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 publicly available. All submissions should refer to File Number SR–FINRA–2011–043 and should be submitted on or before October 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23792 Filed 9–15–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65316; File No. SR–EDGA–2011–29]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to EDGA Rules Regarding the Registration and Obligations of Market Makers

September 12, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2011, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter XI of the EDGA rulebook to add four new rules regarding the registration and obligations of market makers and amend Rule 1.5 to add definitions of ''Market Maker'' and ''Market Maker Authorized Trader.'' The Exchange also proposes to amend Rule 8.15, Interpretation .01 to expand the list of violations eligible for disposition under the Exchange's Minor Rule Violation Plan (''MRVP'') by adding Rule 11.21(a)(1). The Exchange also proposes to amend EDGA Rule 14.1, entitled ''Unlisted Trading Privileges,'' to restrict trading activities of market makers, and impose a series of reporting and record-keeping requirements on market makers. The text of the proposed rule change is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

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

In its filing with the Commission, the Exchange 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. The self-regulatory organization 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 purpose of the proposed rule change is to provide Members the ability to register as Market Makers and to provide for the regulation of Market Makers. Registration as a Market Maker will be purely optional. The process for registration as a Market Maker is contained in proposed Rule 11.18, which provides that applicants must file applications in such form as the Exchange may prescribe. Applicants will be reviewed by the Exchange, which will consider factors including the capital, operations, personnel, technical resources and disciplinary history of the applicant. Each Market Maker must have and maintain the minimum net capital of at least the amount required by Rule 15c3–1 under the Securities Exchange Act of 1934 (the ''Act'').[3] Pursuant to the proposed Rule, an applicant's registration as a Market Maker will become effective upon receipt by the Member of the Exchange's notice of approval of registration. Under proposed Rule 11.18(f), registered Market Makers are designated as dealers on the Exchange for all purposes under the Act and the rules and regulations thereunder.

Proposed Rule 11.18 also provides that the registration of a Market Maker may be suspended or terminated by the Exchange if the Exchange determines that the Market Maker substantially or continually fails to engage in dealings in accordance with Exchange Rules, if the Market Maker fails to meet the minimum net capital conditions, if the Market Maker fails to maintain fair and orderly markets, or if the Market Maker does not have at least one registered Market Maker Authorized Trader (''MMAT'') qualified to perform market making activities as set forth in proposed Rule 11.19(b)(5).[4] Any Market Maker may also withdraw its registration under the proposed Rule. Subsection (d) of the proposed Rule provides that the Exchange may require a certain minimum prior notice period for withdrawal, and may place other conditions on withdrawal and re-registration following withdrawal, as it deems appropriate to maintain fair and orderly markets.

Proposed Rule 11.19 provides for the registration and obligations of MMATs. The Exchange can register a person as a MMAT upon receiving an application in the form prescribed by the Exchange, and MMATs are permitted to enter orders only for the account of the Market Maker for which they are registered. MMATs may be officers, partners, employees, or other associated persons of Members who are registered as Market Makers. To be eligible for registration as a MMAT, a person must complete the training and other programs required by the Exchange and successfully complete the General Securities Representative Examination (Series 7) or equivalent foreign examination module approved by the Exchange. Market Makers must ensure that their MMATs are properly qualified to perform market making activities. The Exchange may grant a person conditional registration as a MMAT as appropriate in the interests of maintaining a fair and orderly market.

In addition, under proposed Rule 11.19, the Exchange may suspend or withdraw the registration of a MMAT if the Exchange determines that the person has caused the Market Maker to fail to comply with the securities laws or rules of the Exchange, if the person fails to

[16] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.15c3–1.

[4] A MMAT whose registration is suspended pursuant to proposed Rule 11.18(c) shall not be deemed qualified within the meaning of Rule 11.18(c)(4).

perform his or her responsibilities properly, or fails to maintain fair and orderly markets. If a MMAT is suspended, the Market Maker may not allow the person to submit orders. A Member may also withdraw the registration of a MMAT by submitting to the Exchange a written request on a form prescribed by the Exchange.

Proposed Rule 11.20 provides for the registration of Market Makers in a security. A Market Maker may become registered in a newly authorized security or in a security already admitted to dealings on the Exchange by filing a security registration form with the Exchange. Registration in the security shall become effective on the same day that the Exchange approves the registration, unless otherwise provided by the Exchange. In considering the approval of the registration of the Market Maker in a security, the Exchange may consider the financial resources available to the Market Maker, the Market Maker's experience in making markets, the Market Maker's operational capability, the maintenance and enhancement of competition among Market Makers in each security in which they are registered, the existence of clearing arrangements for the Market Maker's transactions and the character of the market for the security. The proposed Rule also provides that a Market Maker may voluntarily terminate its registration in a security by providing the Exchange with a written notice of such termination. The Exchange may require a certain minimum prior notice period for such termination and may place other conditions on withdrawal and re-registration following withdrawal. The Exchange may suspend or terminate the registration of a Market Maker in any security whenever it determines that the Market Maker has not met one or more of its obligations, including if the Exchange determines that the Market Maker has failed to maintain fair and orderly markets.

