

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2010 - 003

Amendment No.

Proposed Rule Change by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial ☒ Amendment ☐ Withdrawal ☐

Section 19(b)(2)

☒

Section 19(b)(3)(A)

☐

Section 19(b)(3)(B)

☐

Rule

☐ 19b-4(f)(1)☐ 19b-4(f)(4)☐ 19b-4(f)(2)☐ 19b-4(f)(5)☐ 19b-4(f)(3)☐ 19b-4(f)(6)Pilot
☐Extension of Time Period
for Commission Action
☐

Date Expires

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Change Relating to Trade Reporting of OTC Equity Securities and Restricted Equity Securities

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Brant

Last Name Brown

Title Associate General Counsel

E-mail brant.brown@finra.org

Telephone (202) 728-6927

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Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 01/15/2010

By Stephanie Dumont

(Name)

Senior Vice President and Director of Capital Markets
Policy

(Title)

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

Stephanie Dumont,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

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Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend several rules regarding reporting obligations to the OTC Reporting Facility (“ORF”). Specifically, FINRA is proposing to (1) amend the FINRA ORF Rules and the PORTAL Rules (FINRA Rule 6630 Series) regarding the reporting requirements for restricted equity securities; (2) update the definition of “OTC Equity Security”; and (3) clarify member reporting obligations with respect to certain trades reported on or through an exchange. The proposed rule change would also make conforming changes to other FINRA rules.

The text of the proposed rule change is attached as Exhibit 5.²

(b) Not applicable.

¹ 15 U.S.C. 78s(b)(1).

² On September 16, 2009, FINRA filed with the SEC a proposed rule change to, among other things, amend FINRA Rules 6420 and 6622 to require that members report over-the-counter equity transactions and secondary market transactions in non-exchange-listed direct participation program securities within 30 seconds of execution. See Securities Exchange Act Release No. 60960 (November 6, 2009), 74 FR 59272 (November 17, 2009) (Notice of Filing of SR-FINRA-2009-061). On November 6, 2009, FINRA filed with the SEC a proposed rule change to establish a Quotation Consolidation System for OTC Equity Securities and delete the rules governing the OTC Bulletin Board Service that amends FINRA Rule 6410. See Securities Exchange Act Release No. 60999 (November 13, 2009), 74 FR 61183 (November 23, 2009) (Notice of Filing of SR-FINRA-2009-077). FINRA will amend this filing, SR-FINRA-2009-077, and/or SR-FINRA-2009-061, as necessary, to reflect Commission approval of any of the proposed rule changes.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on April 16, 2009, the FINRA Board of Governors authorized the filing of the rule change regarding the PORTAL rules with the SEC. The portions of the proposed rule change regarding the additional amendments were approved by senior management of FINRA pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Regulatory Notice announcing Commission approval.

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

(a) Purpose

The proposed rule change includes several amendments to the reporting provisions regarding the ORF. In general, the proposed rule change amends the definition of "OTC Equity Security" in the FINRA trade reporting rules to address the cessation of the PORTAL Market and clarifies the scope of the ORF rules. The proposed rule change also makes conforming changes to other FINRA rules, including the Order Audit Trail System ("OATS") rules.

(1) Amendments to the ORF Rules

In 1990, the SEC adopted Rule 144A (“SEC Rule 144A”) under the Securities Act of 1933³ (“Securities Act”) to establish a safe harbor for the private resale of “restricted securities” to “qualified institutional buyers” (“QIBs”).⁴ At the same time, FINRA (then NASD) created the PORTAL Market to serve as a system for quoting, trading, and reporting trades in certain designated restricted securities that were eligible for resale under SEC Rule 144A (“PORTAL securities”).⁵ In September 2008, the NASDAQ Stock Market (“NASDAQ”) ceased the operation of the PORTAL Market.⁶ NASDAQ explained in the rule filing that it is taking a minority stake in a consortium that will control and operate a new electronic platform for handling transactions in SEC Rule 144A-eligible securities.⁷ On October 26, 2009, NASDAQ filed a proposed rule

³ 17 CFR 230.144A.

⁴ See Securities Act Release No. 6862 (April 23, 1990), 55 FR 17933 (April 30, 1990). For the purpose of SEC Rule 144A, a QIB is generally defined as any institution acting for its own account, or for the accounts of other QIBs, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the institution.

⁵ See Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781 (May 4, 1990).

⁶ See Securities Exchange Act Release No. 58638 (September 24, 2008), 73 FR 57188 (October 1, 2008). As part of the separation of NASDAQ from FINRA, certain functionality relating to PORTAL, including the qualification and designation of PORTAL securities, became part of NASDAQ’s rules and were eliminated from the FINRA rules. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

⁷ In addition to NASDAQ ceasing operation of the PORTAL Market, the Commission has also approved the deletion of the Depository Trust Company (“DTC”) requirement that a SEC Rule 144A security, other than Investment Grade Securities, be included in an “SRO Rule 144A System” in order to be eligible for DTC’s deposit, book-entry delivery, and other depository services. See Securities Exchange Act Release No. 59384 (February 11, 2009), 74 FR 7941 (February 20, 2009). The PORTAL Market was the only “SRO Rule 144A System.” Id.

