

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58622; File No. SR-NASDAQ-2008-072)

September 23, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Establish a PORTAL Reference Database and Related Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 16, 2008, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to establish a PORTAL Reference Database. Nasdaq will make the proposed rule change effective immediately upon approval.

The text of the proposed rule change is below. Proposed new language is underlined.<sup>3</sup>

\* \* \* \* \*

**7050. PORTAL Reference Database**

The following charges shall apply to access to the PORTAL Reference Database

- (1) For PORTAL data for 2008 and future years, the annual fee is:

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://nasdaq.complinet.com>.

<u>1-20 Users</u>	<u>\$20,000</u>
<u>21 to 100 Users</u>	<u>\$50,000</u>
<u>101+ Users</u>	<u>\$100,000</u>

(2) For PORTAL data for 1990 to 2007, the fee for each year of reference data shall be:

<u>1-20 Users</u>	<u>\$20,000 (not to exceed \$200,000 for access to all PORTAL historical data files from 1990 to 2007)</u>
<u>21 to 100 Users</u>	<u>\$50,000 (not to exceed \$500,000 for access to all PORTAL historical data files from 1990 to 2007)</u>
<u>101+ Users</u>	<u>\$100,000 (not to exceed \$1,000,000 for access to all PORTAL historical data files from 1990 to 2007)</u>

\* \* \* \* \*

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

**Background**

The National Association of Securities Dealers, Inc. (“NASD”) created the PORTAL Market in 1990,<sup>4</sup> simultaneously with the SEC’s adoption of Rule 144A,<sup>5</sup> to be a new trading system for the purpose of quoting, trading, and reporting trades in securities deemed eligible for resale by Qualified Institutional Buyers under Rule 144A. Rule 144A provides an exemption from registration under Section 5 of the Securities Act<sup>6</sup> for resales of privately placed securities to investors that meet the eligibility requirements of being a qualified institutional buyer (“QIB”) under Rule 144A(a)(1),<sup>7</sup> i.e., institutional investors that in the aggregate own or invest on a discretionary basis at least \$100 million in securities and broker/dealers that in the aggregate own or invest on a discretionary basis at least \$10 million in securities. The PORTAL Market did not develop as anticipated.<sup>8</sup> For many years, the sole function of the NASD related to the PORTAL market was to review whether an issue of privately placed securities met the

---

<sup>4</sup> Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781 (May 4, 1990) (the “original PORTAL rule filing”).

<sup>5</sup> Securities Act Release No. 6862 (April 23, 1990), 55 FR 17933 (April 30, 1990).

<sup>6</sup> 17 [sic] U.S.C. 77e.

<sup>7</sup> 17 CFR 230.144A(a)(1).

<sup>8</sup> For more information related to the background of The PORTAL Market, see Securities Exchange Act Release No. 55669 (April 25, 2007); 72 FR 23874 (May 1, 2007).

eligibility requirements of Rule 144A, thereby qualifying the securities for DTC book-entry services.

The staff of Nasdaq has historically had responsibility for review of PORTAL applications to determine the eligibility of securities and, originally, PORTAL participants (including broker/dealers and investors). Upon the separation of Nasdaq from the NASD and the approval of Nasdaq as a registered national securities exchange under Section 6 of the Act, the review functions for PORTAL market eligibility were retained by Nasdaq and the PORTAL Market Rules in the NASD Rule 5300 Series became the Nasdaq Rule 6500 Series.<sup>9</sup> The NASD continued, however, to regulate trading reporting for PORTAL-designated securities.

Since 1990, Nasdaq has designated over 26,000 equity and debt securities as being PORTAL-eligible. This designation process includes the submission and review of offering documents and memorandum related to the restricted nature of the security and the completion of a PORTAL market application form.

### **PORTAL Reference Database**

As part of Nasdaq's continuing efforts to enhance the transparency and efficiency of trading in Rule 144A issues, Nasdaq has created and intends to make publicly available, for a fee, a consolidated electronic reference database of information culled from PORTAL offering documents and applications submitted to Nasdaq since 1990. The database is fully electronic and allows users to determine, in addition to other information, a PORTAL issue's name and offering description, CUSIP, country of incorporation, security class, maturity class and date, currency denomination, applicable

---

<sup>9</sup> Securities Exchange Act Release No. 53128 (Jan. 13, 2006); 71 FR 3550 (Jan. 23, 2006).

interest and credit rating, convertibility and call provisions, total number of shares offered, and date of PORTAL designation. As new issues seek PORTAL designation, they too will be added to the database. Access to the database will open to all market participants.

As set forth in the proposed rule text, pricing for access to the database will be tiered based on the number of users authorized for access and the number of the years for which access is desired. There will be no pro-rating of these annual fees and all parties will pay a full year's fee regardless of when they elect to seek access to the database. The total cost of access to the full database will, however, be capped based on the number of users at a particular firm. Nasdaq believes that this pricing structure will allow users to better align and control their costs of access with their data usage.

Nasdaq believes that PORTAL reference database will materially improve the availability of historical information about issuances of restricted equity and debt and provide a more reliable background upon which market participants can make investment decisions regarding such securities.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>10</sup> in general, and with Section 6(b)(4) of the Act,<sup>11</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. Nasdaq notes that creation of the PORTAL reference database

---

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4).

required the retrieval, organization, and review of hundreds of thousands of pages of hard-copy documents as well as the conversion of retrieved information into electronic form, and its subsequent importation into the database itself. In addition, the database also required programming an information entry and retrieval protocol. On an ongoing basis, Nasdaq will also incur hardware and software costs for the maintenance and storage of PORTAL reference data.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2008-072 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2008-072. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments

received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2008-072 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.<sup>12</sup>

Florence E. Harmon  
Acting Secretary

---

<sup>12</sup> 17 CFR 200.30-3(a)(12).