



THE NASDAQ STOCK MARKET
ONE LIBERTY PLAZA, 50TH FLOOR
NEW YORK, NY 10006

June 28, 2007

Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
Station Place, 100 F Street, NE
Washington, DC 20549-1090

Re: SR- NASDAQ-2006-65 – Response to Comments

Dear Ms. Morris:

The NASDAQ Stock Market LLC (“Nasdaq”) welcomes the opportunity to respond to comments submitted in connection with the above-captioned rule proposal to reestablish an indicative quotation and trading system for securities that are designated by The PORTAL[®] Market as PORTAL Securities (“PORTAL” or “Portal Market”).

As noted in Nasdaq’s filing, the PORTAL initiative is intended to enhance the efficiency and transparency of trading in Rule 144A securities. These important benefits were also recognized in comments submitted by the Council on Competitiveness, TechNet, and NYPPEX, all of whom urged the Commission’s approval of the proposal believing that it will enhance our country’s ability to succeed in the global marketplace for capital formation, improve access to capital for technology companies, and substantially improve liquidity and lower the cost of issuing these securities. Nasdaq agrees wholeheartedly with these comments. In Nasdaq’s view, the PORTAL initiative provides a tremendous opportunity to demonstrate the strength, sophistication, and innovation of the United States’ capital markets.

I. Comments of the Securities Industry and Financial Markets Association (“SIFMA”)

In its comments, SIFMA asserts that the proposal is vague and incomplete in a number of areas including: the requirements for reporting to the Trade Reporting and Compliance Engine (“TRACE”) and the OTC Reporting Facility; the information to be disseminated to PORTAL Brokers, Dealers and Qualified Investors; regulatory jurisdiction; and the nature of subscriber agreements and other documents related to the PORTAL system. SIFMA further asserts that the Commission should take the

extraordinary step of requiring that additional information regarding the proposal be published for comment prior to Commission action. We do not believe the questions or issues raised by SIFMA or our responses to them warrant republication of the proposal.

Trade Reporting

First, SIFMA seeks clarification of what trade information will be reported to TRACE and the OTC Trade Reporting Facility, who will be responsible for submitting the information, the scope of trade information submitted, and the timing of its submission. SIFMA also wants to know if automatic trade reporting is mandatory or optional, if the system will report trades that are negotiated via PORTAL but not executed by the system, and if PORTAL Brokers and Dealers will be required to provide any additional information for reporting beyond that in PORTAL by virtue of the execution of the trade in the system. Finally, SIFMA seeks confirmation that to the extent information is submitted to TRACE and the OTC Reporting Facility through PORTAL, National Association of Securities Dealers (“NASD”) members will not be under a separate obligation to report to TRACE and the OTC Reporting Facility.

Nasdaq Response:

The PORTAL system will not change NASD trade reporting rules, but will assist its users by submitting information to TRACE and the OTC Trade Reporting Facility on their behalf. The obligation to ensure that accurate trade reports are submitted in a timely fashion, however, remains the responsibility of the firm with a reporting obligation. If a transaction is consummated in the PORTAL system, a complete trade report will be, if required by NASD rules, immediately submitted by the system to the appropriate reporting facility on behalf of the parties to the trade in the format specified by the receiving reporting systems. The trade report information to be submitted to TRACE and OTC Trade Reporting Facility is the exact same information (price, size, time of execution etc.) that is submitted today by market participants for trades in PORTAL equity and PORTAL debt securities to meet regulatory reporting obligations. For reporting purposes, the system will not require any additional information from users beyond that already in the system at the time of execution. The system will also allow parties, if they so choose, to submit required regulatory trade reports using the system even if such trades were executed outside of PORTAL and such reports will be viewable by PORTAL market participants. The system will not allow, however, executing parties to opt out of the automatic submission of required trade reports for trades executed in PORTAL. PORTAL will only automatically report trades that actually execute within its system, and will not submit to a reporting facility those transactions that are negotiated, but not ultimately executed by, in PORTAL.

Dissemination of PORTAL Information

SIFMA next turns to issues related to the dissemination of PORTAL transaction information. First, SIFMA urges Nasdaq to consider whether dissemination of any trade

report information regarding PORTAL securities is necessary or beneficial, arguing that PORTAL's indicative quotes and indications of interest will provide significant transparency and that dissemination of trade report information would provide no or marginal benefits but risk negatively impacting liquidity and the willingness to commit capital in unregistered securities. SIFMA then seeks clarification regarding what information will be disseminated to PORTAL market participants and, in particular, if Nasdaq intends to disseminate to them trade information for trades negotiated through, but not executed in, PORTAL. SIFMA also suggests that if trade report information is to be disseminated to PORTAL market participants, such dissemination should follow protocols currently applicable to the acceptance and dissemination of trade report information provided to TRACE and the OTC Trade Reporting Facility. Lastly, SIFMA notes that the role of third-party vendors in the dissemination of PORTAL data is not spelled out, and that terms and costs of PORTAL data distribution are not specifically addressed.