change with the Commission for immediate effectiveness terminating NASDAQ's PORTAL security designation process and removing rules related to the PORTAL Market from its rulebook.⁸ As a result, NASDAQ no longer accepts new applications for debt or equity securities seeking PORTAL designation.⁹

FINRA's transaction reporting rules for restricted equity securities are currently tied to whether the security is designated for inclusion in the PORTAL Market. Specifically, FINRA's general transaction reporting rules for over-the-counter equity securities specifically exclude restricted securities and PORTAL securities from the reporting requirements.¹⁰ FINRA's PORTAL rules (FINRA Rule 6630 Series) require that transactions in PORTAL equity securities be reported to the ORF no later than 6:30 p.m. Eastern Time.¹¹ However, this requirement applies only to those restricted equity securities that are designated for inclusion in the PORTAL Market. Thus, the cessation

⁸ Securities Exchange Act Release No. 60991 (November 12, 2009), 74 FR 60006 (November 19, 2009).

⁹ See id. NASDAQ noted in the filing that nothing in the proposal was "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." Id.

¹⁰ See FINRA Rule 6400 Series.

¹¹ FINRA Rule 6633(a). The proposed rule change is limited in scope to equity securities and would not affect the Trade Reporting and Compliance Engine Service ("TRACE") or the reporting requirements with respect to transactions in debt securities. With respect to PORTAL securities that are debt securities, FINRA Rule 6633(b) currently requires members to report secondary market transactions to TRACE in accordance with the FINRA Rule 6700 Series. Thus, under current FINRA rules, reporting obligations for debt securities are set forth in the TRACE rules rather than the PORTAL rules. The proposed rule change deletes FINRA Rule 6633(b); however, the deletion of this provision does not affect the reporting obligations with respect to transactions in any debt security.

of the operation of the PORTAL Market and the designation of securities as PORTAL securities creates a gap in FINRA's transaction reporting requirements for restricted equity securities that are traded pursuant to SEC Rule 144A.

FINRA believes it is appropriate to continue to receive information regarding transactions in restricted equity securities traded pursuant to SEC Rule 144A for audit trail and other regulatory purposes. FINRA is therefore proposing to eliminate the current PORTAL reporting rules¹² and amend the ORF rules to include reporting requirements for all equity securities that are "restricted securities" under Rule 144(a)(3) of the Securities Act and that are traded pursuant to SEC Rule 144A, irrespective of whether they are designated as PORTAL securities. Under the proposed rule change, transactions in all restricted equity securities effected pursuant to SEC Rule 144A would generally be required to be reported to the ORF no later than 8:00 p.m. Eastern Time without interruption.¹³ Transactions in restricted equity securities effected pursuant to SEC Rule 144A and executed between 8:00 p.m. and midnight would be required to be reported the following business day (T+1) by 8:00 p.m.

¹² In addition to the reporting rules, FINRA Rule 6635 specifies which FINRA rules are and are not applicable to transactions and business activities relating to PORTAL securities. FINRA is proposing to retain Rule 6635 as FINRA Rule 6630 to maintain the status quo with respect to the application of FINRA rules to those securities previously designated as PORTAL securities prior to October 26, 2009.

¹³ FINRA Rule 6633(a)(2) currently requires that transactions in PORTAL equity securities be reported to the ORF "no later than 6:30 p.m. Eastern Time (or the end of the OTC Reporting Facility reporting session that is in effect at that time)." Since December 4, 2006, the ORF reporting session has remained open until 8:00 p.m. Eastern Time. See Securities Exchange Act Release No. 54773 (November 17, 2006), 71 FR 68665 (November 27, 2006); see also Nasdaq Head Trader Alert 2006-120 (August 23, 2006). The proposed rule change amends the time deadline reference in the rule to reflect the current hours of operation.

In addition to the changes relating to restricted equity securities, FINRA is proposing clarifying changes to the definition of “OTC Equity Security” to delete the outdated reference to securities that “qualify for real-time trade reporting” and, instead, to define the term as any equity security that is not an “NMS stock” as defined by the SEC in Regulation NMS.¹⁴ The proposed rule change will also eliminate the defined term “non-exchange-listed security” from Rule 6420.¹⁵ The effect of these changes is that any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan will be excluded from the definition of “OTC Equity Security” in Rule 6420.

The proposed rule change also amends the ORF rules to address explicitly transactions in OTC Equity Securities that are executed on an exchange. FINRA’s trade reporting rules historically have been limited to only trades executed “otherwise than on an exchange.”¹⁶ For example, the FINRA/NASDAQ TRF Rules, the FINRA/NYSE TRF

¹⁴ Rule 600 of Regulation NMS defines “NMS stock” as any NMS security other than an option. “NMS security” is defined as “any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.” See 17 CFR 242.600(b)(46), 242.600(b)(47).

¹⁵ FINRA Rule 6440 (Submission of SEA Rule 15c2-11 Information on Non-Exchange-Listed Securities) and NASD Rule 2320(f), which is often referred to as the Three Quote Rule, use the term “non-exchange-listed security.” Because the proposed rule change deletes the term “non-exchange-listed security” from Rule 6420, the proposed rule change also amends FINRA Rule 6440 and NASD Rule 2320(f) to define the term for purposes of those rules. The proposed definition in each rule is identical to the definition as it appeared in FINRA Rule 6420. Consequently, there is no change in the application of either rule as a result of the proposed rule change.

