designate a shorter time if such action is consistent with the protection of investors and the public interest. Because FINRA is delaying the implementation of Rules 2090 and 2111 only, FINRA requests that the Commission waive the 30-day operative delay so that this proposed rule change may become operative upon filing.

SR–FINRA–2010–039 would amend and convert existing NYSE and NASD know your customer and suitability rules into the consolidated FINRA rulebook [11] and, to the extent implementation of SR–FINRA–2010–039 is postponed, FINRA members remain subject to those existing NYSE and NASD know-your-customer and suitability obligations. Further, the delay in the implementation date will allow firms additional time to better prepare procedures and systems and better educate associated persons and supervisors to comply with the requirements of new FINRA Rules 2090 and 2111. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.[12]

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:

*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.* Please include File Number SR–FINRA–2011–016 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–FINRA–2011–016. 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 FINRA. 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–FINRA–2011–016 and should be submitted on or before May 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–8873 Filed 4–12–11; 8:45 am]

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[11] The current FINRA rulebook consists of (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from NYSE ("Incorporated NYSE rules") (together, the NASD Rules, and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD rules generally apply to all FINRA member firms, the Incorporated NYSE rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

[12] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64259; File No. SR–NASDAQ–2010–134]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of Longer Time Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Adopt Additional Criteria for Listing Commodity Stockpiling Companies That Have Indicated That Their Business Plan Is To Buy and Hold Commodities

April 8, 2011.

On October 15, 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 to adopt additional criteria for listing commodity stockpiling companies ("CSCs") that have indicated that their business plan is to buy and hold commodities. The proposed rule change was published for comment in the **Federal Register** on November 3, 2010.[3] The Commission received no comments on the proposal. The Commission subsequently extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or to institute proceedings to determine whether to disapprove the proposed rule change, to February 1, 2011.[4] The Commission received one comment letter on the proposal.[5] On January 31, 2011, the Commission issued an order instituting proceedings to determine whether to disapprove the proposed rule change.[6]

Section 19(b)(2) of the Act [7] provides that not later than 180 days after the date of publication of notice of the filing of a proposed rule change, the Commission shall issue an order approving or disapproving the proposed rule change. Section 19(b)(2) of the Act [8] further provides that the Commission may extend the period for issuance of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63207 (October 28, 2010), 75 FR 67788.

[4] *See* Securities Exchange Act Release No. 63508 (December 9, 2010), 75 FR 78300 (December 15, 2010).

[5] *See* Letter from Edward H. Smith, Jr. to Florence E. Harmon, Deputy Secretary, Commission, dated January 18, 2011.

[6] *See* Securities Exchange Act Release No. 63804 (January 31, 2011), 76 FR 6506 (February 4, 2011).

[7] 15 U.S.C. 78s(b)(2)(B)(ii)(I).

[8] 15 U.S.C. 78s(b)(2)(B)(ii)(II).

the order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination, or the self-regulatory organization that filed the proposed rule change consents to the longer period.

The Commission is extending the 180-day time period for the issuance of an order approving or disapproving the proposed rule change for an additional 60 days.[9] The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that the Commission has sufficient time to consider the Exchange's proposal and whether it is consistent with the Act. The proposal would establish, for the first time, standards for listing securities of companies whose business plan is to buy and hold commodities.

Accordingly, pursuant to Section 19(b)(2) of the Act,[10] the Commission designates July 1, 2011 as the date by which the Commission shall issue an order either approving or disapproving the proposed rule change (File Number SR–NASDAQ–2010–134).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–8872 Filed 4–12–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64246; File No. SR–NASDAQ–2011–048]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

April 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2011, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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 modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on April 1, 2011. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, 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, 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.

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

1. Purpose

NASDAQ is amending Rule 7018 to make modifications to its pricing schedule for execution of quotes/orders through the NASDAQ Market Center of securities priced at $1 or more. Under the pricing schedule, NASDAQ offers a credit to liquidity providers, with the size of the credit varying based on a range of parameters specified in the fee schedule. The lowest liquidity provider rebate is $0.0020 per share executed for displayed quotes/orders and $0.0010 per share executed for non-displayed quotes/orders. One means by which members may currently receive a higher liquidity rebate is focused on the use of non-displayed quotes/orders: members providing 3 million shares or more of liquidity through one or more MPID using non-displayed quotes/orders receive a rebate of $0.0015 per share executed, rather than the basic rebate of $0.0010 per share executed, with respect to those quotes/orders.[3] Effective April 1, 2011, NASDAQ will eliminate this rebate provision. As NASDAQ noted when it introduced this rebate provision in January 2011,[4] NASDAQ believes that transparent markets should be encouraged wherever possible, but NASDAQ does offer members the option of providing liquidity through non-displayed quotes/orders in order to allow it to compete better with alternative trading systems that operate as dark pools. Accordingly, it was NASDAQ's expectation that the rebate tier might encourage some members that use dark pools extensively to make greater use of non-displayed liquidity on NASDAQ. Because such a response did not occur, NASDAQ has decided to eliminate the tier. NASDAQ notes that the tier's elimination will not impact any members, because there are no members that currently qualify for the tier that do not also qualify for the same rebate for non-displayed quotes/orders (and a higher rebate for displayed quotes/orders) under another volume-based pricing tier.

Second, NASDAQ is introducing a new rebate tier for members that are active in both the NASDAQ Market Center and the NASDAQ Options Market. Currently, a member is eligible to receive an enhanced rebate of $0.0029 per share executed for displayed quotes/orders and of $0.0015 per share executed for non-displayed quotes/orders if it achieves certain specified levels of activity in both markets. The required levels of monthly activity are an average daily volume of more than 10 million shares of liquidity provided through the NASDAQ Market Center and an average daily volume of more than 130,000 options contracts accessed or provided through the NASDAQ Options Market. In each case, the member may achieve the required volume levels through one or more of its market participant identifiers ("MPIDs"). While retaining this tier,[5] NASDAQ is proposing to add an additional tier for a market participant with (i) shares of liquidity provided through the NASDAQ Market Center in all securities during the month equal to 1% or more of the average total consolidated volume reported to all consolidated transaction

[9] The proposed rule change was published for notice and comment in the **Federal Register** on November 3, 2010. *See supra* note 2. The 180th date from publication in the **Federal Register** is May 2, 2011 and an additional 60-days from that date would extend the time period to July 1, 2011.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The rebate for displayed quotes/orders for such members is the basic rate of $0.0020 per share executed, unless the member otherwise qualifies for a more favorable rebate with respect to its displayed quotes/orders.

[4] Securities Exchange Act Release No. 63648 (January 5, 2011), 76 FR 2178 (January 12, 2011) (SR–NASDAQ–2011–003).

[5] NASDAQ is, however, modifying the wording of the existing tier in Rule 7018 to improve its clarity. The changes do not result in any substantive changes to the applicability of the tier.