

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63218; File No. SR-NASDAQ-2010-140)

November 1, 2010

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish a Flexible 60-Day Trial Period for New Users of Correlix Latency Measurement Services

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 October 26, 2010, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) 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 the Exchange. 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 proposes to change to establish a flexible 60-day free trial period for new users of Correlix latency measurement services, and to codify prices for those services.

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at NASDAQ’s principal office, on the Commission’s Web site at <http://www.sec.gov>, and at the Commission’s Public Reference Room. The Exchange will implement the proposed rule change immediately.

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

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

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

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

Correlix provides users of the NASDAQ Market Center (“System”) real-time analytical tools to measure the latency of orders to and from that System. Correlix shares with the Exchange a portion of the revenues it receives from subscribers.<sup>3</sup> Recently, the Commission approved a one-time 60-day free trial period for parties wishing to evaluate the Correlix RaceTeam offering for the NASDAQ Market Center.<sup>4</sup> That initial one-time free trial period expired on August 28, 2010. The instant filing seeks Commission approval to: 1) modify the free trial period so that all parties will be eligible for one free 60-day trial period whenever they initially elect to sign-up for the service now or in the future; and 2) codify and make transparent the current fees imposed by Correlix on those using the service to measure latency to and from the Exchange.

The Exchange is proposing the flexible trial period so as to ensure that all potential Correlix users have an equal opportunity to take advantage of an initial free trial period to evaluate the product. NASDAQ also notes that the introduction of more flexibility in determining when to participate in the free trial period will allow Correlix users to introduce the

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<sup>3</sup> The specifics of the NASDAQ/Correlix relationship are detailed in SR-NASDAQ-2010-068, a separate filing also recently approved by the Commission. See Exchange Act Release No. 62605 (July 30, 2010), 75 FR 47651 (August 6, 2010).

<sup>4</sup> See Exchange Act Release No. 62391 (June 28, 2010), 75 FR 38858 (July 6, 2010).

product into their own technology infrastructure at a time of their own choosing and in coordination with other scheduled technology initiatives.

Current pricing for the Correlix RaceTeam product for the NASDAQ market varies depending on the number of unique MPIDs and ports selected by the customer for monitoring by Correlix. For NASDAQ (including the NASDAQ Options Market), the fee is an initial \$3,000 monthly base fee for the first unique MPID monitored. For each additional unique MPID sought to be monitored, an additional monthly charge of \$1,000 is assessed. The monthly price for each unique MPID includes the monitoring of up to 25 NASDAQ port connections associated with that particular MPID. Customers that wish to exceed 25 ports per-MPID for monitoring can purchase additional 25 port blocks for an additional fee of \$1000 per month per MPID. To enhance transparency, the Exchange proposed to codify these fees.

The Exchange believes that the above proposals will provide users of the NASDAQ Market Center greater transparency into the fees associated with latency measurement services and encourage the use of such services on a trial basis.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Section 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

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

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

a national market system, and, in general, to protect investors and the public interest. In particular, the filing makes transparent uniform fees imposed for latency measurement services.

In addition, the Exchange 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 the Exchange operates or controls. In particular, the Exchange notes that the use of Correlix latency measurement services is entirely voluntary and made available on a non-discriminatory basis.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder, in that the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has

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

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

given 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 Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the Correlix service and fees sought to be codified here have already been approved by the Commission, and that accelerated approval of the a flexible initial trial period will ensure that the free period is made available to all interested parties without delay. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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:

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<sup>9</sup> For the 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. 78(c)(f).

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-2010-140 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-2010-140. 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 10:00 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 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-2010-140, 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>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).