

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. Persons making written submissions should file copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Chicago Stock Exchange, Incorporated. All submissions should refer to File No. SR-CHX-99-19 and should be submitted by February 3, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-781 Filed 1-12-00; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42310; File No. SR-NASD-99-6]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Implementation of Mandatory Trade Reporting for PORTAL Securities

January 3, 2000.

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 October 28, 1999,<sup>3</sup> the National Association of

Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the NASD. 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

The NASD is proposing to amend the rules of The PORTAL Market in the Rule 5300 Series to implement reporting of transactions in certain PORTAL securities. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in *brackets*.

\* \* \* \* \*

#### 5300. THE PORTAL MARKET

##### 5310. Definitions

For purposes of the PORTAL Market Rules, unless the context requires otherwise:

(a) "Association" means the National Association of Securities Dealers, Inc. (Association) or its wholly-owned subsidiary, The Nasdaq Stock Market, Inc., as determined by the Association.

(b) "Exchange Act" or "Act" means the Securities Exchange Act of 1934, as amended from time to time.

(c) "Execution" means entering into a purchase, sale or transfer of a PORTAL security.]

[(d)] (c) "PORTAL" or "PORTAL Market" means the Association's market for designated foreign and domestic securities [through an automated quotation and communications system that facilitates private offerings, resales, trading, clearance and settlement by PORTAL participants] *that are eligible for resale under SEC Rule 144A.*

(e) "PORTAL account instruction system" means one or more communications systems designated by the Association to transfer information concerning PORTAL account activities between a PORTAL qualified investor, its agent providing it access to the PORTAL depository system, PORTAL dealers and PORTAL brokers].

[(f)] "PORTAL broker" means any member of the Association that is currently registered as a PORTAL broker in the PORTAL Market pursuant to Rule 5339.]

things. See Letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated December 29, 1999. The substance of the amendment has been incorporated into this notice.

[(g)] "PORTAL clearing organization" means a clearing organization that is part of the PORTAL clearing system and is designated by the Association to perform clearance and settlement functions with respect to PORTAL securities.]

[(h)] "PORTAL clearing system" means the system consisting of one or more organizations designated by the Association to perform clearance and settlement functions with respect to PORTAL securities.]

[(i)] "PORTAL dealer" means any member of the Association that is currently registered as a PORTAL dealer in the PORTAL Market pursuant to Rule 5338 of the PORTAL Rules, and is thereby also registered as a PORTAL qualified investor.]

(j) "PORTAL depository organization" means a depository organization that is part of the PORTAL depository system and is designated by the Association to perform the functions of a securities depository with respect to PORTAL securities.]

[(k)] "PORTAL depository system" means the system consisting of one or more organizations designated by the Association to perform the functions of a securities depository with respect to PORTAL securities.]

[(l)] "PORTAL Market information" means quotation, transaction and other data and information displayed in the PORTAL Market that is accessed directly through the PORTAL Market system or indirectly through a third-party distributor of PORTAL Market information.]

(d) "PORTAL equity security" means a PORTAL security that represents 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).

(e) "PORTAL debt security" means a fixed income corporate bond issued by a U.S. company that is not rated or is rated BB+ or lower by a nationally recognized statistical rating organization, but shall not include convertible debt instruments, medium term notes, sovereign debt, Yankee bonds, municipal and municipal-derivative securities, or asset-backed instruments.

[(m)] (f) "PORTAL Market system" or "PORTAL system" means [the PORTAL Market] any computer system(s) [used]

<sup>18</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> On December 30, 1999, the NASD submitted Amendment No. 1 clarifying when transactions are exempt from reporting requirements under the proposed ACT and TRACE rules, among other

designated by the Association to accept trade reports on transactions in PORTAL equity and/or debt securities, or to display transaction, quotation, [and] or other [data and] information on [designated] PORTAL securities.

[(n)] "PORTAL non-participant report" means a report submitted by a member of the Association that is a PORTAL dealer or a PORTAL broker to the Market Regulation Department of the Association on a monthly basis that includes the information required Rule 5335.]

[(o)] "PORTAL participant" means a PORTAL dealer, a PORTAL broker and a PORTAL qualified investor.]

[(p)] "PORTAL qualified investor" means any investor that is currently registered as a PORTAL qualified investor in the PORTAL Market pursuant to the Rule 5350 Series.]

[(q)] (g) "PORTAL Rules" or "PORTAL Market Rules" means the PORTAL Market rules as included in the Rule [5000] 5300 Series.

[(r)] (h) "PORTAL security" means a security that is currently designated by the Association for inclusion in the PORTAL Market pursuant to the Rule 5320 Series.

[(s)] "PORTAL surveillance report" means a report submitted by a PORTAL dealer or PORTAL broker to the Market Regulation Department of the Association on a monthly basis that includes the information required by Rule 5336.]

[(t)] (i) "PORTAL transaction report" means a report of a transaction in a PORTAL security submitted by a [PORTAL dealer or PORTAL broker] member through [the] a designated PORTAL Market system [within 15 minutes after execution of the transaction that includes the information required by Rule 5334].

[(u)] (j) "Restricted security" means a security that meets the definition of that term contained in SEC Rule 144(a)(3) under the Securities Act. A PORTAL security continues to be a restricted security even though it is eligible to be resold pursuant to the provisions of SEC Rule 144, including SEC Rule 144(k), but has not been so resold.

[(v)] (k) "SEC" means the United States Securities and Exchange Commission.

[(w)] (l) "SEC Rule 144A" means SEC Rule 144A adopted under the Securities Act, as amended from time to time.

[(x)] (m) "Securities Act" means the Securities Act of 1933, as amended from time to time.

[(y)] "Short Sale" means any sale of a security that meets the definition of that term contained in SEC Rule 3b-3 adopted under the Exchange Act.]

[(n)] "Time of execution" means the time when all of the terms of a transaction in a PORTAL security have been agreed to that are sufficient to calculate the dollar price of the transaction and a determination has been made that the transaction is in compliance with Rule 144A or any other applicable exemption from registration under Section 5 of the Securities Act.