¹⁶ See e.g., FINRA Rule 6100, 6200, and 6300 Series.

Rules, and the ADF Rules all include an exception from the reporting obligations for transactions reported on or through an exchange.¹⁷ These rules collectively provide for the submission of trade reports to FINRA for transactions in NMS stocks only if the transaction is executed over the counter.

FINRA Rule 6622 sets forth the requirements for members regarding the submission of transaction reports to the ORF for transactions in OTC Equity Securities. While, as discussed above, the FINRA TRF and ADF rules explicitly except transactions executed on or through an exchange, the ORF rules do not include a similar exception for transactions in otherwise eligible securities that are reported on or through an exchange.¹⁸ Thus, FINRA proposes to amend FINRA Rule 6622 to explicitly include an exception for transactions in OTC Equity Securities reported on or through an exchange. In addition, the proposed changes to Rule 6420(k) and Rule 6610 further clarify that transactions in OTC Equity Securities must be reported to the ORF where such transactions are executed otherwise than on or through an exchange.

(2) Amendments to the OATS Rules

FINRA is proposing to conform the definition of “OTC equity security” in Rule 7410 of the OATS rules to the proposed definition in Rule 6420.¹⁹ Under the OATS

¹⁷ See FINRA Rules 6282(i)(1)(C), 6380A(e)(1)(C), 6380B(e)(1)(C).

¹⁸ The ORF Rules do include an exception for transactions in foreign equity securities when the transaction is executed on and reported to a foreign securities exchange or the transaction is executed over the counter in a foreign country and is reported to the regulator of securities markets for that country. See FINRA Rule 6622(g).

¹⁹ Similarly, the proposed rule change eliminates the separate definition of “OTC Equity Security” in FINRA Rule 4560 (Short-Interest Reporting) and clarifies that the rule applies to all equity securities except restricted equity securities.

rules, members are required to record and report order information for transactions in equity securities listed on NASDAQ and for “OTC equity securities.”²⁰ For purposes of the OATS rules, Rule 7410(l) defines “OTC equity security” as any equity security that: (1) is not listed on a national securities exchange, or (2) is listed on one or more regional stock exchanges and does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape. The rule currently excludes direct participation program securities from the scope of the OATS requirements, and the proposed rule change will maintain this exclusion.²¹ The proposed change will not result in any change to the scope of securities required to be reported to OATS. By using substantially similar definitions in both rule series, FINRA will ensure that the appropriate types of securities are addressed throughout FINRA’s order reporting, quotation, and trade reporting rules and that key terminology reflects current market structure and trends.

As noted in Item 2 of this filing, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Regulatory Notice announcing Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²² which requires, among other things, that FINRA rules

²⁰ See FINRA Rules 7440 and 7450.

²¹ In addition, the proposed rule change codifies prior FINRA guidance that the OATS rules do not apply to orders for restricted equity securities. See Regulatory Notice 06-70 n.2 (December 2006).

²² 15 U.S.C. 78o-3(b)(6).

must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will ensure that FINRA continues to receive important information regarding transactions in restricted securities traded pursuant to SEC Rule 144A.

FINRA believes that the other proposed changes to the definition of “OTC Equity Security” will ensure that the appropriate types of securities are addressed in the applicable FINRA rules and that key terminology reflects current market structure and trends.

4. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA 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.

5. 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.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.²³

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

²³ 15 U.S.C. 78s(b)(2).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2010-003)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Trade Reporting of OTC Equity Securities and Restricted Equity Securities

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 , Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) 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 FINRA. 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

FINRA is proposing to amend the FINRA OTC Reporting Facility (“ORF”) Rules and the PORTAL Rules (FINRA Rule 6630 Series) regarding the reporting requirements for restricted equity securities; update the definition of “OTC Equity Security”; and clarify member reporting obligations with respect to certain trades reported on or through an exchange.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-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, FINRA 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. FINRA 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

The proposed rule change includes several amendments to the reporting provisions regarding the ORF. In general, the proposed rule change amends the definition of "OTC Equity Security" in the FINRA trade reporting rules to address the cessation of the PORTAL Market and clarifies the scope of the ORF rules. The proposed rule change also makes conforming changes to other FINRA rules, including the Order Audit Trail System ("OATS") rules.

(a) Amendments to the ORF Rules

In 1990, the SEC adopted Rule 144A ("SEC Rule 144A") under the Securities Act of 1933³ ("Securities Act") to establish a safe harbor for the private resale of "restricted securities" to "qualified institutional buyers" ("QIBs").⁴ At the same time,

³ 17 CFR 230.144A.

⁴ See Securities Act Release No. 6862 (April 23, 1990), 55 FR 17933 (April 30, 1990). For the purpose of SEC Rule 144A, a QIB is generally defined as any institution acting for its own account, or for the accounts of other QIBs, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the institution.