Nasdaq Response:

While Nasdaq agrees that indicative quotes and indications of interest will improve transparency to a degree, they are not a substitute for the dissemination of actual trade execution information to PORTAL market participants. Such dissemination is a key component in enhancing the transparency of trading in Rule 144A securities, and Nasdaq does not agree that dissemination of trade reports in PORTAL securities is likely to negatively impact liquidity. Instead, Nasdaq believes that dissemination of transaction information is likely to increase the ability of PORTAL market participants to make better informed trading decisions, thereby increasing confidence and liquidity in the 144A marketplace. As noted above, PORTAL will only disseminate to PORTAL market participants trade report information for trades actually executed or reported through the system. If Nasdaq is wrong in its assessment of the desirability of enhanced transparency, then brokers that trade PORTAL securities will avoid using PORTAL in order to avoid having trade information disseminated to PORTAL participants, and the status quo will remain intact. If Nasdaq is correct, however, then added transparency will redound to the benefit of issuers of these securities and their investors by enhancing liquidity and lowering transactions costs.

For similar reasons, Nasdaq does not believe that the dissemination of transaction information generated in the PORTAL system to PORTAL market participants should be restricted in any manner based on limits or time periods applicable to TRACE or OTC Trade Reporting Facility reporting. Participation in PORTAL is voluntary, and market participants that elect to trade in the system will do so with the clear understanding that their trades will be immediately disseminated to other PORTAL market participants and, if required, immediately reported for regulatory purposes.¹ Such dissemination and

¹ Nasdaq is willing to consider, however, in consultation with Commission Staff, modifying the dissemination parameters of PORTAL debt trades in the system to potentially follow current TRACE standards where the quantity for individual debt trades disseminated is capped at 5 million for investment-grade securities, and 1 million for non-investment grade securities.

reporting are fully consistent with the goals of enhanced transparency and efficiency that were at the heart of the original PORTAL approval order² and Nasdaq's renewed PORTAL proposal. As pointed out by SIFMA, PORTAL participants will be "sophisticated parties" and, therefore, can be expected to have the ability to appropriately assess the value of such trade information.³ Nasdaq does not at this time plan to distribute PORTAL market information through third-party vendors. As to costs, all fees for the system and/or its data will be the subject of formal filings with the Commission pursuant to Section 19(b) of the Exchange Act and will provide the opportunity for interested parties to comment on them.

Regulatory Jurisdiction

Noting that the NASD would continue to surveil trade reports in PORTAL securities that are submitted to TRACE and the OTC Reporting Facility and that Nasdaq's MarketWatch Department will perform real-time surveillance of quoting and trading activity in PORTAL, SIFMA encourages Nasdaq, the NASD and the Commission to bring the regulatory jurisdiction over all aspects of the PORTAL market under a common regulatory umbrella. SIFMA draws particular attention to existing Nasdaq Rule 6531 (to be re-numbered as Rule 6503), which requires that sales of PORTAL securities comply with SEC Rule 144A or with another applicable exemption from registration and which requires that record be retained demonstrating that fact as an example of how overlapping regulators create unnecessary burdens. SIFMA next takes issue with the requirement that access to the system as a PORTAL Broker or a PORTAL Dealer be limited to Nasdaq exchange members, and also asks that Nasdaq clarify the scope of its authority over PORTAL Qualified Investors under proposed Rule 6513. Finally, SIFMA asserts that rules governing the extent to which PORTAL Qualified Investors are permitted to access PORTAL directly are vague and requests that Nasdaq specifically address the extent to which PORTAL Qualified Investors may directly access the trading and negotiation functionality of the PORTAL system and explain the legal rationale for such direct access.