[(z)] (o) "Transaction" or "trade" means the purchase or sale of a PORTAL security.

[(aa)] (p) "United States" or "U.S." means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

#### 5320. Requirements Applicable to PORTAL Securities

#### 5321. Application for Designation

(a) Application for designation as a PORTAL security shall be in the form required by the Association and shall be filed by [a PORTAL participant] the issuer or any member of the Association. Applications may be made with or without the concurrence of the issuer. The application shall demonstrate to the satisfaction of the Association that the security meets or exceeds the qualification requirements set forth in Rule 5322 and provides the undertakings required by subparagraph (c) hereof.

(b) Designation of a security as a PORTAL security shall be declared effective within a reasonable time after determination of qualification. The effective date of designation as a PORTAL security shall be determined by the Association giving due regard to the requirements of the PORTAL Market.

(c) An applicant that submits an application for designation of a security as a PORTAL security (or the issuer of the security, if the applicant is a member) under subparagraph (a) above shall undertake to promptly advise the Association:

(1) That the issuer has submitted to the SEC a registration statement to register the resale of the PORTAL security, securities to be exchanged for the PORTAL security, or securities into which the PORTAL security is exchangeable or convertible;

(2) of the effective date of a registration statement submitted to the SEC with respect to a PORTAL security, as described in subparagraph (1) hereof; and

(3) of the assignment of any CUSIP or CINS security identification to the PORTAL security or any tranche of a PORTAL security issue.

#### 5322. Qualification Requirements for PORTAL Securities

(a) To qualify for initial designation and continued designation in the PORTAL Market, a security shall:

(1) be:

(A) a restricted security, as defined in SEC Rule 144(a)(3) under the Securities Act; or

(B) a security that 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; provided, however, that if the security is a depository receipt, the underlying security shall also be a security that meets the criteria set forth in subparagraphs (A) or (B) hereof;

(2) be eligible to be sold pursuant to SEC Rule 144A under the Securities Act;

(3) be in negotiable form, be a depository eligible security as defined in paragraph (d) of Rule 11310, and not subject to any restriction, condition or requirement that would impose an unreasonable burden on any [PORTAL participant] member;

(4) be assigned a CUSIP or CINS security identification number that is different from any identification number assigned to any unrestricted securities of the same class which do not satisfy paragraph (a)(1)(B) [; or, if issued in physical certificate form to investors, have a legend placed on each certificate stating that the securities have not been registered under the Securities Act and cannot be resold without registration under the Securities Act or an exemption therefrom]; and

(5) satisfy such additional criteria or requirements as the Association may prescribe.

(b) Notwithstanding the provisions of paragraph (a)(1)(B) of this Rule, if a PORTAL security is sold pursuant to the provisions of Rule 144, including Rule 144(k), it will thereby cease being a PORTAL security and it must be assigned a CUSIP or CINS security identification number that is different from the identification number assigned to a PORTAL security of the same class.

#### 5323. Suspension or Termination of a PORTAL Security Designation

(a) The Association may, in its discretion, suspend or terminate designation as a PORTAL security if it determines that:

(1) the security is not in compliance with the requirements of the PORTAL Rules;

(2) a holder or prospective purchaser that requested issuer information pursuant to SEC Rule 144A(d)(4) did not receive the information;

(3) any application or other document relative to such securities submitted to the Association contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein not misleading; or

(4) failure to withdraw designation of such securities would for any reason be detrimental to the interests and welfare of [PORTAL participants] *members* or the Association.

(b) The Association will promptly notify [PORTAL participants] *members* of the suspension or termination of a security's designation as a PORTAL security *through the designated PORTAL Market system through which the security is reported*. [Such notification may be made through the facilities of the PORTAL Market.] Suspension or termination shall become effective in accordance with the terms of notice by the Association. The Association also will promptly notify The Depository Trust Company of the suspension or termination.

(c) Notwithstanding the suspension or termination of designation of a security as a PORTAL security, such security shall remain subject to all rules of the Association applicable to the PORTAL Market until the security is sold in accordance with the terms of notice by the Association of the suspension or termination.

#### 5324. Review of Denial, Suspension or Termination of a PORTAL Security

*A determination by the Association to deny, suspend or terminate the designation of a PORTAL security may be reviewed upon application by the aggrieved person pursuant to the provisions of the Rule 4800 Series.*

#### [5324.] 5325. PORTAL Entry Fees

When [a PORTAL participant] *an issuer or member* submits an application for designation of any class of securities as a PORTAL security, it shall pay to the Association a filing fee of \$2,000.00 for an application covering a security or group of identifiable securities issuable as part of a single private placement covered by the same offering documents, plus \$200.00 per assigned security symbol that is in addition to the first symbol assigned.

#### 5330. Requirements Applicable to Members of the Association

##### 5331. Limitations of Transactions in PORTAL Securities

(a) No member shall sell a PORTAL security unless:

(1) the sale is to:

(A) an investor or member that the member reasonably believes is a "qualified institutional buyer" in a transaction exempt from registration under the Securities Act by reason of compliance with Rule 144A;

(B) an investor or member in a transaction that is exempt from registration under the Securities Act by reason of compliance with an applicable exemption under the Securities Act other than 144A; or

(C) a member acting as an agent in a transaction that the member acting as an agent determines is in compliance with subparagraphs (A) or (B) hereof, and the selling member determines is exempt from registration under the Securities Act by reason of compliance with SEC Rule 144A or an applicable exemption under the Securities Act other than SEC Rule 144A; and (2) the member maintains in its files information demonstrating that the transaction is in compliance with Rule 144A or with any other applicable exemption from registration under the Securities Act.