FINRA (then NASD) created the PORTAL Market to serve as a system for quoting, trading, and reporting trades in certain designated restricted securities that were eligible for resale under SEC Rule 144A (“PORTAL securities”).⁵ In September 2008, the NASDAQ Stock Market (“NASDAQ”) ceased the operation of the PORTAL Market.⁶ NASDAQ explained in the rule filing that it is taking a minority stake in a consortium that will control and operate a new electronic platform for handling transactions in SEC Rule 144A-eligible securities.⁷ On October 26, 2009, NASDAQ filed a proposed rule change with the Commission for immediate effectiveness terminating NASDAQ’s PORTAL security designation process and removing rules related to the PORTAL Market from its rulebook.⁸ As a result, NASDAQ no longer accepts new applications for debt or equity securities seeking PORTAL designation.⁹

⁵ See Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781 (May 4, 1990).

⁶ See Securities Exchange Act Release No. 58638 (September 24, 2008), 73 FR 57188 (October 1, 2008). As part of the separation of NASDAQ from FINRA, certain functionality relating to PORTAL, including the qualification and designation of PORTAL securities, became part of NASDAQ’s rules and were eliminated from the FINRA rules. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

⁷ In addition to NASDAQ ceasing operation of the PORTAL Market, the Commission has also approved the deletion of the Depository Trust Company (“DTC”) requirement that a SEC Rule 144A security, other than Investment Grade Securities, be included in an “SRO Rule 144A System” in order to be eligible for DTC’s deposit, book-entry delivery, and other depository services. See Securities Exchange Act Release No. 59384 (February 11, 2009), 74 FR 7941 (February 20, 2009). The PORTAL Market was the only “SRO Rule 144A System.” Id.

⁸ Securities Exchange Act Release No. 60991 (November 12, 2009), 74 FR 60006 (November 19, 2009).

⁹ See id. NASDAQ noted in the filing that nothing in the proposal was “intended to impact securities previously designated as PORTAL securities or alter any

FINRA's transaction reporting rules for restricted equity securities are currently tied to whether the security is designated for inclusion in the PORTAL Market. Specifically, FINRA's general transaction reporting rules for over-the-counter equity securities specifically exclude restricted securities and PORTAL securities from the reporting requirements.¹⁰ FINRA's PORTAL rules (FINRA Rule 6630 Series) require that transactions in PORTAL equity securities be reported to the ORF no later than 6:30 p.m. Eastern Time.¹¹ However, this requirement applies only to those restricted equity securities that are designated for inclusion in the PORTAL Market. Thus, the cessation of the operation of the PORTAL Market and the designation of securities as PORTAL securities creates a gap in FINRA's transaction reporting requirements for restricted equity securities that are traded pursuant to SEC Rule 144A.

FINRA believes it is appropriate to continue to receive information regarding transactions in restricted equity securities traded pursuant to SEC Rule 144A for audit trail and other regulatory purposes. FINRA is therefore proposing to eliminate the

existing regulatory obligation applicable to such securities, including, but not limited to, any trade reporting obligation imposed by any self-regulatory organization." Id.

¹⁰ See FINRA Rule 6400 Series.

¹¹ FINRA Rule 6633(a). The proposed rule change is limited in scope to equity securities and would not affect the Trade Reporting and Compliance Engine Service ("TRACE") or the reporting requirements with respect to transactions in debt securities. With respect to PORTAL securities that are debt securities, FINRA Rule 6633(b) currently requires members to report secondary market transactions to TRACE in accordance with the FINRA Rule 6700 Series. Thus, under current FINRA rules, reporting obligations for debt securities are set forth in the TRACE rules rather than the PORTAL rules. The proposed rule change deletes FINRA Rule 6633(b); however, the deletion of this provision does not affect the reporting obligations with respect to transactions in any debt security.

current PORTAL reporting rules¹² and amend the ORF rules to include reporting requirements for all equity securities that are “restricted securities” under Rule 144(a)(3) of the Securities Act and that are traded pursuant to SEC Rule 144A, irrespective of whether they are designated as PORTAL securities. Under the proposed rule change, transactions in all restricted equity securities effected pursuant to SEC Rule 144A would generally be required to be reported to the ORF no later than 8:00 p.m. Eastern Time without interruption.¹³ Transactions in restricted equity securities effected pursuant to SEC Rule 144A and executed between 8:00 p.m. and midnight would be required to be reported the following business day (T+1) by 8:00 p.m.

In addition to the changes relating to restricted equity securities, FINRA is proposing clarifying changes to the definition of “OTC Equity Security” to delete the outdated reference to securities that “qualify for real-time trade reporting” and, instead, to define the term as any equity security that is not an “NMS stock” as defined by the SEC in Regulation NMS.¹⁴ The proposed rule change will also eliminate the defined term

¹² In addition to the reporting rules, FINRA Rule 6635 specifies which FINRA rules are and are not applicable to transactions and business activities relating to PORTAL securities. FINRA is proposing to retain Rule 6635 as FINRA Rule 6630 to maintain the status quo with respect to the application of FINRA rules to those securities previously designated as PORTAL securities prior to October 26, 2009.

¹³ FINRA Rule 6633(a)(2) currently requires that transactions in PORTAL equity securities be reported to the ORF “no later than 6:30 p.m. Eastern Time (or the end of the OTC Reporting Facility reporting session that is in effect at that time).” Since December 4, 2006, the ORF reporting session has remained open until 8:00 p.m. Eastern Time. See Securities Exchange Act Release No. 54773 (November 17, 2006), 71 FR 68665 (November 27, 2006); see also Nasdaq Head Trader Alert 2006-120 (August 23, 2006). The proposed rule change amends the time deadline reference in the rule to reflect the current hours of operation.

