

RaceTeam subscribers' logins will restrict access to only their own latency data; and Correlix will not see specific information regarding the trading activity of non-subscribers.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>8</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Pursuant to the arrangement, EDGA makes the RaceTeam product uniformly available to all customers who voluntarily request it and pay the fees as detailed in the proposal, pursuant to a standard non-discriminatory pricing schedule. In addition, the Commission believes that the proposal will further the protection of investors and the public interest because: (1) Correlix will only be able to view data related to latency for Correlix RaceTeam subscriber firms; (2) Correlix will not see a subscriber's individual order detail such as security, price or size; (3) individual RaceTeam subscribers' logins will restrict access to only their own latency data; and (4) Correlix will not see specific information regarding the trading activity of non-subscribers.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-EDGA-2010-09) be, and hereby is, approved.

<sup>7</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62929; File No. SR-EDGX-2010-09]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Order Approving a Proposed Rule Change Relating to a Revenue Sharing Program With Correlix, Inc.

September 17, 2010.

On July 28, 2010, EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 to establish a revenue sharing program with Correlix, Inc. ("Correlix"). The proposed rule change was published for comment in the **Federal Register** on August 13, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

In its proposal, EDGX described real-time analytical tools offered by Correlix to measure the latency of orders to and from the System, and also described the terms of the pricing and the revenue sharing agreement between Correlix and the Exchange. In addition, the Exchange represented that under the agreement, EDGX will receive 30% of the total monthly subscription fees received by Correlix from parties who have contracted directly with Correlix to use their RaceTeam latency measurement service for the Exchange. According to the Exchange, EDGX will not bill or contract with any Correlix RaceTeam customer directly.

Pricing for the Correlix RaceTeam product for the Exchange varies depending on the depth of latency information requested, the number of unique MPIDs subscribed by the customer, and the number of ports available for monitoring by Correlix. For boundary-level Exchange latency information,<sup>4</sup> the fee will be an initial

\$1,500 monthly base fee for the first 25 ports associated in aggregate with any of the MPIDs selected by the Member for latency monitoring. For each additional 25 ports associated in aggregate with any of the MPIDs selected by the Member for latency monitoring, an additional monthly charge of \$750 will be assessed. For match-level Exchange latency information,<sup>5</sup> the fee will be an initial \$2,000 monthly base fee for the first 25 ports associated in aggregate with any of the MPIDs selected for latency monitoring, and an additional \$1000 per month for each additional 25 ports associated in aggregate with any of the MPIDs selected for latency monitoring.

According to the Exchange, Correlix will see an individualized unique Exchange-generated identifier that will allow Correlix RaceTeam to determine round-trip order time,<sup>6</sup> from the time the order reaches the Exchange extranet, through the Exchange matching engine, and back out of the Exchange extranet. In its proposal, the Exchange represented that the RaceTeam product offering does not measure latency outside of the Exchange extranet. Further, EDGX stated that the unique identifier serves as a technological information barrier so that the RaceTeam data collector will only be able to view data for Correlix RaceTeam subscriber firms related to latency. Accordingly, Correlix will not see subscriber's individual order detail such as security, price or size; individual RaceTeam subscribers' logins will restrict access to only their own latency data; and Correlix will not see specific information regarding the trading activity of non-subscribers.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section

a matching engine acknowledgement with respect to such order message is transmitted from the Exchange device back to the user. For market data, the time measurement will be from the time that the market data engine receives a market data update until the time that the market data update is transmitted from the Exchange device back to the user.

<sup>5</sup> In addition to the boundary-level Exchange latency information, match level information will also provide further elapsed time detail for messaging between Exchange internal systems.

<sup>6</sup> According to EDGX, the product measures latency of orders regardless of whether the orders are rejected, executed, or partially executed.

<sup>7</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</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.

<sup>3</sup> See Securities Exchange Act Release No. 62682 (August 10, 2010), 75 FR 50029.

<sup>4</sup> The time that elapses from an order message's receipt by an Exchange device until the time that

6(b)(4) of the Act,<sup>8</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Pursuant to the arrangement, EDGX makes the RaceTeam product uniformly available to all customers who voluntarily request it and pay the fees as detailed in the proposal, pursuant to a standard non-discriminatory pricing schedule. In addition, the Commission believes that the proposal will further the protection of investors and the public interest because: (1) Correlix will only be able to view data related to latency for Correlix RaceTeam subscriber firms; (2) Correlix will not see a subscriber's individual order detail such as security, price or size; (3) individual RaceTeam subscribers' logins will restrict access to only their own latency data; and (4) Correlix will not see specific information regarding the trading activity of non-subscribers.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-EDGX-2010-09) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62927; File No. SR-FINRA-2010-046]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Exemptions from the Trading Activity Fee

September 17, 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 September 7, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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 Substance of the Proposed Rule Change

FINRA is proposing to [sic] amend Section 1(b) of Schedule A to the FINRA By-Laws to remove the exemption from the trading activity fee ("TAF") for transactions in exchange-listed options effected by a member when FINRA is not the designated options examining authority ("DOEA") for that member.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

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

In its filing with the Commission, FINRA 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. FINRA 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

The TAF is one of three member regulatory fees FINRA uses to fund its member regulation activities, which include examinations, financial monitoring, and FINRA's policymaking, rulemaking, and enforcement activities.<sup>3</sup> FINRA initially adopted the TAF in 2002 as a replacement for an earlier regulatory fee based on trades reported to Nasdaq's Automated Confirmation Transaction system then in place.<sup>4</sup> Because the TAF funds FINRA's member regulation functions, it is intended to apply to transactions in a way that corresponds with FINRA's regulatory responsibilities.<sup>5</sup> In general, the TAF is assessed for the sale of all exchange registered securities wherever executed (except debt securities that are not TRACE-eligible), over-the-counter equity securities, security futures, TRACE-Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to the reporting requirements of the Municipal Securities Rulemaking Board.<sup>6</sup> The TAF rules also include numerous exemptions for certain types of transactions.<sup>7</sup> The proposed rule change would eliminate the exemption from the TAF for transactions in exchange-listed options when FINRA is not the DOEA for that member.<sup>8</sup>

In 2003, FINRA exempted from the TAF "[t]ransactions in exchange listed options effected by a member when FINRA is not the designated options examining authority for that member."<sup>9</sup> The exemption was added to reflect the

<sup>3</sup> See FINRA By-Laws, Schedule A, § 1(b). In addition to the TAF, the other member regulatory fees are the Gross Income Assessment and the Personnel Assessment. See *id.* §§ 1(c), (d).

<sup>4</sup> See Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Eliminate the Regulatory Fee and Institute a New Transaction-Based Trading Activity Fee); see also NASD Notice to Members 02-63 (September 2002); NASD Notice to Members 02-41 (July 2002). The TAF was originally approved on a pilot basis; the SEC approved the TAF on a permanent basis in 2003. See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003); see also NASD Notice to Members 03-30 (June 2003).

<sup>5</sup> See Securities Exchange Act Release No. 50485 (October 1, 2004), 69 FR 60445 (October 8, 2004).

<sup>6</sup> See FINRA By-Laws, Schedule A, § 1(b)(1).

<sup>7</sup> See FINRA By-Laws, Schedule A, § 1(b)(2).

<sup>8</sup> See FINRA By-Laws, Schedule A, § 1(b)(2)(K).

<sup>9</sup> FINRA By-Laws, Schedule A, § 1(b)(2)(K). See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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.