

more liquidity will be available at the NBBO.

The Commission notes that the proposal to allow d-Quotes to be active when their filed price is inferior to the BBO should contribute to market depth by making the Floor brokers' d-Quote liquidity available for execution in a greater number of situations. The proposal to permit minimum trade size instructions for d-Quotes should allow Floor brokers additional flexibility in the handling of their orders without adversely affecting the executions of other market participants, since Floor brokers would remain subject to the existing parity allocation rules.<sup>11</sup> Finally, the proposal to peg d-Quotes to the NBBO rather than the BBO should contribute to market quality by providing additional liquidity at the NBBO, thus encouraging the tightening of spreads to the NBBO on the Exchange. For the foregoing reasons, the Commission finds the proposed rule change is consistent with the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NYSEAmex-2009-76 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEAmex-2009-76. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,<sup>12</sup> all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAmex-2009-76 and should be submitted on or before December 28, 2009.

#### V. Accelerated Approval of Proposed Rule Change, as modified by Amendment No. 1

The Commission also finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that no comments were received during the 21-day comment period allotted for the initial proposal. The Commission notes that the Exchange's representation that the proposal seeks to replace functionality that was previously eliminated. In addition, in this case, accelerated approval of the proposed rule change will permit the Exchange to implement systems changes related to the proposed rule change in a timely fashion.

In addition, the changes proposed in Amendment No. 1, discussed in Part III above, seek to clarify the proposed handling of d-Quotes with a filed price outside the BBO. The proposal as modified by Amendment No. 1 does not differ materially from the proposal as described in the Notice and the Commission believes the revision helps clarify the proposed operation of d-Quotes.

In light of the foregoing, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>13</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-NYSEAmex-2009-76), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-28999 Filed 12-4-09; 8:45 am]

BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61070; File No. SR-NASDAQ-2009-100]

#### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for NASDAQ's Portal Reference Database

November 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 16, 2009, The NASDAQ Stock Market LLC (the "NASDAQ Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASDAQ Exchange. The NASDAQ Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The NASDAQ Exchange is proposing to modify and simplify pricing for NASDAQ's Portal Reference Database. The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.

\* \* \* \* \*

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> See NYSE Amex Equities Rule 72.

<sup>12</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

**7045. PORTAL Reference Database**

The Following Charges shall Apply To Access to the PORTAL Reference Database

[(1) For PORTAL data for 2008 and future years, the annual fee is:

1–20 Users \$20,000

21 to 100 Users \$50,000

101+ Users \$100,000]

[(2)] (1) [For PORTAL data for 1990 to 2007,] [the] *The fee for each year of reference data shall be:*

1–20 Users \$20,000 (not to exceed \$200,000 for access to all PORTAL historical data files) [from 1990 to 2007)]

21 [to 100] ± Users \$50,000 (not to exceed \$500,000 for access to all PORTAL historical data files) [from 1990 to 2007)]

[101+ Users] [\$100,000 (not to exceed \$1,000,000 for access to all PORTAL historical data files from 1990 to 2007)]

PORTAL securities are restricted securities, as defined in SEC Rule 144(a)(3) under the Securities Act; or securities that, pursuant to contract or through terms of the security, upon issuance and continually thereafter only can be sold pursuant to Regulation S under the Securities Act, SEC Rule 144A, or SEC Rule 144 under the Securities Act, or in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4 thereof and not involving any public offering that were designated for inclusion in the PORTAL Market by Nasdaq. PORTAL equity securities are PORTAL securities that represent an ownership interest in a legal entity, including but not limited to any common, capital, ordinary, preferred stock, or warrant for any of the foregoing, shares of beneficial interest, or the equivalent thereof (regardless of whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, exercisable or non-exercisable, callable or non-callable, redeemable or non-redeemable). PORTAL debt securities are PORTAL securities that are United States dollar denominated debt securities issued by United States and/or foreign private corporations.

PORTAL reference data consists of, in addition to other information, a PORTAL debt or equity issue's name and offering description, CUSIP, country of incorporation, security class, maturity class and date, currency denomination, applicable interest and credit rating, convertibility and call provisions, total number of shares

offered, and date of PORTAL designation.