The Exchange's determinations pursuant to proposed Rules 11.18 through 11.20 may be appealed by any person aggrieved by such determination. The procedures for appeal are established in Chapter X of the Exchange's rulebook.

Finally, Proposed Rule 11.21 sets out the obligations of Market Makers. In general, Market Makers must engage in a course of dealings for their own accounts to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange. The responsibilities of a Market Maker include, without limitation, remaining in good standing with the Exchange and in compliance with all applicable Exchange Rules; informing the Exchange of any material change in its financial or operational condition or personnel [5]; maintaining a current list of MMATs and providing any updates to such list to the Exchange upon any change in MMATs; and clearing and settling transactions through the facilities of a registered clearing agency. The latter requirement may be satisfied by direct participation, use of direct clearing services, or by entering into a correspondent clearing arrangement with another Member that clears trades through such agency. Market Makers will be responsible for the acts and omissions of its MMATs. If the Exchange finds any substantial or continued failure by a Market Maker to engage in a course of dealing as specified in this Rule, such Market Maker will be subject to disciplinary action or suspension or revocation of its registration.

Further, proposed Rule 11.21(d) provides that a Market Maker must maintain continuous, two-sided quotations within a designated percentage of the National Best Bid (''NBB'') and National Best Offer (''NBO'', and together with the NBB, the ''NBBO'') (or, if there is no NBB or NBO, the last reported sale). These Market Maker quotation requirements are intended to eliminate trade executions against Market Maker quotations priced far away from the inside market, commonly known as ''stub quotes''. They are also intended to augment and work in relation to the single stock pause standards already in place on a pilot basis for stocks in the S&P 500® Index [6] and the Russell 1000® Index, as well as a pilot list of Exchange Traded Products [7] (the ''Original Circuit Breaker Securities''). Permissible quotes are determined by the individual character of the security, the time of day in which the quote is entered and other factors which are summarized below.

For issues subject to an individual stock trading pause under the applicable rules of a primary listing market, a permissible quote (also known as ''Designated Percentage'') is as follows: (i) A Market Maker's quotes in the Original Circuit Breaker Securities shall not be more than 8% away from the NBBO; (ii) a Market Maker's quotes in National Market System (''NMS'') securities (as defined in Rule 600 of Regulation NMS) [8] that are not Original Circuit Breaker Securities with a price equal to or greater than $1 shall not be more than 28% away from the NBBO; and (iii) a Market Maker's quotes in NMS securities that are not Original Circuit Breaker Securities with a price less than $1 shall not be more than 30% away from the NBBO. For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market (*e.g.,* before 9:45 a.m. and after 3:35 p.m. Eastern time), the Designated Percentage shall be 20% for Original Circuit Breaker Securities, 28% for all NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than $1, and 30% for all NMS securities that are not Original Circuit Breaker Securities with a price less than $1.

Once a compliant quote is entered, it may rest without adjustment until such time as it moves to within 9.5% away from the NBBO for Original Circuit Breaker Securities, 29.5% away from the NBBO for NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than $1, and 31.5% away from the NBBO for all NMS securities that are not Original Circuit Breaker Securities with a price less than $1, whereupon the Market Maker must immediately adjust its quote to at least the permissible default level of 8%, 28%, or 30%, respectively, away from the NBBO. During times when a stock pause trigger percentage is not applicable, a Market Maker must enter a quote no further than:

(i) 20% away from the inside (*i.e.,* it may rest without adjustment until it reaches 21.5% away from the inside) for Original Circuit Breaker Securities;

(ii) 28% away from the inside for all NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than $1 (*i.e.,* it may rest without adjustment until it reaches 29.5% away from the inside); and

(iii) 30% away from the inside for all NMS securities that are not Original Circuit Breaker Securities with a price less than $1 (*i.e.,* it may rest without adjustment until it reaches 31.5% away from the inside).

In the absence of a NBB or NBO, the above calculations will remain the

[5] The Exchange proposes to include an interpretation that reminds Market Makers that, in addition to their obligation under Rule 11.21(a)(3) to ''inform the Exchange of any material change in financial or operational condition'', they are also obligated to submit a copy of such notice with Securities and Exchange Commission (''SEC'') pursuant to Rule 17a–11 under the Act, 17 CFR 240.17a–11. The notice to the Exchange must be sent concurrently with the notice sent to the SEC. *See* EDGA Rule 4.2.

[6] *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–EDGA–2010–01).

[7] *See* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–EDGA–2010–05).

