SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60990; File No. SR–NASDAQ–2009–095]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto To Extend the Pilot Program and Reduce Fees for NASDAQ Last Sale Data Feeds and To Make a Technical Correction to NASDAQ Rule 7039

November 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 2009, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On November 5, 2009, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal as amended on an accelerated basis.

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

NASDAQ is proposing to extend for three months the pilot, retroactively as of October 1, 2009, that created the NASDAQ Last Sale (''NLS'') market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. Specifically, NASDAQ offers the ''NASDAQ Last Sale for NASDAQ'' and ''NASDAQ Last Sale for NYSE/Amex'' data feeds containing last sale activity in U.S. equities within the NASDAQ Market Center and reported to the jointly-operated FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF''). The purpose of this proposal is to extend the existing pilot program for three months, retroactively as of October 1, 2009, as well as to make a drafting error correction to the fee tables in NASDAQ Rule 7039 (NASDAQ Last Sale Data Feeds) concerning the distribution of NASDAQ Last Sale data products via television for both NASDAQ and NYSE/Amex that results in the correct lower monthly fee.

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the current pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, Nasdaq believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on websites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is *in italics;* proposed deletions are in brackets.[3]

* * * * *

7039. NASDAQ Last Sale Data Feeds

(a) For a three month pilot period commencing on [July] *October* 1, 2009, NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

(1) ''NASDAQ Last Sale for NASDAQ'' shall contain all transaction reports for NASDAQ-listed stocks; and

(2) ''NASDAQ Last Sale for NYSE/Amex'' shall contain all such transaction reports for NYSE- and Amex-listed stocks.

(b) Each distributor of the NASDAQ Last Sale Data Feeds may elect between two alternate fee schedules, depending upon the choice of distributors to report usage based on either a username/password entitlement system or a quote counting mechanism or both. All fees for the NASDAQ Last Sale Data Products are ''stair-stepped'' in that the fees are reduced for distributors with more users but the lower rates apply only to users in excess of the specified thresholds rather than applying to all users once a threshold is met. In addition, there shall be a maximum fee of $50,000 per month for NASDAQ Last Sale for NASDAQ and NASDAQ Last Sale for NYSE/Amex.

(1) Firms that choose to report usage for either a username/password entitlement system or quote counting mechanism or both shall elect between paying a fee for each user or a fee for each query. A firm that elects to pay for each query may cap its payment at the monthly rate per user. Firms shall pay the following fees:

Users/mo	Price	Query	Price
(A) NASDAQ Last Sale for NASDAQ			
1–9,999	$0.60/usermonth	0–10M	$0.003/query.
10,000–49,999	$0.48/usermonth	10M–20M	$0.0024/query.
50,000–99,999	$0.36/usermonth	20M–30M	$0.0018/query.
100,000+	$0.30/usermonth	30M+	$0.0015/query.
(B) NASDAQ Last Sale for NYSE/Amex			
1–9,999	$0.30/usermonth	0–10M	$0.0015/query.
10,000–49,999	$0.24/usermonth	10M–20M	$0.0012/query.
50,000–99,999	$0.18/usermonth	20M–30M	$0.0009/query.
100,000+	$0.15/usermonth	30M+	$0.000725/query.

(2) Firms that choose not to report usage based on either a username/password entitlement system or quote counting mechanism or both may distribute NASDAQ Last Sale Data Products under alternate fee schedules depending upon whether they distribute data via the Internet or via Television:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic NASDAQ Manual found at *http://nasdaqomx.cchwallstreet.com.*

(A) The fee for distribution of NASDAQ Last Sale Data Products via the Internet shall be based upon the number of Unique Visitors to a website receiving such data. The number of Unique Visitors shall be validated by a vendor approved by NASDAQ in NASDAQ's sole discretion.

Unique visitors	Monthly fee
(i) NASDAQ Last Sale for NASDAQ	
1–100,000	$0.036/Unique Visitor.
100,000–1M	$0.03/Unique Visitor.
1M+	$0.024/Unique Visitor.
(iii) NASDAQ Last Sale for NYSE/Amex	
1–100,000	$0.018/Unique Visitor.
100,000–1M	$0.015/Unique Visitor.
1M+	$0.012/Unique Visitor.

(B) Distribution of NASDAQ Last Sale Data Products via Television shall be based upon the number of Households receiving such data. The number of Households to which such data is available shall be validated by a vendor approved by NASDAQ in NASDAQ's sole discretion.

Households	Monthly fee
(i) NASDAQ Last Sale for NASDAQ	
1–1M	$0.00096/Household.
1M–5M	$0.00084/Household.
5M–10M	$0.00072/Household.
10M+	$0.0006/Household.
(ii) NASDAQ Last Sale for NYSE/Amex	
1–1M	$0.00048/Household.
1M–5M	$0.00042/Household.
5M–10M	$0.00036/Household.
10M+	$0.0003/Household.