##### 5332. Reporting Debt and Equity Transactions in PORTAL Securities

[(a) A transaction in a PORTAL security in which a PORTAL dealer or PORTAL broker participates shall be reported to the PORTAL Market system in a PORTAL transaction report complying with Rule 5534 by:]

[(1) the seller, if each party in the transaction is either a PORTAL dealer or PORTAL broker;]

[(2) the PORTAL dealer or PORTAL broker participating in the transaction, if only one party in the transaction is a PORTAL dealer or PORTAL broker provided, however, that with respect to transactions that are part of the initial offering by or on behalf of the issuer or an affiliate thereof, a PORTAL dealer or PORTAL broker may comply with its obligation to submit a PORTAL transaction report by submitting, instead, a PORTAL surveillance report which reports such transaction to the Market Regulation Department of the Association as set forth in Rule 5336.]

[(b) A transaction in a PORTAL security in which a member participates, but in which no PORTAL dealer or PORTAL broker participates, shall be reported to the Market Regulation Department of the Association in a PORTAL non-

participate report complying with Rule 5335 by:]

[(1) the seller, if each party in the transaction is a member; or]

[(2) the member, if only one party in the transaction is a member.]

[(c) The member responsible for submitting a PORTAL transaction report shall also submit to the Market Regulation Department of the Association a PORTAL surveillance report as set forth in Rule 5336.]

*(a) Transactions in a PORTAL equity security shall be reported to the Automated Confirmation Transaction System ("ACT") in accordance with this Rule, except for transactions meeting the requirements of subparagraphs (e)(1)-(4) of Rule 6230.\* Each PORTAL transaction report on a PORTAL equity security shall:*

*(1) include the information required by paragraph (d) of Rule 6130, including the time of execution;*

*(2) be submitted to ACT no later than 6:30 p.m. Eastern Time (or the end of the ACT reporting session that is in effect at that time); and*

*(3) be submitted by the party as required by paragraph (c) of Rule 6130.*

*(b) Transactions in PORTAL debt securities shall be reported to the Trade Reporting And Comparison Entry Service ("TRACE") in accordance with the Rule 6200 Series.*

[(d)c] The reporting requirements of this Rule shall apply to [any transaction in a PORTAL security, including] transactions in reliance of SEC Rule 144 and sales to or purchases from a non-U.S. securities market.

*(d) Members that submit PORTAL transaction reports shall be subject to any fees imposed by the particular PORTAL Market system through which the PORTAL transaction report is submitted, as set forth in the Rule 7000 Series.*

##### 5333. Quotations in PORTAL Securities

*Members shall not enter a quotation with respect to any PORTAL security in a PORTAL Market system, electronic communication network (as defined in SEC Rule 11Ac-1-(a)(8)), or other interdealer quotation system.*

[PORTAL Settlement]

[(a) Transactions in the PORTAL Market where the PORTAL dealer or PORTAL broker that enters the PORTAL transaction report in the PORTAL

\* Until the Trade Reporting And Comparison Entry Service Rules are approved by the SEC and made effective, members that are obligated to report secondary market transactions in PORTAL equity securities through ACT can rely on the exceptions from reporting in Rule 6240(c) of the Fixed Income Pricing Service Rules.

Market system designates settlement in the PORTAL clearance and depository systems will settle five (5) business days after the date of the execution of the transaction, except as otherwise agreed between the PORTAL participants, in any currency accepted by the PORTAL depository organization.]

[(b) PORTAL securities and funds will be transferred on the books of the PORTAL depository system upon receipt from the PORTAL clearing system of the necessary settlement instructions designating settlement in the PORTAL clearance and depository systems from the PORTAL transaction report entered in the PORTAL Market system by the appropriate PORTAL dealer or PORTAL broker and subject to the purchaser meeting the requirements of the relevant PORTAL depository organization concerning deposit and availability of funds in accordance with the depository organization's procedures.]

[(c) PORTAL dealers and PORTAL brokers that settle a PORTAL transaction outside the PORTAL clearance and depository systems responsibility for the prompt settlement of the transaction in accordance with the protocols of the settlement methods used and the transaction will not be compared in the PORTAL Market.]

5334. PORTAL Transaction Reports-to-5390. Miscellaneous—Deleted

[5391.] 5340. Arbitration

The facilities of the Association's Arbitration Department, and the procedures of the Code of Arbitration Procedure shall be available to [PORTAL participants] *members* to resolve disputes arising from PORTAL transactions and transfers or activities related thereto.

5392. Rules of the Association—Deleted

\* \* \* \* \*

## 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 NASD 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 NASD had prepared summaries, set forth in Sections A, B, and below, of the most significant aspects of such statements.<sup>4</sup>

<sup>4</sup> The Commission has modified the text of the summaries prepared by the NASD.

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

#### Purpose

##### 1. Introduction

The Nasdaq Stock Market, Inc. ("Nasdaq") operates The PORTAL Market for securities that were sold in private placements and are eligible for resale under SEC Rule 144A adopted under the Securities Act of 1933<sup>5</sup> ("Securities Act"). The NASD created The PORTAL Market in 1990,<sup>6</sup> simultaneously with the SEC's adoption of rule 144A,<sup>7</sup> for the purposes of quotation, trading, and trade reporting in securities deemed eligible by the NASD for resale under Rule 144A. SEC Rule 144A provides an exemption from SEC registration for resales by investors of privately placed securities to qualified institutional buyers ("QIBs"), *i.e.*, institutional investors with at least \$100 million invested in securities.

PORTAL designation is required for all Rule 144A security issues, except investment grade rated debt,<sup>8</sup> for the security to receive a CUSIP number and the book-entry services of The Depository Trust Company ("DTC"). An issuer of an investment grade rated debt issue can apply directly to DTC for book-entry services under DTC rules ("Rule 144A investment grade rated debt issues").

The market-related activities of The PORTAL (market (*i.e.*, quotations, trade reporting, and trade dissemination) have not developed, even though the PORTAL Rules include requirements that would regulate all of these activities. In particular, the PORTAL Rules require trade reporting for all transactions in PORTAL securities within 15 minutes of execution. However, these reporting requirements have never been implemented because of technological problems and costs associated with submitting trade reports through the PORTAL Market computer system, which was a stand-alone computer system. Currently, the NASD's only function with regard to The PORTAL Market is reviewing whether

<sup>5</sup> 15 U.S.C. 77(a).

