

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61070; File No. SR-NASDAQ-2009-100)

November 30, 2009

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing For NASDAQ's Portal Reference Database

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 16, 2009, The NASDAQ Stock Market LLC (the "NASDAQ Exchange" or "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 the NASDAQ Exchange. The NASDAQ Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The NASDAQ Exchange is proposing to modify and simplify pricing for NASDAQ's Portal Reference Database. The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

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***7045. PORTAL Reference Database***

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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:

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1-20 Users	\$20,000
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21 to 100 Users	\$50,000
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101+ Users	\$100,000]
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[**(2)**] [**(1)** [For PORTAL data for 1990 to 2007,] [the] The fee for *each year* of reference data shall be:

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1-20 Users	\$20,000 (not to exceed \$200,000 for access to all PORTAL historical data files) [from 1990 to 2007)]
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21 [to 100] ±	\$50,000 (not to exceed \$500,000 for access to all PORTAL Users historical data files) [from 1990 to 2007)]
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[101+ Users]	[\$100,000 (not to exceed \$1,000,000 for access to all PORTAL historical data files from 1990 to 2007)]
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PORTAL securities are restricted securities, as defined in SEC Rule 144(a)(3) under the Securities Act; or securities that, pursuant to contract or through terms of the security, upon issuance and continually thereafter only can be sold pursuant to Regulation S under the Securities Act, SEC Rule 144A, or SEC Rule 144 under the Securities Act, or in a transaction exempt from the registration requirements of the Securities Act pursuant to Section 4 thereof and not involving any public offering that were designated for inclusion in the PORTAL Market by

Nasdaq. PORTAL equity securities are PORTAL securities that represent an ownership interest in a legal entity, including but not limited to any common, capital, ordinary, preferred stock, or warrant for any of the foregoing, shares of beneficial interest, or the equivalent thereof (regardless of whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, exercisable or non-exercisable, callable or non-callable, redeemable or non-redeemable). PORTAL debt securities are PORTAL securities that are United States dollar denominated debt securities issued by United States and/or foreign private corporations. PORTAL reference data consists of, in addition to other information, a PORTAL debt or equity issue's name and offering description, CUSIP, country of incorporation, security class, maturity class and date, currency denomination, applicable interest and credit rating, convertibility and call provisions, total number of shares offered, and date of PORTAL designation.

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

In its filing with the Commission, the NASDAQ Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASDAQ Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

a. Purpose

As part of NASDAQ's continuing efforts to enhance the transparency and efficiency of trading in Rule 144A issues, NASDAQ created and makes publicly available, for a fee, a

consolidated electronic reference database of information culled from offering documents and applications for securities seeking designation as a PORTAL security submitted to NASDAQ since 1990.<sup>4</sup> 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 interest and credit rating, convertibility and call provisions, total number of shares offered, and date of PORTAL designation. As new issues sought PORTAL designation, they too were added to the database. Access to the database is open to all market participants. There is no pro-rating of these fees. The total cost of access to the full database is capped based on the number of users at a particular firm. In this filing, NASDAQ is proposing to the [sic] modify and simplify fees for users of this database. Under the proposal, NASDAQ will: 1) eliminate the separate pricing schedule for more recent PORTAL data; and 2) only use two tiers, 1-20 users, and 21+ users, for pricing all PORTAL data. For example, under the old fee structure a firm seeking PORTAL data for 125 users for the years 2008 and 1996 would have been charged \$100,000 for the 2008 data, and \$100,000 for the 1996 data, for a total of \$200,000. Under the new structure, that same firm will now pay \$50,000 for the 2008 data, and \$50,000 for the 1996 data, for a total of \$100,000.

NASDAQ believes that the above price modifications with respect to the PORTAL Reference Database will encourage the use 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.

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<sup>4</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). NASDAQ no longer designates securities as PORTAL securities, and has filed with the Commission a rule proposal to eliminate its PORTAL Market rules. See Securities Exchange Act Release No. 60991 (November 12, 2009); 74 FR 60006 (November 19, 2009).

b. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Sections 6(b)(5) of the Act,<sup>6</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. NASDAQ also believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(4) of the Act,<sup>8</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. In connection with the fees, NASDAQ notes that creation of the PORTAL reference database 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. On an ongoing basis, NASDAQ will also incur hardware and software costs for the maintenance and storage of PORTAL reference data. Finally, NASDAQ notes that the Commission has previously approved the Portal Reference Database and that this filing simplifies and modifies fees for the database.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

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

The NASDAQ Exchange 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 on the proposed rule change were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied the five-day pre-filing notice requirement.

#### **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-2009-100 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2009-100. 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 the NASDAQ Exchange. All

comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2009-100 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 & Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).