Nasdaq Response:

Nasdaq agrees with SIFMA that, to the extent possible, SROs should work together to avoid duplication of regulatory processes and inconsistent standards of conduct. Nasdaq notes that it and the NASD already work together extensively in connection with the operation and regulation of the main Nasdaq equity market; there is no basis to believe that interaction in connection with PORTAL trading will not achieve the same efficient, positive results. However, PORTAL is a trading facility of Nasdaq

² Securities Exchange Act Release No. 27956 (April 27, 1990); 55 F.R. 18783 (May 4, 1990) (the "PORTAL Original Adoption"), at 18787 and Securities Act Release No. 6862 (April 23, 1990); 55 F.R. 17933 (April 30, 1990) (the "Rule 144A Adopting Release"), at 17934.

³ The SEC stated in its adopting release for Rule 144A that ". . . Rule 144A is intended to cover only resales to institutions that are sophisticated investors." Rule 144A Adopting Release, at 17936.

and, as such, Nasdaq must be responsible for the oversight of real-time quote and trade activity in that system. To facilitate users' compliance with established NASD rules governing trade reporting in PORTAL securities, the PORTAL system will forward transaction reports submitted to the PORTAL system to either the NASD's TRACE system or its OTC Trade Reporting Facility as appropriate. With regard to Nasdaq Rule 6531, as SIFMA correctly notes, that rule already exists in the Nasdaq manual, and simply reiterates the obligation of firms to comply with SEC rules governing the offering of unregistered securities and the maintenance of appropriate books and records related to such activity. It is not a rule that can reasonably be expected to generate any material amount of inconsistent or duplicative regulatory burdens.

Since PORTAL is a trading facility of the Nasdaq exchange, execution access to the system must be limited to Nasdaq exchange members registered as PORTAL Brokers or PORTAL Dealers. As SIFMA itself points out in its letter, Nasdaq has limited authority over non-members of its exchange and, therefore, Nasdaq must require Nasdaq exchange membership for those broker/dealers firms that participate in the PORTAL system. Further, Nasdaq notes that the overwhelming majority of firms seeking qualification for PORTAL securities today are already members of the Nasdaq exchange, and that the costs associated with obtaining and maintaining Nasdaq exchange membership costs are extremely competitive and thus do not represent any significant barrier to PORTAL system access – particularly given the large institutional nature of the PORTAL market. As to SIFMA's request for clarification regarding Nasdaq's authority over PORTAL Qualified Investors, Nasdaq's reference to PORTAL Qualified Investors in PORTAL Rule 6513 was made in error. That provision is intended to apply only to PORTAL Dealers and PORTAL Brokers. Nasdaq's more limited authority to suspend or terminate the registration of a PORTAL Qualified Investor is found in proposed Rule 6506(c). Prior to the commencement of operation of the PORTAL system, Nasdaq will seek to file an immediately effective rule proposal to amend proposed Rule 6513 to restrict its application to PORTAL Dealers and PORTAL Brokers.

Finally, as the proposed PORTAL rules clearly provide, PORTAL Qualified Investors may not directly or indirectly access the trading or negotiation functionality of the PORTAL system. There is no ability for PORTAL Qualified Investors to negotiate or execute trades. PORTAL Qualified Investors can, however, view quotes and executions emanating from the system and may direct messages to PORTAL Brokers and Dealers to seek to have the broker or dealer represent them and negotiate and/or execute on their behalf with other PORTAL Brokers and PORTAL Dealers. We see no reasonable basis for objection to PORTAL Qualified Investors receiving information that will help them make informed trading decisions.

Subscriber Agreements

SIFMA notes that the proposal does not contain information regarding the provisions of subscriber and related agreements and states its belief that such agreements should be made available for public consideration, comment and review before approval

of the proposal by the Commission.

Nasdaq Response:

The Commission has never routinely required an exchange's commercial agreements to be filed, and Nasdaq sees no basis for deviating from the norm in this case. Simply put, we do not believe that the Commission or its staff considers review of warranties, indemnification clauses, intellectual property licenses, or similar commercial matters to fall within the areas of its expertise or statutory mandate. Nasdaq anticipates that PORTAL subscriber agreements will be substantially similar to Nasdaq subscriber agreements that are already in widespread use for other systems and services provided by Nasdaq.⁴ Moreover, the decision to participate in the system and execute a PORTAL subscriber agreement will be totally voluntary. To the extent that SIFMA members find the terms of an agreement objectionable, Nasdaq would expect SIFMA to make its views known directly to Nasdaq, without the need for Commission mediation.