<sup>6</sup> Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781 (May 4, 1990). The PORTAL Rules were subsequently amended by Securities Exchange Act Release No. 33326 (December 13, 1993), 58 FR 66388 (December 20, 1993) and Securities Exchange Act Release No. 37317 (June 17, 1996), 61 FR 33156 (June 26, 1996).

<sup>7</sup> Securities Act Release No. 6862 (April 23, 1990), 55 FR 17933 (April 30, 1990).

<sup>8</sup> Investment grade rated debt is a debt security rated by a nationally recognized statistical rating organization in one of its four highest rating categories.

an issue of privately placed securities meets the eligibility requirements of SEC Rule 144A.

In 1998, the NASD modified its definition of the term "ACT Eligible Security" in Rule 6110(a) of the NASD Rules for ACT to include an interpretation.<sup>9</sup> Under the new interpretation and pursuant to the Rule 5320 Series of the PORTAL rules, any PORTAL security voluntarily submitted to ACT for reconciliation, comparison, and/or clearance and settlement would be considered an "ACT Eligible Security." In addition, the Association submitted a letter to the Commission advising it that Nasdaq proposed to eliminate the Stratus computer system that supports The PORTAL Market.<sup>10</sup>

##### 2. Summary of Proposed Amendments

The NASD proposes to amend the rules governing The PORTAL Market ("PORTAL Rules") in the Rule 5300 Series to require that NASD members submit trade reports of secondary market transactions<sup>11</sup> in PORTAL-designated U.S. high-yield debt securities through the Trade Reporting And Comparison Entry Service ("TRACE") and in PORTAL equity securities through the Automated Confirmation Transaction Service ("ACT").<sup>12</sup> ACT is a system, operated by Nasdaq, that accommodates the reporting and dissemination of last sale reports for secondary market transactions in equity securities (including preferred stock issues), and provides automated comparison and

<sup>9</sup> See Securities Exchange Act Release No. 40424 (Sept. 10, 1998), 63 FR 49623 (Sept. 16, 1998).

<sup>10</sup> See letter from Robert E. Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market to Belinda Blaine and David A. Sirignano Divisions of Market Regulation and Corporate Finance, SEC, dated November 16, 1998.

<sup>11</sup> See discussion *infra*. The exception from reporting for a "primary distribution by an issuer" in proposed Rule 6230(e)(1) and (2) is proposed to include the resale under Rule 144A to the first QIB by a broker/dealer that has purchased the security from the issuer under Section 4(2) of the Securities Act if the broker/dealer is acting only as an intermediary. Thus, the first secondary market transaction in a PORTAL security that would be reportable would be a resale by an investor that has purchased directly from the issuer (where a broker/dealer has only acted as an agent) or a resale by a QIB that has purchased from a broker/dealer that has purchased the securities from the issuer under Section 4(2) of the Securities Act.

<sup>12</sup> It is anticipated that, at any one time, there will be approximately 900 PORTAL equity securities and approximately 2,000 PORTAL U.S. high-yield debt securities subject to trade reporting as a result of this proposal. As restricted PORTAL securities are eligible for resale into the public markets, either through Rule 144 or through registration, they will cease to be treated as PORTAL securities but will become subject to any applicable reporting obligations for publicly-traded securities.

confirmation services and forwards confirmed trades to DTC for settlement.

TRACE is a proposed new service to be operated by Nasdaq to provide services similar to those of ACT for secondary market transactions in certain SEC registered debt and Rule 144A investment grade rated debt issues that are eligible for book-entry services at DTC. The NASD's proposal to establish TRACE to implement trade reporting and transparency for secondary market transactions in such debt issues has been submitted to the SEC simultaneously with this proposed rule change to File No. SR-NASD-99-65.<sup>13</sup>

Only reporting obligations will be imposed with respect to secondary market transactions in PORTAL equity securities reported through ACT. However, members may also use the system's automated services for comparison, confirmation, and the forwarding of confirmed trades to DTC for settlement if they choose. Secondary market transactions in PORTAL U.S. high yield debt securities that are reported to TRACE will be subject to the mandatory confirmation of transactions as proposed in File No. SR-NASD-99-65. There will be no public dissemination of information in trade reports submitted to the Association with respect to PORTAL securities and depository-eligible Rule 144A investment grade rated debt issues.

The use of TRACE and ACT for the trade reporting of secondary market transactions in PORTAL securities will address the technological and cost problems that were associated with the reporting of such trades through the stand-alone PORTAL computer system, which is no longer operational.

The NASD proposes to amend the Definitions section contained in Rule 5310 of the PORTAL Rules and the Reporting Requirements contained in Rule 5332 of the PORTAL Rules to mandate reporting of secondary market transactions in PORTAL U.S. high-yield debt and equity transactions. Except for the security designation requirements, a majority of the remaining provisions are proposed to be deleted as obsolete. Other amendments to the Rules are proposed to revise the security application process and to eliminate other unnecessary provisions in the PORTAL Rules.

<sup>13</sup> The TRACE Rules will replace the Fixed Income Pricing System ("FIPS") Rules in the Rule 6200 Series. See Securities Exchange Act Release No. 42201 (Dec. 3, 1999), 64 FR 69305 (Dec. 10, 1999) (SR-NASD-99-65).

### 3. Description of the Proposed Amendments

#### a. Definitions—Rule 5310

i. *PORTAL Equity/Debt Security* Two new definitions are proposed for the terms "PORTAL equity security" and "PORTAL debt security." The definition of a PORTAL equity security will include any:

security that represents 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).