(C) A Distributor that distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms shall pay all fees applicable to each distribution mechanism, provided that there shall be a discount from the applicable Television rate as follows:

(i) 10 percent reduction in applicable Television fees when a Distributor reaches the second tier of Users, Queries, or Unique Visitors for its non-Television users;

(ii) 15 percent reduction in applicable Television fees when a Distributor reaches the third tier of Users, Queries, or Unique Visitors for its non-Television users; and

(iii) 20 percent reduction in applicable Television fees when a Distributor reaches the fourth tier of Users, Queries, or Unique Visitors for its non-Television users.

(c) All Distributors of a NASDAQ Last Sale Data Feed shall also pay a monthly fee of $1,500.

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

In its filing with the Commission, NASDAQ 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 III below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data via the Internet and Television at no cost to millions of Internet users and Television viewers. NASDAQ now proposes a three-month extension of that pilot program on the same terms as applicable today.[4]

The NLS pilot created two separate ''Level 1'' products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the ''NASDAQ Last Sale for NASDAQ Data Product,'' a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the NASDAQ Last Sale for NYSE/Amex data product that provides real-time last sale information including execution price, volume, and time for NYSE- and Amex-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF.

NASDAQ established two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems and/or quote counting mechanisms will be eligible for a specified fee schedule for the NASDAQ Last Sale for NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/Amex Product: Firms that were unable to maintain username/password entitlement systems and/or quote counting mechanisms will also have multiple options for purchasing the NASDAQ Last Sale data. These firms chose between a ''Unique Visitor'' model for internet delivery or a ''Household'' model for television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third-party vendor or ratings agency approved by NASDAQ at NASDAQ's sole discretion. In addition, to reflect the growing confluence between these media outlets, NASDAQ offered a reduction in fees when a single distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms.

Second, NASDAQ established a cap on the monthly fee, currently set at $50,000 per month for all NASDAQ Last Sale products. The fee cap enables NASDAQ to compete effectively against other exchanges that also offer last sale data for purchase or at no charge.

As with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/Amex products would pay a single $1,500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The $1,500 monthly fee will apply to all distributors and will not vary based on whether the distributor distributes the data internally or externally or distributes the data via both the Internet and Television.

Finally, NASDAQ proposes to make a drafting error correction to the fee tables in NASDAQ Rule 7039 (NASDAQ Last Sale Data Feeds) concerning the distribution of NASDAQ Last Sale data products via television for both NASDAQ and NYSE/Amex. The correction results in the lower monthly fee as originally intended but for a drafting error. Since these particular market data products have yet to be procured the incorrect fees have never been assessed and the correction results in no practical effect.

[4] NASDAQ will file a proposed rule change within thirty days seeking permanent approval of the NLS pilot.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general and with Section 6(b)(4) of the Act,[6] as stated above, in that it provides an equitable allocation of reasonable fees among users and recipients of NASDAQ data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The NASDAQ Last Sale market data products proposed here appear to be precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[7]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether, proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

NASDAQ's ability to price its Last Sale Data Products is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and free delayed consolidated data, and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary last sale data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including eleven self-regulatory organization (''SRO'') markets, as well as broker-dealers (''BDs'') and aggregators such as the DirectEdge electronic communications network (''ECN''). Each SRO market competes to produce transaction reports via trade executions, and an ever-increasing number of FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, and ECNs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ECN and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, Amex, NYSEArca, and BATS.

Any ECN or BD can combine with any other ECN, broker-dealer, or multiple ECNs or BDs to produce jointly proprietary data products. Additionally, non-broker-dealers such as order routers like LAVA, as well as market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ECNs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace writ large.

Consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available at no cost with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only that data which will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to successfully market proprietary data products.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook,

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f–3(b)(4).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

Island, RediBook, Attain, TracECN, and BATS Trading. Today, BATS publishes its data at no charge on its Web site in order to attract order flow, and it uses market data revenue rebates from the resulting executions to maintain low execution charges for its users.

Several ECNs have existed profitably for many years with a minimal share of trading, including Bloomberg Tradebook and NexTrade.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, Reuters and Thomson. New entrants are already on the horizon, including ''Project BOAT,'' a consortium of financial institutions that is assembling a cooperative trade collection facility in Europe. These institutions are active in the United States and could rapidly and profitably export the Project Boat technology to exploit the opportunities offered by Regulation NMS.

In establishing the price for the NASDAQ Last Sale Products, NASDAQ considered the competitiveness of the market for last sale data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not unreasonably discriminatory fee and an equitable allocation of fees among all users.

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

NASDAQ 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. To the contrary, the NASDAQ Last Sale Products respond to and enhance competition that already exists in the market.

On May 28, 2008, the internet portal Yahoo! announced that it would offer its website viewers real-time last sale data provided by BATS Trading. NASDAQ's last sale data products would compete directly with the BATS product disseminated via Yahoo!. Since that time, BATS has attracted additional purchasers of its last sale product that is free or charge or, at least, has not been the subject of a proposed rule change..