Compliance with the Exchange Act

SIFMA requests that Nasdaq make its exemptive requests in connection the proposal publicly available for comment before the Commission issues any exemptive relief or approves the proposal so SIFMA and its members can review the legal and policy basis of the requests and see if there are any precedential or other considerations. SIFMA then notes that other organizations may wish to make similar requests for relief and requests that Nasdaq confirm that it intends to receive an exemption from SEC Rule 15c2-11 prior to PORTAL becoming operational. Separately, SIFMA also notes that Section 12(g) of the Exchange Act requires registration of an equity security if it is held by more than the number of persons specified by Section 12(g) of the Exchange Act and requests that Nasdaq state if it intends to monitor and limit the number of holders of PORTAL Securities so as to avoid such registration and if so, how it intends to accomplish those tasks.

Nasdaq Response:

Nasdaq declines SIFMA's request to publicize its exemptive requests and notes that it is not the general practice of the Commission to seek public comment on exemption requests.⁵ Nasdaq disagrees with the suggestion that its requests for exemption should be published simply to make sure that others agree with Nasdaq's legal analysis and/or the Commission's potential exercise of its explicit statutorily-granted exemptive authority. In the case of Nasdaq's exemption requests related to: 1) SEC Rule

⁴ See, e.g., NASDAQ Services Agreement at http://www.nasdaqtrader.com/trader/tradingservices/productservices/agreements/nasdaq_access_agreement.pdf.

⁵ See Rule 0-12(g), which provides that publication for comment of an exemption request is solely within the discretion of the SEC.

15c2-11⁶ (that would allow brokers and dealers to post quotations in PORTAL without first gathering certain information required by that rule), and 2) Exchange Act Section 12(g) (that would allow brokers or dealers to trade on a Nasdaq exchange facility PORTAL equity securities that are not registered under that section), similar exemptions to both rules were previously approved by the Commission in 1990 in connection with the initial implementation of PORTAL; the new requests raise no new substantive issues justifying publication for comment and its attendant delay. The prior exemption requests and the Commission's determinations are fully described in Securities Exchange Act Release No. 27955 (April 27, 1990); 55 FR 18781 (May 4, 1990) (SR-NASD-88-23), which is cited in the instant PORTAL proposal at footnote 6.

Regarding Nasdaq's request for an exemption from 12(b) of the Exchange Act (that would allow brokers or dealers to trade on a Nasdaq exchange facility PORTAL equity securities that are not registered under that section), Nasdaq notes that very recently, substantially the same issue was the subject of a full Commission review, which resulted in the granting of an exemption in connection with the implementation of the NYSE's Automated Bond System.⁷

In sum, Nasdaq's exemption requests include a statement of the exemptions requested, background information on PORTAL Market, and a description of the proposals contained in the PORTAL rule filing, and Nasdaq's legal analysis regarding the basis for the exemptions sought. That information, with the exception of Nasdaq's legal analysis, is included in the PORTAL rule filing that was published on May 1, 2007. To the extent that others may wish to rely on or seek similar exemptive relief, Nasdaq notes that its full requests for exemption and Commission letters granting such exemptions will be made available on the Commission's website after they are issued and, as such, there is no compelling basis for commencing a separate notice and comment process.

Finally, with regard to monitoring and limiting holders of PORTAL equity to avoid Section 12(g) registration, Nasdaq is currently in discussions with numerous market participants about the contours and specific operational needs of such a process and expects to either provide, or technologically support, such functionality at the time of the launch of the PORTAL system or very shortly thereafter.

Order Size

SIFMA notes the PORTAL rules state that orders in whole shares up to 999,999 shares may be entered into the system for normal processing and requests that Nasdaq explain its rationale for limiting order size in this manner and clarify if any limitations on

⁶ As requested by SIFMA, Nasdaq confirms that it intends for this and all other exemptions to be effective prior to PORTAL becoming operational.

⁷ See Securities Exchange Release No. 51998 (July 8, 2005); 70 F.R. 40748 (July 14, 2005) and Securities Exchange Act Release No. 54766 (November 16, 2006); 71 F.R. 67657 (November 22, 2006).

order sizes for normal processing will be imposed on bonds.

Nasdaq Response:

Nasdaq's selection of a single order share maximum of 999,999 is in keeping with its past practice for all of its trading systems including single book. For the size of quotes and orders for PORTAL debt, the system provides a 1000x size multiplier feature that will allow debt quotes and orders to be entered and executed up to a maximum size of 999,999,000 bonds. We have no reason to expect that these sizes are not adequate to meet the needs of market participants.