The definition of a PORTAL debt security is proposed to include any: fixed income U.S. corporate bond that is not rated or is rated BB+ or lower by a nationally recognized statistical rating organization, but shall not include convertible debt instruments, medium term notes, sovereign debt, Yankee bonds, municipal and municipal-derivative securities, or asset-backed instruments.<sup>14</sup>

Because of concerns about the technological difficulties and excessive costs associated with implementing trade reporting for the other types of debt securities, the mandatory reporting requirement will only apply to traditional U.S. high-yield debt securities and not to other types of securities.<sup>15</sup>

In addition, The PORTAL Market includes a few issues of Rule 144A investment grade rated debt, although such debt issues do not require PORTAL designation to obtain a CUSIP number and book-entry services at DTC. Any investment grade debt securities that are PORTAL designated will nonetheless be subject to reporting under the proposed TRACE reporting requirements.<sup>16</sup>

ii. *Time of Execution* The proposed definition of "time of execution" is "the time when all of the terms of a transaction in a PORTAL security have been agreed to that are sufficient to calculate the dollar price of the

<sup>14</sup> Hereinafter, the term "PORTAL debt security" will be used to reference only a reportable PORTAL-designated "fixed income U.S. corporate bond that is not rated or is rated BB+ or lower by a nationally recognized statistical rating organization. \* \* \*" The definition of a "TRACE security" includes PORTAL debt securities.

<sup>15</sup> The staff will consider whether the scope of the definition of PORTAL debt security should be revised to include additional types of debt issues after reporting for debt securities is implemented with respect to registered debt issues pursuant to File No. SR-NASD-99-65, in order to be consistent with the types of issues that will be reportable if registered.

<sup>16</sup> See Securities Exchange Act Release No. 42201 (Dec. 3, 1999), 64 FR 69305 (Dec. 10, 1999) (SR-NASD-99-65).

transaction and a determination has been made that the transaction is in compliance with Rule 144A or any other applicable exemption from registration under Section 5 of the Securities Act." Therefore, the time for reporting a transaction in a PORTAL equity security and a PORTAL debt security will commence at the time of execution as defined in the PORTAL Rules.<sup>17</sup> The time of execution, as determined by this definition, will be the time included in a trade report.

iii. *PORTAL Market System* The definition of "PORTAL Market system" is proposed to be revised to identify one or more computer systems that may be designated by the NASD to accept trade reports or to display transaction, quotation or other information on PORTAL securities.<sup>18</sup>

iv. *PORTAL Transaction Report* The definition of "PORTAL transaction report" is also proposed to be revised to mean a report of a transaction in a PORTAL security submitted by a member through a designated PORTAL Market system. Previously, PORTAL transaction reports were only to be submitted by a broker/dealer qualified as a PORTAL broker or PORTAL dealer and such reports were required to be submitted within 15 minutes of the execution of the transaction.

v. *Definitions Proposed to be Deleted* A number of the current definitions that relate to the initial concept for the reporting, comparison, and settlement of PORTAL trades directly through a PORTAL Market computer system are proposed to be deleted in their entirety as no longer necessary. These include the definitions for: "PORTAL account instruction system," "PORTAL clearing organization," "PORTAL clearing system," "PORTAL depository organization," "PORTAL depository system," "PORTAL Market information," "PORTAL non-participant report," "PORTAL surveillance report," and "Short Sale."

In addition, it is no longer necessary for the NASD to qualify members as PORTAL dealers or PORTAL brokers or to qualify investors as PORTAL qualified investors for the purpose of entering quotations and viewing quotations in The PORTAL Market. Therefore, the following definitions are proposed to be deleted: "PORTAL broker," "PORTAL dealer," "PORTAL

<sup>17</sup> Under the proposed TRACE rules, a member's obligation to determine whether a transaction is exempted from registration will not be applicable for transactions in SEC registered debt securities.

<sup>18</sup> Through this filing and File NO. SR-NASD-99-65, the NASD is designating ACT and TRACE as "PORTAL Market systems."

participant,” and “PORTAL qualified investor.”

Moreover, the term “execution” is proposed to be deleted as it is largely redundant of the term “transaction” and would be inconsistent with the proposed definition of the term “time of execution.”

#### b. Reporting Requirements

i. *Deleted Provisions* The current provisions of Rule 5332, which require that PORTAL dealers and brokers report transactions in PORTAL securities, are mostly proposed to be deleted. Other provisions that relate to the initial concept for the reporting, comparison, and settlement of PORTAL trades directly through a PORTAL Market computer system are proposed to be deleted in their entirety as no longer necessary. These include Rules 5333 and 5337, which set out the requirements for PORTAL trade comparison and settlement, and Rule 5334 which sets out the contents of a required trade report and the manner of reporting and requires that PORTAL trade reports be disseminated. Also proposed to be deleted are Rules 5335 and 5336, which required broker/dealers that were not approved as PORTAL dealers or brokers to submit a separate trade report and required another trade report (called the “Surveillance Report”) for reporting the initial sale to a QIB by the broker/dealer under SEC Rule 144A.

ii. *General Reporting Obligation* In place of the current reporting requirements, it is proposed that two new provisions be adopted in Rule 5332 which would obligate members to report secondary market transactions in PORTAL equity and PORTAL debt securities through ACT and TRACE, respectively. Proposed Rule 5332(a) would require that all secondary market “transactions”<sup>19</sup> in PORTAL equity securities be reported through ACT, subject to certain exceptions discussed below. The proposed rule incorporates only those provisions currently contained in Rule 6130 of the ACT Rules that apply to trade reporting. Members may, at their option, use the confirmation, comparison, and settlement features of ACT with respect to secondary market transactions in PORTAL equity securities.<sup>20</sup>

<sup>19</sup> The definition of the term “transaction” includes any purchase or sale of a PORTAL security and is only intended to refer to secondary market transactions. See discussion *infra*.

<sup>20</sup> Thus, the definition of an “ACT eligible security” is not proposed to be amended to include PORTAL equity securities. Instead, as set forth in Securities Exchange Act Release No. 40424 (Sept. 10, 1998), 63 FR 49623 (Sept. 16, 1998), the

Proposed Rule 5332(b) would require that all secondary market transactions in PORTAL debt securities be reported to the TRACE in accordance with the proposed Rule 6200 Series, which include exceptions from reporting as discussed below.<sup>21</sup> Under the proposed TRACE Rules, a PORTAL debt security is included in the definition of a TRACE security. Thus, all secondary market transactions in PORTAL debt securities will be required to comply with all TRACE Rules, including rules mandating reporting and comparison.<sup>22</sup>

iii. *Exceptions From Reporting Obligation* The exceptions to the transaction reporting obligations in Rule 5332 for PORTAL equity and debt securities are the same. These exceptions are contained in proposed Rule 6230(e)(1) through (4) of the TRACE Rules.<sup>23</sup> Their application to PORTAL equity securities is found in proposed rule 5332(a) and to PORTAL debt securities is found in proposed Rule 5332(b).