In addition, as set forth above, the market for last sale data is already competitive, with both real-time and delayed consolidated data as well as the ability for innumerable entities begin rapidly and inexpensively to offer competitive last sale data products. Moreover, the New York Stock Exchange distributes competing last sale data products and has reduced the price of its product. Under the deregulatory regime of Regulation NMS, there is no limit to the number of competing products that can be developed quickly and at low cost. The Commission should not stand in the way of enhanced competition.

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

Three comment letters were filed regarding the proposed rule change as originally published for comment NASDAQ responded to these comments in a letter dated December 13, 2007. Both the comment letters and NASDAQ's response are available on the SEC Web site at: *http://www.sec.gov/comments/sr-nasdaq-2006-060/nasdaq2006060.shtml.*

III. 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.* Please include File Number SR–NASDAQ–2009–095 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–2009–095. 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 the 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–NASDAQ–2009–095 and should be submitted on or before December 10, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change, to extend the pilot program for three months, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, it is consistent with Section 6(b)(4) of the Act,[9] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[11] which requires that the rules of an exchange not impose any burden on competition not necessary or

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(8).

appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[12] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[13]

The Commission approved the fee for the NASDAQ Last Sale Data Feeds for a pilot period which ran until September 30, 2009.[14] The Commission notes that the Exchange proposes to extend the pilot program for three months, with such extension retroactive to October 1, 2009. The Commission did not receive any comments on the previous extensions of the pilot program.[15]

On December 2, 2008, the Commission issued an approval order (''Order'') that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for ''non-core'' market data products, such as the NASDAQ Last Sale Data Feeds.[16] The Commission believes that Nasdaq's proposal to temporarily extend the pilot program to December 31, 2009 is consistent with the Act for the reasons noted in the Order.[17] The Commission believes that approving NASDAQ's proposal to temporarily extend the pilot program that imposes a fee for the NASDAQ Last Sale Data Feeds for an additional three months will be beneficial to investors and in the public interest, in that it is intended to allow continued broad public dissemination of increased real-time pricing information.

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal is expected to benefit investors by continuing to facilitate their access to widespread, free, real-time pricing information contained in the NASDAQ Last Sale Data Feeds. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[18] to approve the proposed rule change as amended on an accelerated basis and retroactively to October 1, 2009.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–2009–095) as amended is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27746 Filed 11–18–09; 8:45 am]

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[12] 17 CFR 242.603(a).

[13] NASDAQ is an exclusive processor of its last sale data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes data on an exclusive basis on its own behalf.

[14] *See* Securities Exchange Act Release Nos. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060); 58894 (October 31, 2008), 73 FR 66953 (November 12, 2008) (SR–NASDAQ–2008–086); 59186 (December 30, 2008), 74 FR 743 (January 7, 2009) (SR–NASDAQ–2008–103); 59652 (March 31, 2009) 74 FR 15533 (April 6, 2009) (SR–NASDAQ–2009–027); 60201 (June 30, 2009), 74 FR 32670 (July 8, 2009) (SR–NASDAQ–2009–062).

[15] *Id.*

[16] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data).

[17] *See supra* note 14.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60991; File No. SR–NASDAQ–2009–092]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Eliminate Rules Related to Nasdaq's PORTAL Market

November 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2009, The NASDAQ Stock Market LLC (''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 Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] 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

Nasdaq proposes to eliminate rules related to Nasdaq's PORTAL Market. The text of the proposed rule change is below. The text of the proposed rule change is attached as Exhibit 5 and [sic] is available at *http://www.cchwallstreet.com/nasdaq.*[4]

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

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Nasdaq proposes to eliminate rules related to its PORTAL Market.

Background

The National Association of Securities Dealers, Inc. (''NASD'') created the PORTAL Market in 1990,[5] simultaneously with the SEC's adoption of Rule 144A,[6] to be a new trading system for the purpose of quoting, trading, and reporting trades in securities deemed eligible for resale by Qualified Institutional Buyers under Rule 144A. Rule 144A provides an exemption from registration under Section 5 of the Securities Act[7] for resales of privately placed securities to investors that meet the eligibility requirements of being a qualified institutional buyer (''QIB'') under Rule 144A(a)(1),[8] *i.e.,* institutional investors that in the aggregate own or invest on a discretionary basis at least $100 million in securities and broker/dealers that in the aggregate own or invest on a discretionary basis at least $10 million in securities. The PORTAL Market did

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rules of The NASDAQ Stock Market LLC found at *http://nasdaqomx.cchwallstreet.com.*

[5] Securities Exchange Act Release No. 27956 (Apr. 27, 1990); 55 FR 18781 (May 4, 1990) (the ''original PORTAL rule filing'').

[6] Securities Act Release No. 6862 (April 23, 1990); 55 FR 17933 (April 30, 1990).

[7] 17 U.S.C. 77e.

[8] 17 CFR 230.144A(a)(1).