Removal of Certain Securities from PORTAL

SIFMA first notes that the proposal requires applicants submitting a request for PORTAL designation of a security to notify Nasdaq of the submission of the registration statement, and that in many registered exchange offers, a portion of bonds remains untendered. SIFMA then requests that Nasdaq clarify if, in such circumstances, it intends to remove all PORTAL securities eligible to be exchanged and, if so, would such removal be done when the registration statement becomes effective, or at some other point in time.

Nasdaq Response:

Nasdaq intends to immediately remove from PORTAL any security that becomes subject to an effective registration statement. Nasdaq believes that in order to maintain the integrity of the list of PORTAL qualified securities for use in the trading system it will be important to clearly and quickly terminate PORTAL securities that become subject to a registration statement so as to eliminate investor confusion about where and how the issue may trade. Nasdaq believes that these market quality goals outweigh the needs of a small minority of holders that may fail to tender. Such removals will take place upon Nasdaq being notified, or otherwise becoming aware, of an effective registration.

II. Comments of Friedman, Billings, Ramsey & Co, Inc. ("FBR")

In its comments, FBR states its view that, with some modifications, Nasdaq's proposal could beneficially increase transparency in the 144A market. However, FBR asserts that the proposal's "Nasdaq-approved QIB" concept will have the opposite effect by creating a hidden market in secondary 144A trading, place broker-dealers in conflict with their obligations of full and fair disclosure to their customers, and unfairly restrict the ability of accredited investors to sell shares permitted by Rule 144A. FBR also states its belief that the Commission should eliminate the link between PORTAL registration and eligibility of Rule 144A equity securities at The Depository Trust Company

("DTC"), arguing that the current practice provides Nasdaq an unfair competitive advantage.

The Nasdaq-Approved QIB Concept

FBR notes that Nasdaq has proposed limiting participation in the PORTAL Market to Qualified Institutional Buyers ("QIBs") approved by it and asserts that this limitation restricts who can directly access the PORTAL market and also prevents PORTAL Brokers and PORTAL Dealers from orally or in writing providing quotes, indications of interest, last sale information and other information from the system to QIB customers that have not been approved by Nasdaq. In FBR's view, the concept of Nasdaq-approved QIBs will create a hidden market similar to the one that existed in Nasdaq-listed securities prior to the adoption of the Order Handling Rules. FBR then indicates its concern that this inability to share such information is in conflict with its obligations under SEC and NASD Rules to provide fair treatment to its customers – customers who are, according to FBR, qualified to buy and sell under Rule 144A. FBR also raises process concerns related to QIBs being certified by Nasdaq, citing potential delays in approval that could impact a QIB customer's ability to buy or sell at a favorable price. As an alternative to Nasdaq's proposed role in reviewing QIB qualifications, FBR suggests that preventing disclosure of PORTAL information to QIBs can be accomplished by placing the onus on PORTAL Brokers and PORTAL Dealers to determine who is a QIB for purposes of accessing the system under existing Rule 144A standards. According to FBR, such an approach would allow QIB customers to act quickly on PORTAL information and eliminate the hidden market problem that they allege.

Nasdaq Response:

Nothing in Nasdaq's proposal prevents FBR from sharing PORTAL information with its QIB customers. Those QIBs must simply be qualified as a PORTAL Qualified Investor by Nasdaq in order to access such information. The limitation exists to ensure that Nasdaq, as a self-regulatory organization responsible for enforcing its rules, can take reasonable steps to prevent pricing information from reaching non-QIBs. Since many issuers of PORTAL securities also issue exchange-listed securities, dissemination of the information beyond QIBs has the potential to confuse investors in the related non-PORTAL securities.

FBR's analogy to "hidden" markets, where market participants willfully limit access, and the present proposal is misplaced. PORTAL is a voluntary market system that will operate under uniform, explicit standards governing access and information receipt. Moreover, it strains credulity to argue that QIBs, entities that by definition control \$100 million in investible assets, will be unable to incur the modest financial and ministerial costs that will be associated becoming a PORTAL Qualified Investor. Accordingly, if the PORTAL system proves to be of benefit to the market for 144A securities, QIBs will have no reason not to become qualified. The same logic applies to