Proposed Rules 6230(e)(1) and (2) would exempt from reporting those PORTAL debt transactions “which are part of a primary distribution by an issuer” or are “made in reliance on section 4(2) of the Securities Act of 1933. \* \* \* ” A private placement that is considered a “Rule 144A placement” is usually conducted in the following manner: the issuer sells its securities to a single broker/dealer in reliance on the private placement exemption from registration in section 4(2) of the Securities Act. The broker/dealer-purchaser then resells such securities to the initial QIB in reliance on Rule 144A. In contrast, in a traditional private placement, the issuer sells its securities to investors under section 4(2) of the Securities Act, with any participating broker/dealer acting solely as agent.

Rule 6230(e)(2) would exempt from reporting the sale by the issuer under section 4(2) of the Securities Act to a broker/dealer acting as purchaser in a

definition of an “ACT eligible security” will continue to be interpreted to include all securities designated as PORTAL securities to the extent transactions in such securities are voluntarily submitted to ACT solely for comparison, confirmation, and/or clearance and settlement. See note 3, *supra*.

<sup>21</sup> See Securities Exchange Act Release No. 42201 (Dec. 3, 1999), 64 FR 69305 (Dec. 10, 1999) (SR–NASD–99–65).

<sup>22</sup> *Id.* In addition, the definition of a TRACE security will include all Rule 144A investment grade rated debt issues that are depository-eligible for book entry services at DTC.

<sup>23</sup> Until TRACE Rules are approved by the Commission and made effective, members obligated to report secondary market transactions in PORTAL equity securities through ACT can rely on the exceptions from reporting in Rule 6240(c) of the Fixed Income Pricing Service Rules.

“Rule 144A placement” and to the investor that purchases through a broker/dealer acting solely as placement agent in a traditional private placement. In addition, however, we propose that the proposed exemption from reporting for a “primary distribution by an issuer” in Rule 6230(e)(1) include the “resale” by the broker/dealer-purchaser in a “Rule 144A placement” to the first QIB purchaser, so long as the broker/dealer-purchaser is acting as an intermediary. Thus, the first secondary market transaction in a PORTAL security (and a TRACE security that is a Rule 144A investment grade rated debt security) that would be subject to trade reporting would be a resale by an investor that has purchased directly from the issuer in a traditional private placement (where a broker/dealer has only acted as an agent) or a resale by a QIB that has purchased directly from the broker/dealer-purchaser in a “Rule 144A placement.”

Where, however, a broker/dealer purchases PORTAL securities from the issuer in a private placement as an investment or is unable to immediately sell all of the securities it purchased intending to act as an intermediary, the broker/dealer were to hold the PORTAL securities, it would not be obligated to report its purchase of the securities because two reporting exemptions would apply. However, if the broker/dealer were to resell these PORTAL securities it would be obligated to report the resales because no reporting exemption would be available for the resale transaction.

iv. *Information In Trade Reports/Time of Submission* Proposed subparagraphs (a) and (b) of Rule 5332 require that a PORTAL transaction report include the information required by Rule 6130(d) of the ACT Rules in the case of a PORTAL equity security, and the information required by proposed Rule 6230(c) of the TRACE Rules in the case of a PORTAL debt security.

PORTAL transaction reports for equity securities will be required to be submitted no later than 6:30 p.m. Eastern Time to ACT or the currently effective close of the ACT reporting session. As PORTAL equity transactions are unlikely to be reported within 90 seconds of execution, the trade report submitted to ACT will normally include the execution time.

Trade reports for PORTAL debt securities will be required to be submitted within the time frame proposed for debt securities subject to mandatory reporting through TRACE, which is initially proposed to be one hour from the time of execution. However, for purposes of PORTAL debt



securities and Rules 144A investment grade rated debt issues that are eligible for DTC book entry services, the definition of the time of execution is different from the applicable to SEC registered debt in that the definition takes into account the member's obligation to make a determination that an exemption from registration is available for the transaction.

v. *Party Obligated to Submit Trade Report* Proposed subparagraphs (a) and (b) of Rule 5332 would incorporate provisions from the ACT and TRACE Rules, respectively, that specify which party to a secondary market transaction in a PORTAL equity or debt security is obligated to report the transaction. Thus, paragraph (c) of Rule 6130 of the ACT Rules would apply to PORTAL equity securities in proposed Rule 5332(a)(3) and paragraph (b) of proposed Rule 6230 of the TRACE Rules would apply to PORTAL debt securities.

vi. *Rule 144/Offshore Transactions Provision* Subparagraph (d) of Rule 5332 is proposed to be renumbered as subparagraph (c) and revised to delete language that applied the reporting requirements to "any transaction in a PORTAL security." This language restates the introductory language in paragraphs (a) and (b), and is unnecessary. The provision, as amended, will clarify that members are obligated under PORTAL Rules to report the resale of PORTAL securities:

- into the U.S. public market under the exemption provided by SEC Rule 144; and
- from the U.S. private market to an offshore market or from an offshore market to the U.S. private market.

However, transactions in PORTAL securities that have been sold offshore under the exemption from registration provided by Regulation S, where the resale transaction is entirely offshore, are not reportable.

vii. *Imposition of Fees for Trade Reporting.* Members submitting trade reports to ACT with respect to secondary market transactions for PORTAL equity securities will be subject to the same fees currently imposed on other members reporting through ACT under the Rule 7000 Series pursuant to proposed Rule 5332(d).

With respect to fees for the submission of trade reports to TRACE, such fees will be proposed in a separate rule filing to be submitted to the Commission and will be located in the NASD Rule 7000 Series.

