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.

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BILLING CODE 8011–01–P

[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.

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

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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

[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).

not develop as anticipated.[9] For many years, the sole function of the NASD related to the PORTAL market was to review whether an issue of privately placed securities met the eligibility requirements of Rule 144A, thereby qualifying the securities for book-entry services offered by the Depository Trust Company (''DTC'').

The staff of Nasdaq has historically had responsibility for review of PORTAL applications to determine the eligibility of securities and, originally, PORTAL participants (including broker/dealers and investors). Upon the separation of Nasdaq from the NASD and the approval of Nasdaq as a registered national securities exchange under Section 6 of the Act, the review functions for PORTAL market eligibility were retained by Nasdaq and the PORTAL Market Rules in the NASD Rule 5300 Series became the Nasdaq Rule 6500 Series.[10] The NASD continued, however, to regulate trading [sic] reporting for PORTAL-designated securities. On July 31, 2007, the SEC approved amendments to the PORTAL rules that reestablished a trading system for the purpose of quoting and trading securities eligible for resale by qualified institutional buyers under SEC Rule 144A.[11] During the period following the reestablishment of the Nasdaq PORTAL Market, Nasdaq reexamined the operational and ownership structure of PORTAL with a view to adopting changes that reflected the preferences of market participants and enhanced the operation of the system. As a result of this review, Nasdaq filed with the Commission rules that terminated the operation of the Nasdaq PORTAL Market for trading PORTAL equity securities, while allowing Nasdaq to continue to review and designate both restricted debt and equity securities as PORTAL-eligible securities in its SRO capacity. Nasdaq also indicated its intention to enter into agreements with certain of its members or their affiliates (the ''Firms'') to create, and take a minority interest in, the PORTAL Alliance, a Delaware limited liability company principally formed to operate a private open-access over-the-counter platform to facilitate transactions in 144A restricted securities.[12] Nasdaq has entered into such agreements and will be providing technological and operational support, in a non-SRO capacity, to that over-the-counter platform. Recently, DTC eliminated its book-entry eligibility requirement that certain Rule 144A securities be included in an SRO Rule 144A System, like PORTAL. As such, market participants no longer need to seek PORTAL designation to obtain DTC book-entry.[13]

The Proposal

Based on the foregoing, Nasdaq has determined to terminate its PORTAL security designation processes, as well as remove rules related to the PORTAL Market from its rulebook.[14] Nasdaq notes in making this proposal that the vast majority of PORTAL Market rules describe a system for the trading of PORTAL debt securities, a system that is not in operation. Further, Nasdaq's PORTAL security designation rules are no longer necessary as a result of DTC's elimination of the SRO Rule 144A System requirement.[15] Finally, Nasdaq specifically notes that nothing in this proposal is intended to impact securities previously designated as PORTAL securities or alter any existing regulatory obligation applicable to such securities, including, but not limited to, any trade reporting obligation imposed by any self-regulatory organization.[16]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[17] in general, and with Sections 6(b)(5) of the Act,[18] 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. In particular, Nasdaq's current PORTAL operations are limited,[19] and its security designation processes are no longer need to [sic] for issuers to obtain DTC book-entry services. As such, elimination of the PORTAL rules will provide clarity regarding the status of the PORTAL Market.

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

Nasdaq does not believe that the proposed rule change will impose any burden on competition 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

No written comments were either solicited or 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)[20] of the Act and Rule 19b–4(f)(6) thereunder.[21]

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.

[9] 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).

[10] Securities Exchange Act Release No. 53128 (Jan. 13, 2006); 71 FR 3550 (Jan. 23, 2006).

[11] Securities Exchange Act Release No. 56172 (July 31, 2007); 72 FR 44196 (SR–NASDAQ–2006–065). At the time of approval, Nasdaq indicated that it would first operate a system for trading PORTAL equity, and thereafter would enable the system to trade PORTAL debt securities. While the PORTAL equity functionality was made available on August 15, 2007, Nasdaq did not, and has not, implemented any trading functionality for PORTAL debt securities.

[12] Securities Exchange Act Release No. 58638 (September 24, 2008); 73 FR 57188 (October 1, 2008).

[13] Securities Exchange Act Release No. 59384 (February 11, 2009); 74 FR 7941 (February 20, 2009).

[14] Nasdaq will continue to impose fees for The PORTAL Reference Database. See NASDAQ Rule 7050.

[15] Nasdaq is no longer accepting new applications for debt or equity securities seeking PORTAL designation.

[16] For example, FINRA Rule 6630.

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(5).

[19] The Commission understands that Nasdaq no longer performs any functions related to PORTAL.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 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.

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–2009–092 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–2009–092. 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 Nasdaq. 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–2009–092 and should be submitted on or before December 10, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

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[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60995; File No. SR–CBOE–2009–084]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposal To Codify Certain Provisions of the Options Listing Procedures Plan Into CBOE's Rules

November 13, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2009, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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 Substance of the Proposed Rule Change

For ease of reference, CBOE proposes to codify certain provisions of the Options Listing Procedures Plan (''OLPP'') into its rules. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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

1. Purpose

The Options Listing Procedures Plan (''OLPP'') was approved by the Securities and Exchange Commission (the ''Commission'') on July 6, 2001 and has been amended several times.[5] The OLPP provides procedures for: (i) Listing and trading new option classes; (ii) selecting new options series; (iii) petitioning The Options Clearing Corporation (''OCC'') to review the eligibility, pursuant to the exchanges' listing standards, of a selected option class without delaying the trading of that option class; (iv) determining operational details for option contracts adjusted pursuant to OCC By-Laws; (v) admitting new sponsors; and (vi) losing eligibility to participate in the OLPP.

This current filing is primarily concerned with codifying certain provisions of the OLPP pertaining to selecting new option series and certain strike setting parameters that have been adopted under the OLPP. The Exchange believes that it is helpful to codify select provisions into CBOE's rules so that all applicable rules governing series selection and applicable strike setting parameters are located in a single place. In addition, the Exchange understands that other Sponsor Exchanges to the OLPP will be submitting similar filings to codify portions of the OLPP in their respective rulebooks. Below the Exchange briefly describes the provisions of the OLPP that the Exchange is proposing to codify into CBOE's rules.

OLPP Amendments Pertaining to LEAPS

Amendments 1 and 2 to the OLPP adopted provisions governing the listing of Long-Term Equity Option Series (''LEAPS''). Amendment 1 provided for a uniform time frame for the introduction of new LEAPS on equity option classes, options on exchange traded funds (''ETFs''), or options on Trust Issued Receipts (''TIRs''). The Exchange is proposing to codify the changes made to the OLPP by Amendment 1 as new subparagraph (c) to Rule 5.8, *Long-Term Equity Option Series (LEAPS®).* Amendment 2

[5] *See e.g.,* Securities Exchange Act Release Nos. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001) (order approving OLPP); 58205 (July 22, 2008), 73 FR 43798 (July 28, 2008) (order granting permanent approval to amendment no. 1 to the OLPP); 58630 (September 24, 2008) 73 FR 57166 (October 1, 2008) (order granting permanent approval to amendment no. 2 to the OLPP); and 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009) (order approving amendment no. 3 to the OLPP).