¹⁴ Rule 600 of Regulation NMS defines “NMS stock” as any NMS security other than an option. “NMS security” is defined as “any security or class of securities

“non-exchange-listed security” from Rule 6420.¹⁵ The effect of these changes is that any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan will be excluded from the definition of “OTC Equity Security” in Rule 6420.

The proposed rule change also amends the ORF rules to address explicitly transactions in OTC Equity Securities that are executed on an exchange. FINRA’s trade reporting rules historically have been limited to only trades executed “otherwise than on an exchange.”¹⁶ For example, the FINRA/NASDAQ TRF Rules, the FINRA/NYSE TRF Rules, and the ADF Rules all include an exception from the reporting obligations for transactions reported on or through an exchange.¹⁷ These rules collectively provide for the submission of trade reports to FINRA for transactions in NMS stocks only if the transaction is executed over the counter.

FINRA Rule 6622 sets forth the requirements for members regarding the submission of transaction reports to the ORF for transactions in OTC Equity Securities.

for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.” See 17 CFR 242.600(b)(46), 242.600(b)(47).

¹⁵ FINRA Rule 6440 (Submission of SEA Rule 15c2-11 Information on Non-Exchange-Listed Securities) and NASD Rule 2320(f), which is often referred to as the Three Quote Rule, use the term “non-exchange-listed security.” Because the proposed rule change deletes the term “non-exchange-listed security” from Rule 6420, the proposed rule change also amends FINRA Rule 6440 and NASD Rule 2320(f) to define the term for purposes of those rules. The proposed definition in each rule is identical to the definition as it appeared in FINRA Rule 6420. Consequently, there is no change in the application of either rule as a result of the proposed rule change.

¹⁶ See e.g., FINRA Rule 6100, 6200, and 6300 Series.

¹⁷ See FINRA Rules 6282(i)(1)(C), 6380A(e)(1)(C), 6380B(e)(1)(C).

While, as discussed above, the FINRA TRF and ADF rules explicitly except transactions executed on or through an exchange, the ORF rules do not include a similar exception for transactions in otherwise eligible securities that are reported on or through an exchange.¹⁸ Thus, FINRA proposes to amend FINRA Rule 6622 to explicitly include an exception for transactions in OTC Equity Securities reported on or through an exchange. In addition, the proposed changes to Rule 6420(k) and Rule 6610 further clarify that transactions in OTC Equity Securities must be reported to the ORF where such transactions are executed otherwise than on or through an exchange.

(b) Amendments to the OATS Rules

FINRA is proposing to conform the definition of “OTC equity security” in Rule 7410 of the OATS rules to the proposed definition in Rule 6420.¹⁹ Under the OATS rules, members are required to record and report order information for transactions in equity securities listed on NASDAQ and for “OTC equity securities.”²⁰ For purposes of the OATS rules, Rule 7410(l) defines “OTC equity security” as any equity security that: (1) is not listed on a national securities exchange, or (2) is listed on one or more regional stock exchanges and does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape. The rule currently excludes direct participation

¹⁸ The ORF Rules do include an exception for transactions in foreign equity securities when the transaction is executed on and reported to a foreign securities exchange or the transaction is executed over the counter in a foreign country and is reported to the regulator of securities markets for that country. See FINRA Rule 6622(g).

¹⁹ Similarly, the proposed rule change eliminates the separate definition of “OTC Equity Security” in FINRA Rule 4560 (Short-Interest Reporting) and clarifies that the rule applies to all equity securities except restricted equity securities.

²⁰ See FINRA Rules 7440 and 7450.

program securities from the scope of the OATS requirements, and the proposed rule change will maintain this exclusion.²¹ The proposed change will not result in any change to the scope of securities required to be reported to OATS. By using substantially similar definitions in both rule series, FINRA will ensure that the appropriate types of securities are addressed throughout FINRA's order reporting, quotation, and trade reporting rules and that key terminology reflects current market structure and trends.

FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Regulatory Notice announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²² which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will ensure that FINRA continues to receive important information regarding transactions in restricted securities traded pursuant to SEC Rule 144A.

FINRA believes that the other proposed changes to the definition of "OTC Equity Security" will ensure that the appropriate types of securities are addressed in the

²¹ In addition, the proposed rule change codifies prior FINRA guidance that the OATS rules do not apply to orders for restricted equity securities. See Regulatory Notice 06-70 n.2 (December 2006).

²² 15 U.S.C. 78o-3(b)(6).

applicable FINRA rules and that key terminology reflects current market structure and trends.

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

FINRA 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:

(A) by order approve such proposed rule change, or

(B) 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 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-FINRA-2010-003 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Florence E. Harmon, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2010-003. 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, 100 F Street, NE., Washington, DC 20549, 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 FINRA. 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-FINRA-2010-003 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Florence E. Harmon

Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Below is the text of the proposed rule change.

Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

NASD RULES

* * * * *

2000. BUSINESS CONDUCT

* * * * *

2300. TRANSACTIONS WITH CUSTOMERS

* * * * *

2320. Best Execution and Interpositioning

(a) through (e) No Change.