A general provision in Rule 5374 of the PORTAL Rules setting out the Association's authority to impose fees for PORTAL transactions is proposed to be deleted as unnecessary.

#### c. Prohibition on Quotations in PORTAL Securities

The NASD is proposing to adopt Rule 5333 to prohibit members from publishing quotations in PORTAL securities in any PORTAL Market system, any electronic communication network ("ECN"), or any other interdealer quotation system. This provision should emphasize the obligation of members not to quote PORTAL securities, which is consistent with the restricted nature of these securities.

#### d. Designation of PORTAL Securities

i. *Modification of PORTAL Security Application Process.* Rule 5321 currently requires that an application for designation of a security as a PORTAL security shall be submitted by a PORTAL dealer or broker. As it is no longer necessary to qualify broker/dealers as PORTAL dealers and brokers, subparagraph (a) of Rule 5321 is proposed to be amended to permit any member of the NASD or the issuer of the securities to submit an application for designation of a security as a PORTAL security. Conforming changes are proposed to Rule 5323(b) with respect to the procedures for notification to members if the designation of a PORTAL security is suspended or terminated and to Rule 5324 (to be redesignated Rule 5325) to require that the application fee be paid by the issuer or member submitting the application.

In addition, Rule 5321(a) is proposed to be revised to require that an application for designation of a PORTAL security include the undertakings proposed in new subparagraph (c) of Rule 5321. New subparagraph (c) would require that any applicant promptly advise the NASD when the issuer has submitted a registration statement to the SEC to register: (1) The resale of a PORTAL security; (2) securities to be exchanged for a PORTAL security; or (3) securities into which The PORTAL security is exchangeable or convertible. In addition, the applicant would be required to advise the NASD of the effectiveness of such a registration statement. These provisions are intended to provide information to the NASD that will allow it to delete a PORTAL security from its list of current PORTAL securities when the registration statement is declared effective. At that point, any resale of a former-PORTAL designated security will be accomplished through the registered securities.

In addition, Rule 5321(c) would require an applicant to advise the NASD

when a CUSIP or CINS security identification is assigned to the PORTAL security or any tranche of a PORTAL security issue. This provision is intended to ensure that the NASD is timely advised of additional CUSIP numbers as they are assigned to a new tranche of an issue designated as a PORTAL security.<sup>24</sup> This information will facilitate the ability of the NASD to accept trade reports of secondary market transactions in PORTAL securities.

In order to provide flexibility in the operation of this provision, the issuer may provide these undertakings in lieu of a member-applicant.

ii. *Modification of PORTAL Security Designation Requirements.* The NASD is proposing that the qualification requirements for PORTAL securities in Rule 5322(a)(3) be amended to require that a PORTAL security must be a "depository eligible security." The definition of this term in Rule 11310 would operate to only include securities with book-entry services at DTC. Consistent with this change, NASD Rule 5322(a)(4) also is proposed to be amended to no longer permit a PORTAL security to be in physical certificate form. This amendment is consistent with the limitation of the proposed mandatory reporting of secondary market transactions U.S. debt securities to those securities that are depository eligible.<sup>25</sup>

iii. *Review of Association Decision.* That part of Rule 5360 which set forth the right of an aggrieved person to seek review by the NASD of a denial, suspension or termination of PORTAL-designation status, is proposed to be relocated to Rule 5324.

#### e. Deletion of Obsolete Provisions

The NASD is proposing to delete a large number of provisions of the PORTAL Rules. In addition to the deletions discussed above, other provisions are also proposed to be deleted in their entirety as obsolete.

i. *Registration of PORTAL Dealers, Brokers, and Qualified Investors.* The original concept of The PORTAL Market was that approved broker/dealers and investors would trade in a closed system. The remnants of this concept that remain in the PORTAL Rules are proposed to be deleted. Thus, it is proposed that the following rules be deleted that would register PORTAL

<sup>24</sup> Similar to SEC registered offerings, in some cases a private placement will describe a debt issuance that will be done in tranches over a period of time. Each tranche is assigned a different CUSIP number as it is issued.

<sup>25</sup> See Securities Exchange Act Release No. 42201 (Dec. 3, 1999), 64 FR 69305 (Dec. 10, 1999) (SR-NASD-99-65).

dealers, brokers, and qualified investors (together, PORTAL participants): Rules 5338, 5339, 5340, 5350, 5351, 5352, and 5353. Rule 5360, which includes the procedures for appeal by a PORTAL participant of any denial, suspension or termination of their registration, is also proposed to be deleted. The section of Rule 5360 that related to appeal rights regarding the designation of a PORTAL security has been incorporated into proposed Rule 5324.

ii. *Quotations, Trading, Uniform Practice.* The PORTAL Rules currently contain a large number of obsolete provisions that were intended to regulate the quotation and trading of PORTAL securities between PORTAL participants on a PORTAL-designated computer system. These provisions are proposed to be deleted. The provisions in the PORTAL Rules proposed to be deleted relate to the quotation of PORTAL securities (Rules 5372, 5373, 5375, 5376, and 5377), uniform practice (Rules 5378, 5379, and 5380),<sup>26</sup> and the application of other NASD rules to PORTAL securities (Rule 5392).

#### 4. Examination and Surveillance

In 1990, the NASD developed an examination module for Rule 144A transactions as part of its examination of underwriting arrangements. The Association has been using that module in its routine member examination process, where appropriate. Surveillance of PORTAL equity securities will be encompassed within parts of the current surveillance procedures for trade reporting into ACT. Surveillance of trade reports submitted with respect to PORTAL debt securities will be encompassed within the surveillance plan for TRACE.

#### 5. Request for Separate Approval and Effective of Debt and Equity Reporting Requirements

The NASD requests that the Commission bifurcate its approval of the proposed rule change so that the proposed rule changes to implement mandatory trade reporting of PORTAL equity securities, to modify the application process for designation of PORTAL securities, and to delete obsolete provisions is not dependent upon Commission approval and implementation of the TRACE Rules proposed in SR-NASD-99-65.

