

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58638; File No. SR-NASDAQ-2008-076)

September 24, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Nasdaq's PORTAL Market

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 September 19, 2008, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ 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 Stock Market LLC ("Nasdaq") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to: 1) cease operation, as a self-regulatory organization, of Nasdaq's electronic platform for the quoting and trading of restricted equity securities designated for inclusion in The PORTAL[®] Market ("PORTAL" or the "PORTAL Market"); and 2) file, pursuant to Nasdaq Rule 2140, for Nasdaq to a) acquire a minority ownership interest in a Delaware limited liability company to be known as The PORTAL Alliance LLC (the "Alliance") that would, in turn, own and operate an open electronic platform

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

for the posting of indicative quotations and negotiation of transactions in equity securities designated as PORTAL securities and b) enter into an agreement to operate the platform on behalf of the Alliance. Other members of the Alliance would include certain Nasdaq members or their affiliates. The text of the proposed amendment to the Nasdaq PORTAL Rules is below. Proposed new language is underlined, proposed deletions are in brackets.

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6501 Definitions

For purposes of the PORTAL[®] Rules, unless the context requires otherwise:

(a) – (e) No Change.

(f) The term "PORTAL security" or "PORTAL securities" shall mean a security that is currently designated [and authorized for inclusion in the] as a PORTAL security [Market] by Nasdaq pursuant to the Rule 6500 Series.

(g) The term "PORTAL Market" or "System" shall mean the system for the quotation, negotiation, execution and automated trade reporting of PORTAL Debt [s] Securities that is owned and operated by The NASDAQ Stock Market LLC.

(h) – (x) No Change.

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6504 Reporting Transactions in PORTAL Securities

Transactions in PORTAL Debt [s] Securities shall be reported by the System in accordance with applicable self-regulatory organization rules.

⁴ Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at <http://wallstreet.cch.com/nasdaq>.

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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, 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

On July 31, 2007, the SEC approved amendments to the PORTAL Rules that reestablished a trading system for the purpose of quoting and trading securities eligible for resale by qualified institutional buyers under SEC Rule 144A.⁵ This approval represented a new phase

⁵ Securities Exchange Act Release No. 56172 (July 31, 2007), 72 FR 44196 (SR-NASDAQ-2006-065). At the time of approval, Nasdaq indicated that it would first operate a system for trading PORTAL equity, and thereafter would enable the system to trade PORTAL debt securities. While the PORTAL equity functionality has been available since August 15, 2007, Nasdaq has yet to implement trading functionality for PORTAL debt securities. Subsequently, on February 21, 2008, the SEC approved amendments to the qualification requirements for equity securities to be designated for inclusion in PORTAL in cases where the security does not receive book-entry settlement services at The Depository Trust Corporation ("DTC") as had previously been required by PORTAL Rule 6502(b)(1)(C), but is nonetheless subject to an alternative regular-way non-DTC settlement procedure. Securities Exchange Act Release No. 57368 (February 21, 2008), 73 FR 10852 (SR-NASDAQ-2008-011).

in the operation of the Nasdaq PORTAL Market, which was originally approved by the SEC in 1990 simultaneously with the SEC's approval of Rule 144A.⁶

During the period following the reestablishment of the Nasdaq PORTAL Market, Nasdaq has reexamined the operational and ownership structure of PORTAL with a view to adopting changes that reflect the preferences of market participants and enhance the operation of the system, which, in turn, Nasdaq believes will achieve the goals of enhanced transparency and efficiency in the trading of restricted securities that are at the heart of Nasdaq's PORTAL initiatives.

As a result, Nasdaq is proposing to: 1) terminate the current Nasdaq PORTAL Market for equity securities, while continuing to review and designate both restricted debt and equity securities as PORTAL-eligible securities in its SRO capacity; and 2) enter into agreements with certain of its members or their affiliates (the "Firms") to create, and take a minority interest in, the Alliance, a Delaware limited liability company principally formed to operate a private open-access over-the-counter platform to facilitate transactions in, and, through expected links with third-party transfer tracking systems, monitor ownership of and compliance with transfer restrictions applicable to PORTAL eligible equity and certain other securities eligible for resale under Rule 144A, initially to be known as The PORTAL Alliance Platform (the "Alliance Platform").⁷ Under the proposed structure, Nasdaq will cease to operate the Nasdaq PORTAL

⁶ Rule 144A was adopted by the SEC in 1990 in Securities Act Release No. 6862 (April 23, 1990), 55 FR 17933 (S7-23-88). PORTAL was approved by the SEC in Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781 (SR-NASD-88-23). For an explanation of the history of the development of the PORTAL Market, see Securities Exchange Act Release No. 55669 (April 25, 2007), 72 FR 23874 (SR-NASDAQ-2006-065).

