extend the Outside Date for an additional period not to exceed 120 days if all other conditions to consummation of the transactions contemplated by the merger agreement were satisfied or were capable of being satisfied, and the sole reason that such transactions has not been satisfied is because the closing condition related to required government approvals has not been satisfied, except that this right to terminate the merger agreement is not available to any party to the merger agreement whose failure to perform any material covenant or obligation under the merger agreement has been the primary cause of or resulted in the failure of the transactions contemplated by the merger agreement to occur on or before such date; or

any injunction permanently restrains, enjoins or prohibits the consummation of the transactions contemplated by the merger agreement.

BGC Partners may also terminate the merger agreement if eSpeed materially breaches any representation, warranty, covenant or agreement contained in the merger agreement, which breach by its nature is not curable within 45 days of written notice to eSpeed of such breach.

eSpeed may also terminate the merger agreement if BGC Partners, Cantor, BGC U.S. and BGC Global or BGC Holdings breaches any representation, warranty, covenant or agreement contained in the merger agreement, which breach by its nature is not curable within 45 days of written notice to the aforementioned parties of s