

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58891; File No. SR-NASDAQ-2008-072)

October 30, 2008

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

I. Introduction

On September 16, 2008, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”), filed with the Securities and Exchange Commission (“SEC” or “Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to establish a PORTAL Reference Database and related fees. The proposed rule change was published for comment in the Federal Register on September 30, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Nasdaq has created, and has proposed to make publicly available, for a fee, a consolidated fully-electronic reference database of information culled from PORTAL offering documents and applications submitted to Nasdaq since 1990.⁴ Nasdaq has represented that access to the database would be available to all market participants. The database would allow users to determine a PORTAL issue’s name and offering description, CUSIP, country of incorporation, security class, maturity class and date, currency denomination, applicable interest and credit

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58622 (September 23, 2008), 73 FR 56876 (September 30, 2008)(the “Notice”).

⁴ 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).

rating, convertibility and call provisions, total number of shares offered, and date of PORTAL designation, in addition to other information. On an ongoing basis, data regarding securities that obtain PORTAL designation would be added to the database.

Nasdaq has proposed that users of the PORTAL Reference Database would pay both an annual fee and an access fee per year of data desired. Annual fees would range between \$20,000 and \$100,000 and would be based on the number of users and are per calendar year. Access fees, which also range from \$20,000 to \$100,000, would be tiered based on the number of users authorized for access and the number of the years for which data is requested. The total cost of access to the full database would be capped based on the number of users at a particular firm.

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁶ which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using any facility or system which the exchange operates or controls.

Nasdaq represented that it incurred hardware and software costs, as well as personnel and other technology costs, to establish the PORTAL Reference Database. Establishing the database required the retrieval, review, conversion, and organization of large volumes of documents.

Nasdaq stated that there will be ongoing costs to maintain and update the database, as well. The Commission notes that the pricing structure should allow users to align and control the costs of

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(4).

access with their data needs, and that the information will be available to any participant that pays the fees. The Commission believes that the PORTAL Reference Database will make historical information about issuances of restricted equity and debt more available, which should assist market participants to make better-informed investment decisions regarding such securities.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change, (SR-NASDAQ-2008-072), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon
Acting Secretary

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).