⁷ The Nasdaq member firms expected to enter into agreements with Nasdaq either directly or through affiliated or successor entities are: Banc of America Securities LLC; Citigroup Global Markets Inc.; Credit Suisse Securities (USA) LLC; Deutsche Bank

Market for equity securities in its capacity as a self-regulatory organization and instead operate the Alliance Platform in a private vendor capacity pursuant to corporate and commercial agreements among and between Nasdaq and the Alliance.⁸ Nasdaq has also agreed to phase out use of trademarks using the term PORTAL over the course of two years to prevent any confusion between the new Alliance Platform and the terminated Nasdaq PORTAL Market for equity securities. In return for its financial and intellectual property contributions, Nasdaq will receive a 10% ownership interest in the Alliance in addition to a non-voting preferred interest.⁹ Under the terms of its agreement with the Alliance to operate the Alliance Platform, Nasdaq will be reimbursed for the costs of operating and maintaining the Alliance Platform. The business operations and decisions of the Alliance Platform will ultimately be the responsibility of the Alliance's Board of Managers. Beyond its capacity as but one of what is expected to be initially 12 minority holders with a voting board seat and acting at the direction of the Alliance as operator of the Alliance Platform, Nasdaq will not direct, control, or otherwise manage the business of the Alliance. In addition, Nasdaq commits not to provide pricing or other concessions related to its exchange facilities to Nasdaq members based on their usage of the Alliance Platform.

Access to the Alliance Platform will be open to any qualified registered broker-dealer or institution, and will be entirely voluntary. Thus, any qualified party, including broker-dealers that are not parties to the Alliance limited liability company agreement, may enter indicative

Securities Inc.; Goldman, Sachs & Co.; J.P. Morgan Securities Inc.; Lehman Brothers Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Morgan Stanley & Co. Incorporated; UBS Securities LLC; and Wachovia Capital Markets, LLC.

⁸ Nasdaq has provided copies of these agreements to Commission Staff.

⁹ Nasdaq's financial contribution to the Alliance will be an amount equal to that received by Nasdaq for designating PORTAL equity securities.

quotations, negotiate trades through and receive transaction information from the Alliance Platform. Operationally, the Alliance Platform expects to have the current Nasdaq PORTAL Market quoting and trading functionality as it relates to PORTAL equity securities link with existing transfer tracking systems that monitor and enforce caps on recordholder numbers and other transfer restrictions for equity securities. The Alliance Platform will forward required trade reports for transactions in PORTAL securities negotiated on or otherwise reported to the Alliance Platform to the Financial Industry Regulatory Authority (“FINRA”) for regulatory purposes, as well as forward settlement-related transaction information to the relevant recipient(s) for settlement purposes.¹⁰

Nasdaq believes the above structure will encourage the posting of indicative quotation information in equity securities eligible for resale under Rule 144A (i) within a framework that makes such information generally available to qualified market participants and (ii) through a system that allows the qualified market participants to take action based on such information. In Nasdaq’s view, this result is far superior to the current situation where Nasdaq’s sole ownership of a 144A trading system as a facility of the exchange has resulted in no material improvement in the transparency and efficiency in the trading of 144A equity. This proposal creates an opportunity for a more transparent and technologically efficient trading and trade reporting environment for 144A equity to develop.

¹⁰ Currently, DTC allows Rule 144A securities that are not investment grade rated debt to be eligible for deposit, book-entry delivery, and other depository services only if the Rule 144A securities are designated for inclusion in a system of a self-regulatory organization (“SRO”) approved by the Commission “for the reporting of quotation and trade information of Rule 144A transactions (‘SRO Rule 144A System’).” See Securities Exchange Act Release No. 33327 (Dec. 13, 1993); 58 FR 67878. We note in this regard that the Alliance Platform will not be a system of a SRO approved by the Commission “for the reporting of quotation and trade information of Rule 144A transactions” within the meaning of this rule.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹¹ in general, and with Sections 6(b)(5) of the Act,¹² 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. In particular, Nasdaq believes that the proposal will encourage more competitive, efficient and transparent trading in restricted securities. By providing an operational and ownership structure that encourages an increased display of trading interest, Nasdaq expects the proposal to benefit all market participants that seek to invest in, or trade, such securities.

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

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;

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

and (iii) does not 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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-NASDAQ-2008-076 on the subject line.

Paper comments:

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

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 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 Nasdaq satisfied the five-day pre-filing notice requirement.

All submissions should refer to File Number SR-NASDAQ-2008-076. 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 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 offices 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-2008-076 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.¹⁵

Florence E. Harmon
Acting Secretary

¹⁵ 17 CFR 200.30-3(a)(12).