(f) (1) Except as provided in subparagraph (3) below, in any transaction for or with a customer pertaining to the execution of an order in a non-exchange-listed security [(as defined in the Rule 6600 Series)], a member or person associated with a member shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.

(2) through (3) No Change.

(4) Definitions

For purposes of this paragraph (f):

(A) through (B) No Change.

(C) “Non-exchange-listed security” means any equity security that is not traded on any national securities exchange. The term “non-exchange-

listed security” shall not include “restricted securities,” as defined by
Securities Act Rule 144(a)(3).

(5) No Change.

* * * * *

**3000. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS,
EMPLOYEES, AND OTHERS’ EMPLOYEES**

* * * * *

3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

3110. Books and Records

(a) No Change.

(b) Marking of Customer Order Tickets

A person associated with a member shall indicate on the memorandum for each transaction in a non-exchange-listed security, as that term is defined in [the] Rule [6600 Series] 2320, the name of each dealer contacted and the quotations received to determine the best inter-dealer market; however, the requirements of this paragraph shall not apply if the member can establish and has documented that:

(1) through (2) No Change.

(c) through (j) No Change.

* * * * *

FINRA RULES

* * * * *

4000. FINANCIAL AND OPERATIONAL RULES

* * * * *

4500. BOOKS, RECORDS AND REPORTS

* * * * *

4560. Short-Interest Reporting

(a) Each member shall maintain a record of total “short” positions in all customer and proprietary firm accounts in [OTC Equity Securities and] all equity securities (other than Restricted Equity Securities as defined in Rule 6420) [listed on a national securities exchange] and shall regularly report such information to FINRA in such a manner as may be prescribed by FINRA. Reports shall be made as of the close of the settlement date designated by FINRA. Reports shall be received by FINRA no later than the second business day after the reporting settlement date designated by FINRA.

(b) For purposes of this Rule:

(1) No Change.

(2) the term "customer" includes a broker-dealer, [; and]

[(3) the term “OTC Equity Securities” shall mean any equity security that is not listed on a national securities exchange.]

* * * * *

6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

* * * * *

6400. QUOTING AND TRADING IN OTC EQUITY SECURITIES

6410. General

This Rule 6400 Series sets forth [recording and reporting] quotation and trading requirements for [certain quotations and unpriced indications of interest displayed on inter-dealer quotation systems and the trade reporting requirements applicable to members' transactions in equity securities for which real-time trade reporting is not otherwise required (hereinafter referred to as] "OTC Equity Securities" as that term is defined in Rule 6420 [)].

Members shall use the OTC Reporting Facility for trade reporting in OTC Equity Securities and Restricted Equity Securities in compliance with the Rule 6600 and 7300 Series, as well as all other applicable rules and regulations.

6420. Definitions

(a) through (b) No Change.

[(c) "Non-exchange-listed security" means any equity security that is not traded on any national securities exchange. The term "non-exchange-listed security" shall not include "restricted securities," as defined by Securities Act Rule 144(a)(3), nor any securities designated in the PORTAL Market, the Rule 6630 Series.]

[(d)](c) "OTC Equity Security" means any [non-exchange-listed] equity security [and certain exchange-listed securities] that is not an "NMS stock" as that term is defined in Rule 600(b)(47) of Regulation NMS; provided, however, that the term "OTC Equity Security" shall not include any Restricted Equity Security [that do not otherwise qualify for real-time trade reporting].

(e) through (f) redesignated as (d) through (e)

[(g)](f) “Quotation” shall mean any bid or offer at a specified price with respect to [a non-exchange-listed security] an OTC Equity Security, or any indication of interest by a broker or dealer in receiving bids or offers from others for such a security, or any indication by a broker or dealer that it wishes to advertise its general interest in buying or selling a particular non-exchange-listed security.

[(h)](g) “Quotation medium” means any inter-dealer quotation system [(except for the PORTAL Market)] or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any [non-exchange-listed security] OTC Equity Security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(h) “Restricted Equity Security” means any equity security that meets the definition of “restricted security” as contained in Securities Act Rule 144(a)(3).

(i) through (j) No Change.

(k) “OTC Reporting Facility” means the service provided by FINRA that accommodates reporting for trades in OTC Equity Securities executed other than on or through an exchange and for trades in Restricted Equity Securities effected under Securities Act Rule 144A and dissemination of last sale reports[in OTC Equity Securities]. Regarding those OTC Equity Securities and Restricted Equity Securities that are not eligible for clearance and settlement through the facilities of the National Securities Clearing Corporation, the OTC Reporting Facility comparison function will not be available. However, the OTC Reporting Facility will support the entry and dissemination, as applicable, of last sale data on such securities.

* * * * *

6440. Compliance with the Information Requirements of SEC Rule 15c2-11

(a) through (d) No Change.

(e) For purposes of this Rule, the term “non-exchange-listed security” means any equity security, other than a Restricted Equity Security, that is not traded on any national securities exchange.

• • • Supplementary Material: -----

01. No Change.

* * * * *

6600. OTC Reporting Facility

6610. General

Members are required to [that] report transactions (other than transactions executed on or through an exchange) in OTC Equity Securities, including secondary market transactions in [and] Direct Participation Program securities, and Restricted Equity Securities to the OTC Reporting Facility in compliance [must comply] with the Rule 6600 and 7300 Series, as well as all other applicable rules and regulations.