\* \* \* \* \*

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

In its filing with the Commission, the NASDAQ Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASDAQ Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

#### *a. Purpose*

As part of NASDAQ's continuing efforts to enhance the transparency and efficiency of trading in Rule 144A issues, NASDAQ created and makes publicly available, for a fee, a consolidated electronic reference database of information culled from offering documents and applications for securities seeking designation as a PORTAL security submitted to NASDAQ since 1990.<sup>4</sup> The database is fully electronic and allows users to determine, in addition to other information, a PORTAL issue's name and offering description, CUSIP, country of incorporation, security class, maturity class and date, currency denomination, applicable interest and credit rating, convertibility and call provisions, total number of shares offered, and date of PORTAL designation. As new issues sought PORTAL designation, they too were added to the database. Access to the database is open to all market participants. There is no pro-rating of these fees. The total cost of access to the full database is capped based on the number of users at a particular firm. In this filing, NASDAQ is proposing to the [sic] modify and simplify fees for users of this database. Under the proposal, NASDAQ will: (1) Eliminate the separate pricing schedule for more

recent PORTAL data; and (2) only use two tiers, 1–20 users, and 21+ users, for pricing all PORTAL data. For example, under the old fee structure a firm seeking PORTAL data for 125 users for the years 2008 and 1996 would have been charged \$100,000 for the 2008 data, and \$100,000 for the 1996 data, for a total of \$200,000. Under the new structure, that same firm will now pay \$50,000 for the 2008 data, and \$50,000 for the 1996 data, for a total of \$100,000.

NASDAQ believes that the above price modifications with respect to the PORTAL Reference Database will encourage the use of historical information about issuances of restricted equity and debt and provide a more reliable background upon which market participants can make investment decisions regarding such securities.

#### *b. Statutory Basis*

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Sections 6(b)(5) of the Act,<sup>6</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. NASDAQ also believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. In connection with the fees, NASDAQ notes that creation of the PORTAL reference database required the retrieval, organization, and review of hundreds of thousands of pages of hard-copy documents as well as the conversion of retrieved information into electronic form, and its subsequent importation into the database itself. On an ongoing basis, NASDAQ will also incur hardware and software costs for the maintenance and storage of PORTAL reference data.

<sup>4</sup> For more information related to the background of The PORTAL Market, see Securities Exchange Act Release No. 55669 (April 25, 2007); 72 FR 23874 (May 1, 2007). NASDAQ no longer designates securities as PORTAL securities, and has filed with the Commission a rule proposal to eliminate its PORTAL Market rules. See Securities Exchange Act Release No. 60991 (November 12, 2009); 74 FR 60006 (November 19, 2009).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f.

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

Finally, NASDAQ notes that the Commission has previously approved the PORTAL Reference Database and that this filing simplifies and modifies fees for the database.

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

The NASDAQ Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2009-100 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NASDAQ-2009-100. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NASDAQ Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2009-100 and should be submitted on or before December 28, 2009.

For the Commission, by the Division of Trading & Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-29037 Filed 12-4-09; 8:45 am]

**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61071; File No. SR-FINRA-2009-067]

#### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rules 2060 (Use of Information Obtained in Fiduciary Capacity) and 5290 (Order Entry and Execution Practices) in the Consolidated FINRA Rulebook**

November 30, 2009.

On October 6, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt NASD Rules 3120 (Use of Information Obtained in Fiduciary Capacity) and 3380 (Order Entry and Execution Practices) as FINRA rules in the consolidated FINRA rulebook without material change. The proposed rule change would renumber NASD Rule 3120 as FINRA Rule 2060 and NASD Rule 3380 as FINRA Rule 5290 in the consolidated FINRA rulebook. The proposed rule change was published for comment in the **Federal Register** on October 28, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is appropriate to continue to prohibit members who, in

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied the five-day pre-filing notice requirement.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 60850 (October 21, 2009), 74 FR 55598.

<sup>4</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).