#### a. PORTAL Equity Securities/Other Amendments

It is not anticipated that TRACE will be implemented until Spring of the year 2000. The NASD, therefore, requests that the Commission separately approve proposed Rule 5332(a) and all other proposed rule changes herein except for Rule 5332(b). Approval would implement mandatory trade reporting of PORTAL equity securities, modify the application process for designation of PORTAL securities, and delete obsolete provisions. When so approved by the Commission, the NASD requests that all rules in this rule filing, except Rule 5332(b), become effective within sixty days of the issuance of a Notice to Members by the Association announcing the proposed rule change. That notice will be issued within 60 days of Commission approval.

#### b. PORTAL Debt Securities

The NASD requests that proposed Rule 5332(b) which would implement mandatory trade reporting and confirmation of secondary market transactions in PORTAL debt securities pursuant to the proposed TRACE Rules be approved and become effective simultaneously and under the same conditions as the Commission's approval of the proposed rule change to establish the TRACE Rules in SR-NASD-99-65.

#### *Statutory Basis*

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)<sup>27</sup> of the Act, which requires, among other things, that the Association's rules must be 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, in general, to protect investors and the public interest. The NASD believes that the proposed rule change will facilitate NASD surveillance of secondary market transactions in PORTAL securities, which currently are not subject to mandatory reporting to the Association, in the public interest. In addition, the NASD believes that the proposed rule change will facilitate comparison, confirmation, and settlement of secondary market transactions in PORTAL securities. Finally, the NASD believes that the

elimination of obsolete provisions of the PORTAL Rules will remove impediments to the operation of the secondary market in PORTAL securities.

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

The NASD 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.

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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will by order approve such proposed rule change, except Rule 5332(b),<sup>28</sup> or institute proceedings to determine whether the proposed rule change should be disapproved.

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

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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. Copies of such filing will also be

<sup>26</sup> The NASD's Uniform Practice Code has been amended to apply to resales of restricted securities as defined in Rule 144(a)(3) under the Securities Act. See Securities Exchange Act Release No. 38491 (April 9, 1997), 62 FR 18665 (April 16, 1997).

<sup>27</sup> 15 U.S.C. 78o-3(b)(6).

<sup>28</sup> The NASD would like the Commission to consider the proposed rules in this filing in conjunction with the proposed rules noticed in Securities Exchange Act Release No. 42201 (Dec. 3, 1999), 64 FR 69305 (Dec. 10, 1999) (SR-NASD-99-65).



available for inspection and copying at the principal office of the NASD.

All submissions should refer to file No. SR-NASD-99-66 and should be submitted by February 3, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>29</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-818 Filed 1-12-00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42317; File No. SR-Phlx-99-48]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending the Exchange's Certificate of Incorporation

January 5, 2000.

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 18, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Phlx filed an amendment to the proposal on November 23, 1999.<sup>3</sup> The Commission is publishing this notice and order 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

Proposed Article Twentieth would give the Board the power (1) to assess

fees, dues, and other charges upon members, lessors and lessees of memberships, and holders of permits as the Board may from time to time adopt by resolution or set forth in the Rules of the Board, and (2) to assess penalties for failure to pay any fees, dues, or other charges owed to the Exchange, including cancellation of a membership or permit and forfeiture of all rights as a member, lessor, lessee, or holder of a permit. The Board may delegate powers of the Board with respect to the assessment of fees, dues, other charges, and penalties to any committee or the Chairman of the Board. The text of the new Article Twentieth is available at the office of Secretary, the Phlx, and at the Commission.

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

In its filing with the Commission, the 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 III below. The 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

The purpose of the proposed rule change is to amend the Exchange's Certificate of Incorporation to provide Phlx's Board the specific authority to impose fees, dues, and charges upon members, lessors, and lessees of memberships, and holders of permits. Article Twentieth will permit the Board to more equitably allocate dues, fees, and charges among the Exchange's various constituents, thereby ensuring appropriate distribution of costs relating to maintaining and enhancing the competitive operations of the Exchange.

For these reasons, the Exchange believes that the proposed rule change is consistent with section 6(b)<sup>4</sup> of the Act, in general, and with section 6(b)(4),<sup>5</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

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

The Exchange believes that the proposed rule change imposes no burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.<sup>6</sup>

#### 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-99-48 and should be submitted by [insert 21 days from date of publication].

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

After careful consideration, the Commission finds, for the reasons set forth below, that the Phlx's proposal is consistent with the requirements of the act and the rules and regulations

<sup>6</sup> Written comments were received in response to rule filing SR-Phlx-99-43 in which Phlx proposed to charge a \$1,500 monthly capital funding fee on each exchange seat owner. On November 17, 1999, the Phlx withdrew SR-Phlx-99-43. On November 26, 1999, the Phlx filed SR-Phlx-99-49, proposing a three-month pilot of the \$1,500 monthly capital funding fee, and SR-Phlx-99-51, requesting permanent approval of that proposal. Phlx has also proposed a monthly credit of up to \$1,000 to be applied against certain fees, dues, charges, and other amounts owed to the Exchange by an owner who is also a member of the Exchange (SR-Phlx-99-54). In addition, the Exchange has indicated that it intends to submit rule filings relating to trading permits.

<sup>29</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 Letter from Cynthia Hoekstra, Counsel, Phlx to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated November 22, 1999 ("Amendment No. 1"). The Phlx originally filed two new Articles to its Certificate of Incorporation, Article Nineteenth and Article Twentieth. Amendment No. 1 removes from consideration the adoption of Article Nineteenth. On November 22, 1999, the Phlx filed SR-Phlx-99-50 proposing the adoption of Article Nineteenth which provides, in part, that in addition to all other powers granted to the Phlx Board of Governors ("Board") by law, the Certificate of Incorporation or otherwise, the Board shall have the power to determine whether, and under what terms and conditions, memberships may be leased, and to adopt by resolution or to set forth in the Rules of the Board such rules with respect to leases, lessors and lessees as the Board determines to be advisable.

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

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