

transparency into the connectivity options available to market participants.

The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(4) of the Act,<sup>7</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 the Exchange operates or controls. The filing codifies and makes transparent the fees imposed for direct connections to non co-located customers. These fees are uniform for all such customers and are either comparable to fees charged to co-located customers or vary due to different costs associated with providing service to the two customer types.

#### *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, 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2010-077 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-2010-077. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2010-077 and should be submitted on or before July 27, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-16289 Filed 7-2-10; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62391; File No. SR-NASDAQ-2010-069]

### **Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Free Trial Period for the Use of Correlix, Inc. Data Latency Products in the NASDAQ Market Center**

June 28, 2010.

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 June 18, 2010, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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,<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**

NASDAQ is filing with the Commission a proposed rule change to establish a free trial period for the use of Correlix, Inc. data latency products in the NASDAQ Market Center. There is no proposed rule text.

\* \* \* \* \* [sic]

(b) and (c) Not applicable. [sic]

#### **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.

<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).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

1. Purpose

Recently, NASDAQ entered into an agreement with Correlix to provide to users of the NASDAQ Market Center ("System") real-time analytical tools to measure the latency of orders to and from that System. The specifics of the NASDAQ/Correlix relationship are detailed in SR-NASDAQ-2010-068, a filing seeking Commission approval of the revenue sharing arrangement between the entities. The instant filing seeks Commission approval for the commencement of a free 60-day initial trial period for parties wishing to evaluate the Correlix RaceTeam offering for the NASDAQ Market Center while the Commission publishes and seeks comment on the separate revenue-sharing filing.

NASDAQ believes that the above approach will provide potential users valuable information about, and experience with, the Correlix RaceTeam product while simultaneously providing ample time for the Commission to review and seek public comment on the proposed revenue-sharing relationship between NASDAQ and Correlix.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Sections 6(b)(5) of the Act,<sup>5</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. In particular, the proposed rule change will provide potential users valuable information about, and experience with, the Correlix RaceTeam product while simultaneously providing ample time for the Commission to review and seek public comment on the proposed revenue-sharing relationship between NASDAQ and Correlix.

In addition, NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the

Act,<sup>6</sup> in general, and with Section 6(b)(4) of the Act,<sup>7</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 particular, NASDAQ notes that it will offer the free trial period on a uniform and non-discriminatory basis.

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

NASDAQ does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or 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)<sup>8</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

NASDAQ has requested that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>10</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will afford Exchange members the benefit of the proposal—the ability to evaluate the Correlix RaceTeam product for free—without unnecessary delay. For this reason, the Commission designates the proposed rule change as operative under upon filing.<sup>11</sup>

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Exchange has satisfied this requirement.

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2010-069 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-2010-069. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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

<sup>4</sup> 15 U.S.C. 78f.

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

available publicly. All submissions should refer to File Number SR–NASDAQ–2010–069 and should be submitted on or before July 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010–16290 Filed 7–2–10; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62354; File No. SR–NYSEAmex–2010–57]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Rule 0 To Provide That Certain References in Exchange Rules Should Be Understood To Also Include FINRA, as Applicable

June 22, 2010.

#### Correction

In notice document 2010–15649 beginning on page 36730 in the issue of Monday, June 28, 2010, make the following correction:

On page 36730, in the third column, the department docket number is printed correctly to read as set forth above.

[FR Doc. C1–2010–15649 Filed 7–2–10; 8:45 am]

BILLING CODE 1505–01–D

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62397; File No. SR–NASDAQ–2010–019]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change To Codify Prices for Co-Location Services

June 28, 2010.

#### I. Introduction

On January 29, 2010, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) 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> a proposed rule change relating to co-location services and related fees. The proposed rule change

was published for comment in the **Federal Register** on February 10, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

#### II. Description

As described in the Notice, NASDAQ is proposing to codify fees for its existing co-location services. Co-location services are a suite of hardware, power, telecommunication, and other ancillary products and services that allows market participants and vendors to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange and other NASDAQ OMX Group, Inc. markets. The Exchange provides co-location services and imposes fees through its wholly-owned subsidiary Nasdaq Technology Services LLC and pursuant to agreements with the owner/operator of its data center where both the Exchange’s quoting and trading facilities and co-located customer equipment are housed.<sup>4</sup> Users of co-location services include private extranet providers, data vendors, as well as NASDAQ Exchange members and non-members. The use of co-location services is entirely voluntary.

As detailed in its fee schedule, NASDAQ imposes a uniform set of fees for various co-location services, including: Fees for cabinet space usage, or options for future space usage; installation and related power provision for hosted equipment; connectivity among multiple cabinets being used by the same customer as well as customer connectivity to the Exchange and telecommunications providers;<sup>5</sup> and related maintenance and consulting services. Fees related to cabinet and power usage are incremental, with additional charges being imposed based on higher levels of cabinet and/or power usage, the use of non-standard cabinet sizes or special cabinet cooling equipment, or the re-selling of cabinet space.

NASDAQ is implementing a Cabinet Proximity Option program where, for a monthly fee, customers can obtain an option for future use on available currently-unused cabinet floor space in proximity to their existing equipment.

<sup>3</sup> See Securities Exchange Act Release No. 61488 (February 3, 2010), 75 FR 6748 (“Notice”).

<sup>4</sup> NASDAQ has provided co-location services at various data centers since approximately 2004. Currently, the Exchange provides its co-location services through data centers located in the New York City and Mid-Atlantic areas.

<sup>5</sup> NASDAQ states that these fees are for telecommunications connectivity only. Market data fees are charged independently by NASDAQ and other exchanges.

Under the program, customers can reserve up to maximum of 20 cabinets that the Exchange will endeavor to provide as close as reasonably possible to the customer’s existing cabinet space, taking into consideration power availability within segments of the datacenter and the overall efficiency of use of datacenter resources as determined by the Exchange. Should reserved datacenter space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space in contention or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: Proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer’s ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the datacenter space.

In the Notice, the Exchange made certain representations regarding its co-location services. First, the Exchange represents that co-location customers are not provided any separate or superior means of direct access to NASDAQ quoting and trading facilities, nor does the Exchange offer any separate or superior means of access to the Exchange quoting and trading facilities as among co-location customers themselves within the datacenter. Second, NASDAQ represents that it does not make available to co-located customers any market data or data feed product or service for data going into, or out of, the Exchange systems that is not likewise available to all the Exchange members.<sup>6</sup> Finally, the Exchange represents that all orders sent to the Exchange market enter the marketplace through the same central system quote and order gateway regardless of whether the sender is co-located in the Exchange data center or not. In short, according to the Exchange, it has created no special market technology or programming that is available only to co-located customers and has organized its systems to

<sup>6</sup> The Exchange made a 10Gb fiber connection available to co-located customers early in the first quarter of 2010. On June 21, 2010, the Exchange filed a proposed rule change that would, among other things, establish pricing for 10Gb fiber connections for customers who are not co-located in NASDAQ’s datacenter. See SR–NASDAQ–2010–077.

<sup>12</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.