6620. Reporting Transactions in OTC Equity Securities

* * * * *

6622. Transaction Reporting

(a) When and How Transactions are Reported

(1) through (3) No Change.

(4) Transaction Reporting for Restricted Equity Securities

(A) Last sale reports of transactions in Restricted Equity Securities effected under Securities Act Rule 144A and executed between midnight and

8:00 p.m. Eastern Time shall be reported on the same business day as the transaction.

(B) Last sale reports of transactions in Restricted Equity Securities effected under Securities Act Rule 144A executed between 8:00 p.m. and midnight Eastern Time shall be reported the following business day (T+1) by 8:00 p.m. Eastern Time and be designated “as/of” trades to denote their execution on a prior day.

[(4) All members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in OTC Equity Securities for which electronic submission to the OTC Reporting Facility is not possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be reported to the OTC Reporting Facility, whether on trade date or on a subsequent date on an “as/of” basis (T+N), shall not be reported on Form T.]

(5) through (8) No Change.

(9) To identify late pre-opening and after-hours trades in OTC Equity Securities reported late, FINRA will convert the .T modifier to .ST for any report submitted to the OTC Reporting Facility more than 90 seconds after execution.

(10) All members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in OTC Equity Securities or Restricted Equity Securities for which electronic submission to the OTC Reporting Facility is not possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be

reported to the OTC Reporting Facility, whether on trade date or on a subsequent date on an “as/of” basis (T+N), shall not be reported on Form T.

(b) No Change.

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1) Symbol of the OTC Equity Security or Restricted Equity Security;

(2) through (5) No Change.

(d) Procedures for Reporting Price, Volume, Capacity and Identification of Other Members

Members that are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in OTC Equity Securities and Restricted Equity Securities in the following manner:

(1) through (4) No Change.

(e) Reporting Requirements For Certain Transactions and Transfers of Securities

(1) The following shall not be reported to the OTC Reporting Facility:

(A) [T]ransactions that are part of a primary distribution by an issuer or a registered secondary distribution (other than “shelf distributions”) or of an unregistered secondary distribution;

(B) [T]ransactions made in reliance on Section 4(2) of the Securities Act; [and]

(C) transactions reported on or through an exchange; and

(D) transfers of securities made pursuant to an asset purchase agreement (APA) that is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters, provided that the purchase price under the APA is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA.

(2) No Change.

(f) Reporting Cancelled Trades

(1) No Change.

(2) Deadlines for Reporting Cancelled Trades in OTC Equity Securities

(A) through (G) No Change.

(3) Deadlines for Reporting Cancelled Trades in Restricted Equity

Securities

(A) For trades previously submitted to the OTC Reporting Facility and cancelled before 8:00 p.m. Eastern Time on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation by 8:00 p.m.

(B) For trades cancelled at or after 8:00 p.m. Eastern Time on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following business day by 8:00 p.m.

(C) For any trade cancelled on any date after the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation

(i) by 8:00 p.m. on the date of cancellation if the trade is cancelled before 8:00 p.m., or

(ii) by 8:00 p.m. on the following business day if the trade is cancelled at or after 8:00 p.m.

(g) No Change.

6623. Timely Transaction Reporting

FINRA emphasizes the obligations of members to report securities transactions within the required time period [90 seconds after execution]. All reportable transactions not reported within the required time period [90 seconds after execution] shall be [reported as] marked late, and FINRA routinely monitors members' compliance with the [90-second] reporting requirements. If FINRA finds a pattern or practice of unexcused late reporting, that is, repeated reports of executions submitted after the required time period [after 90 seconds] without reasonable justification or exceptional circumstances, the member may be found to be in violation of Rule 2010. Exceptional circumstances will be determined on a case-by-case basis and may include instances of system failure by a member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole. Timely reporting of all transactions is necessary and appropriate for the fair and orderly operation of the marketplace, and FINRA will view noncompliance as a rule violation.

* * * * *

[6630. REPORTING TRANSACTIONS IN PORTAL[®] SECURITIES]

[6631. Definitions]

[For purposes of the Rule 6630 Series, unless the context otherwise requires:]

[(a) "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time.]

[(b) “PORTAL[®]” or “PORTAL Market” means Nasdaq’s market for designated foreign and domestic securities that are eligible for resale under Securities Act Rule 144A.]

[(c) “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, exerciseable or non-exerciseable, callable or non-callable, redeemable or non-redeemable).]

[(d) “PORTAL debt security” means PORTAL securities that are United States dollar denominated debt securities issued by United States and/or foreign private corporations, but shall not include mortgage or asset-backed securities, collateralized mortgage obligations, money market instruments, or municipal and municipal-derivative securities.]

[(e) “PORTAL Market system” or “PORTAL system” means any computer system(s) designated by FINRA to accept trade reports on transactions in PORTAL equity and/or debt securities, or to display transaction, quotation, or other information on PORTAL securities.]

[(f) “PORTAL security” means a security that is currently designated by The Nasdaq Stock Market LLC for inclusion in the PORTAL Market.]

[(g) “PORTAL transaction report” means a report of a transaction in a PORTAL security submitted by a member through a designated PORTAL system.]