claims that the Nasdaq QIB certification concept is somehow at odds with SEC and NASD customer protection rules. Leaving aside issues concerning the scope and applicability of such standards to a closed market system for Rule 144A securities intended exclusively for large brokerage firms and institutions, it cannot be the case that a firm or its QIB customer, having voluntarily decided not to participate in PORTAL, can thereafter reasonably assert that a lack of access to information from that very system prevents it from fulfilling its regulatory obligations or trading efficiently. As the operator of a trading system that must comply with SEC Rule 144A⁸, Nasdaq believes it has an obligation to seek to ensure that only qualified users access the PORTAL system and its information, even when such information is obtained indirectly from a PORTAL Dealer or PORTAL Broker. Nasdaq reviews the qualifications for users of all its systems, and many recipients of its market data, and PORTAL should be no different. In fact, given the closed nature of the system, such controls are of even greater importance. Nasdaq does agree, however, that its restrictions on dissemination of PORTAL information could have a negative impact on the ability of a PORTAL Dealer to share information about its own quote in a PORTAL security with its own customers. In response, Nasdaq proposes to, in consultation with Commission Staff, modify rules or otherwise clarify, prior to launch of the PORTAL system, that restrictions on transmission of PORTAL information do not apply to a PORTAL Dealer's provision of its own proprietary quote information to an established customer of that dealer.

Accredited Investors

FBR next discusses accredited investors and the impact the current proposal will have on those investors' ability to sell shares in compliance with Rule 144A and likewise place PORTAL Brokers and PORTAL Dealers in conflict with their obligations to their accredited investor customers. As described by FBR, since Rule 144A allows accredited investors to sell to QIBs, but Nasdaq's proposed rules will preclude PORTAL Brokers or PORTAL Dealers from sharing trade or quote information with such accredited investor customers, the brokers and dealers will fail to meet their fair-dealing obligations to those customers set forth in NASD and SEC rules. FBR notes that the current QIB-only access standard, and the fact that Regulation D securities are not proposed to be included in PORTAL, combine to ensure that an accredited investor cannot obtain relevant pricing information from PORTAL nor use the system to consummate sales to QIBs specifically permitted under Rule 144A. In response, FBR proposes that PORTAL Brokers and PORTAL Dealers be permitted to provide quote and last sale information to accredited investors as long as they have a reasonable belief that the accredited investor owns and is seeking to sell the restricted security for which it is seeking market information.

⁸ See Securities Exchange Act Release No. 55669 (April 25, 2007); 72 F.R. 23874 (the "Current PORTAL Proposing Release"), at 23877 and footnote 41 citing Nasdaq's obligations under Section 6(b)(1) of the Securities Exchange Act of 1934 to enforce compliance with, among other things, the federal securities laws.

Nasdaq Response:

Since its inception in 1990, PORTAL has consistently excluded Regulation D securities, and Nasdaq does not believe that it is required to operate a trading system that accommodates all re-sale activity permitted under Rule 144A. Instead, Nasdaq seeks initially to launch a PORTAL trading system that processes the type of securities historically designated as PORTAL securities. Introducing Regulation D offerings would increase the complexity of the PORTAL system offering during its crucial initial roll-out. As to FBR's proposed information sharing solution for accredited investors, Nasdaq is willing to consider, in consultation with Commission Staff, subsequent amendments to the PORTAL rules, after PORTAL is operational, to seek to reasonably accommodate this specific limited circumstance in a manner that does not unduly undermine restrictions on access to PORTAL information.

Depository Eligibility

FBR's last area of comment relates to depository eligibility. As FBR sees it, premising depository eligibility of a security on PORTAL eligibility is unnecessary and anticompetitive. FBR argues that DTC can conduct the same type of review performed by Nasdaq for determining PORTAL eligibility, and by doing so eliminate an impediment to competition between Nasdaq and Alternative Trading Systems that may want to offer competing trading systems but today may only trade securities already registered by PORTAL by issuers seeking depository eligibility.

Nasdaq Response:

As noted in Nasdaq's proposal, PORTAL Market designation is not specifically required for DTC eligibility. Instead, DTC policies allow book-entry to be granted to any security designated for inclusion in the system of a self-regulatory organization for the reporting, quoting and trading of Rule 144A securities, of which PORTAL is the only one in operation at this time.⁹ In short, nothing in DTC's current rules or processes would preclude another SRO from establishing and operating a system for Rule 144A securities and obtaining depository services for those issues. Nasdaq believes that this framework provides an opportunity for innovation and competition in servicing Rule 144A issuers superior to the DTC single utility model proposed by FBR. Finally, we note that DTC has to date expressed no interest in assuming this responsibility.

⁹ See Securities Exchange Act Release No. 33327; (December 13, 1993); 58 F.R. 67878 (December 22, 1993).

Nancy M. Morris
June 28, 2007
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We thank the Commission for providing this opportunity to respond to comments on the proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas P. Moran". The signature is written in a cursive style with a large initial "T" and "M".

Thomas P. Moran
Associate General Counsel