

existing practice and helps to promote a fair and efficient process for the resolution of claims.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-FINRA-2011-006), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64260; File No. SR-FINRA-2011-016]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation date of FINRA Rule 2090 (Know Your Customer) and FINRA Rule 2111 (Suitability)

April 8, 2011.

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 April 7, 2011, 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 and II below, which Items have been substantially prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by 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 Substance of the Proposed Rule Change

FINRA is proposing a rule change to delay the implementation date for FINRA Rule 2090 (Know Your Customer) and FINRA Rule 2111

(Suitability), as approved in SR-FINRA-2010-039, until July 9, 2012.

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

On November 17, 2010, the SEC approved FINRA’s proposal to adopt rules governing know-your-customer and suitability obligations<sup>4</sup> for the consolidated FINRA rulebook.<sup>5</sup> On January 10, 2011, FINRA issued *Regulatory Notice* 11-02, which provided guidance regarding the new rules and announced an implementation date of October 7, 2011. Following SEC approval of the rules and publication of the *Regulatory Notice*, numerous firms requested that the approved rules’ implementation date be delayed to allow firms additional time to determine the types of systems and procedural changes they need to make, implement those changes, and educate associated persons and supervisors regarding compliance with the rules. FINRA is filing this rule change to move the implementation date for Rules 2090 and 2111 from October 7, 2011, to July 9,

<sup>4</sup> See Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (Order Approving File No. SR-FINRA-2010-039).

<sup>5</sup> 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 member, 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).

2012, and has filed it as a “non-controversial” rule change that is effective upon filing.

###### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>6</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change furthers these purposes because it will allow firms to better prepare procedures and systems and better educate associated persons to comply with the requirements of these important rules.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA 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.

##### 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

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) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</sup> normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to

<sup>6</sup> 15 U.S.C. 78o-3(b)(6).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii). Among other things, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to 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 Commission notes that FINRA has satisfied the pre-filing notice requirement.

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</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> 17 CFR 240.19b-4(f)(6).

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<sup>11</sup> 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.<sup>12</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.

<sup>11</sup> 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).

<sup>12</sup> 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).

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-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.<sup>13</sup>

**Cathy H. Ahn,**  
Deputy Secretary.

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<sup>13</sup> 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> The Commission received one comment letter on the proposal.<sup>5</sup> On January 31, 2011, the Commission issued an order instituting proceedings to determine whether to disapprove the proposed rule change.<sup>6</sup>

Section 19(b)(2) of the Act<sup>7</sup> 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<sup>8</sup> further provides that the Commission may extend the period for issuance of

<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. 63207 (October 28, 2010), 75 FR 67788.

<sup>4</sup> See Securities Exchange Act Release No. 63508 (December 9, 2010), 75 FR 78300 (December 15, 2010).

<sup>5</sup> See Letter from Edward H. Smith, Jr. to Florence E. Harmon, Deputy Secretary, Commission, dated January 18, 2011.

<sup>6</sup> See Securities Exchange Act Release No. 63804 (January 31, 2011), 76 FR 6506 (February 4, 2011).

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B)(ii)(I).

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B)(ii)(II).