

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.¹²

Florence E. Harmon,
Deputy Secretary.

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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]

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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”),¹ and Rule 19b–4 thereunder,² 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, 2010.³ 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.⁴ 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;⁵ 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.

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

⁴ 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.

⁵ 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.⁶ 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

⁶ 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.

¹² 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.