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

[(i) “SEC” means the United States Securities and Exchange Commission.]

[(j) “Securities Act Rule 144A” means Rule 144A adopted under the Securities Act.]

[(k) “Securities Act” means the Securities Act of 1933, as amended from time to time.]

[(l) “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 Securities Act Rule 144A or any other applicable exemption from registration under Section 5 of the Securities Act.]

[(m) “Transaction” or “trade” means the purchase or sale of a PORTAL security.]

[(n) “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.]

[6632. Limitations on 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 Securities Act 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 Securities Act Rule 144A; or]

[(C) a member acting as an agent in a transaction that the member acting as 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 Securities Act Rule 144A or an applicable exemption under the Securities Act other than Securities Act Rule 144A; and]

[(2) the member maintains in its files information demonstrating that the transaction is in compliance with Securities Act Rule 144A or with any other applicable exemption from registration under the Securities Act.]

[6633. Reporting Debt and Equity Transactions in PORTAL Securities]

[(a) Subject to Rule 6622(e)(1), transactions in a PORTAL equity security shall be reported to the OTC Reporting Facility in accordance with this Rule. Each PORTAL transaction report on a PORTAL equity security shall:]

[(1) include the information required by Rule 6622(c), including the time of execution;]

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

[(3) be submitted by the party as required by Rule 6622(b) and comply with the procedures under Rule 6622(d).]

[(b) Transactions in PORTAL debt securities shall be reported to the Trade Reporting And Compliance Engine Service in accordance with the Rule 6700 Series.]

[(c) The reporting requirements of this Rule shall apply to transactions in reliance on Securities Act 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 system through which the PORTAL transaction report is submitted, as set forth in the Rule 7700 Series.]

[6634. Arbitration]

[The facilities of FINRA Dispute Resolution and the procedures of the Code of Arbitration Procedure shall be available to PORTAL participants to resolve disputes arising from PORTAL transactions and transfers or activities related thereto.]

6630[5]. Applicability of FINRA Rules to Securities Previously Designated as PORTAL Securities

(a) The following are specifically applicable to transactions and business activities relating to [PORTAL] securities that, prior to October 26, 2009, had been designated by The Nasdaq Stock Market LLC for inclusion in the PORTAL Market (“PORTAL securities”):

- (1) NASD Rules 2230, 2260, 2270, 2310, 2440, 3370, and FINRA Rules 0130, 0140, 2010, 2020, 2262, 2269, 8210;
- (2) the Rule 8100 and 8300 Series; and
- (3) NASD IM-2310-2, IM-2420-1, IM-2440-1, IM-2440-2, IM-3310, and IM-3320.

(b) The following are specifically applicable to transactions and business activities relating to PORTAL securities, with the exceptions specified below:

(1) NASD Rule 2320, except for paragraph (f), which requires that a member obtain quotations from three dealers to determine the best inter-dealer market for the subject security;

(2) FINRA Rule 2150, and NASD Rule 2330, except for paragraph (d); and

(3) NASD Rule 3110.

(c) The following are applicable to members and persons associated with members regardless of whether the member participates in transactions in PORTAL securities:

(1) NASD Rule 0120 and FINRA Rules 0110, 0120, 0160.

(2) NASD Rules 2210, 3020, 3030, 3040, 3050, 3130, 3140 and FINRA Rules 3220, and 5260.

(d) The following are not applicable to transactions and business activities relating to PORTAL securities:

(1) NASD Rules 2450, 2520, 2730, 2740, 2750, 2830, 3210, and FINRA Rules 2310, 2320, 2360, 4560, 5110, 5130.

* * * * *

7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS, AND FACILITY CHARGES

* * * * *

7300. OTC Reporting Facility

7310. Definitions

(a) through (f) No Change.

(g) The term “Reportable Security” shall mean all OTC Equity Securities and Restricted Equity Securities as defined in Rule 6420 and all Direct Participation Programs as defined in Rule 6642.

(h) through (i) No Change.

(j) The term “System” shall mean the OTC Reporting Facility[for purposes of trades in OTC Equity Securities as defined in Rule 6420 and Direct Participation Programs as defined in Rule 6642].

(k) No Change.

* * * * *

7330. Trade Report Input

(a) No Change.

(b) When and How Trade Reports are Submitted

Participants shall transmit trade reports to the System for Reportable System [t]Transactions [in Reportable Securities] within [90 seconds after execution] the time period required in Rule 6622, or, in the case of trades in OTC Equity Securities, shall use the Browse function to accept or decline trades within twenty (20) minutes after execution, according to the requirements of paragraph (c) of this Rule.

(c) through (h) No Change.

* * * * *

7400. Order Audit Trail System

7410. Definitions

For purposes of the Rule 7400 Series:

(a) through (k) No Change.

(l) “OTC equity security” shall have the same meaning as defined in Rule 6420,
except that [mean any equity security that:]

[(1) is not listed on a national securities exchange; or]

[(2) is listed on one or more regional stock exchanges and does not qualify
for dissemination of transaction reports via the facilities of the Consolidated Tape.]

[F]for purposes of the Rule 7400 Series, the term OTC equity security shall not
include direct participation programs, as defined in Rule 6642.

(m) through (o) No Change.

* * * * *