[8] 17 CFR 240.600 [sic].

same, but will use the national last sale instead of the absent bid or offer.

However, scenarios may occur in which pricing at the commencement of a trading day, or at the re-opening of trading in a security that has been halted, suspended, or paused pursuant to Rule 11.14(d), is significantly different from pricing for the security at the close of the previous trading day or immediately prior to the halt, suspension, or pause, respectively. These pricing differentials could be the result of corporate actions that occur after the close of the previous trading day or the market's absorption of material information during the halt, suspension, or pause. Based on this concern, the Exchange believes that Market Makers should not be subject to the pricing obligations proposed herein when the last sale of the previous trading day, or immediately prior to a halt, is the only available reference price.

The Exchange therefore proposes that, for NMS stocks, a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Trading Hours,[9] provided, however, that such pricing obligations: (i) Shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.

Nothing in the above precludes a Market Maker from voluntarily quoting at price levels that are closer to the NBBO than required under the proposal.

The Exchange proposes to offer functionality to Market Makers to assist them with the quotation obligations proposed by this filing. The Exchange will comply with a Market Maker's instructions for the Exchange to enter a quote on the Market Maker's behalf consistent with proposed paragraph 11.21(d). Such instructions will be entered into the System [10] by the Market Maker prior to 9 a.m. in order to take effect on the same trading day. Under proposed Rule 11.21(e), the Exchange will refresh such two-sided quotations in each security in which a Market Maker is registered for a maximum of ten (10) executions per security per Market Maker. After such time, the Market Maker must contact the Exchange in order for the Exchange to continue such two-sided quotations for another ten (10) executions on behalf of the Market Maker. If the Market Maker does not contact the Exchange, the Exchange will not refresh such two-sided quotations in such securities. The Exchange proposes to enter the initial bid and offer at the Designated Percentage and to cancel and replace the bid or offer if it drifts away from the NBBO to the Defined Limit or away from the Designated Percentage towards the NBBO by a number of percentage points determined by the Exchange. The Exchange will determine and publish this percentage in a circular distributed to Members from time to time. The Exchange wishes to retain this flexibility in the event it wishes to modify the number periodically in the future, for instance, to mitigate the amount of quotation information resulting from Exchange-generated Market Maker quotes. If a bid or offer entered pursuant to proposed paragraph 11.21(e) is executed, the Exchange will enter a new bid or offer on behalf of a Market Maker. Bids and offers entered by the Exchange consistent with proposed paragraph (e) to replace a cancelled or executed quotation will be entered at the Designated Percentage away from the NBBO. Such orders will be posted by the Exchange as Post Only Orders,[11] and will be maintained on the Exchange during Regular Trading Hours unless cancelled by the Market Maker pursuant to the Exchange's Rules. In the event that a Market Maker cancels the quotations entered by the Exchange in accordance with proposed paragraph (e), such Market Maker remains responsible for compliance with the requirements of paragraph (d).

The Exchange proposes to cross-reference the above-described Market Maker quotation obligations found in paragraph (d) in paragraph (a)(1).

The Exchange believes that these proposed rules will benefit all Exchange participants, because Market Makers will assist in the maintenance of fair and orderly markets, provide additional liquidity to the Exchange, and assist in preventing excess volatility.

Rule 1.5 has been amended to add the definitions of ''Market Maker'' and ''Market Maker Authorized Trader.'' As a result, the rest of Rule 1.5 has been re-lettered accordingly.

Amendments to Exchange Rule 14.1 (Unlisted Trading Privileges)

The Exchange proposes to add Rule 14.1(c)(5) to restrict trading activities of Market Makers and impose a series of reporting and record-keeping requirements on Market Makers. As a result, current EDGA Rule 14.1(c)(5) has been re-numbered as EDGA Rule 14.1(c)(6).

Proposed EDGA Rule 14.1(c)(5) provides for restrictions for any Member registered as a Market Maker on the Exchange (''Restricted Market Maker'') in a derivative securities product (''UTP Derivative Security'') that derives its value from one or more currencies or commodities, or from a derivative overlying one or more currencies or commodities, or is based on a basket or index comprised of currencies or commodities (collectively, ''Reference Assets''). Specifically, proposed EDGA Rule 14.1(c)(5)(A) provides that a Restricted Market Maker in a UTP Derivative Security on the Exchange is prohibited from acting or registering as a Market Maker on any other exchange in any Reference Asset of that UTP Derivative Security, or any derivative instrument based on a Reference Asset of that UTP Derivative Security (collectively, with Reference Assets, ''Related Instruments''). Proposed EDGA Rule 14.1(c)(5)(B) provides that a Restricted Market Maker shall, in a manner prescribed by the Exchange, file with the Exchange and keep current a list identifying any accounts (''Related Instrument Trading Accounts'') for which Related Instruments are traded: (1) In which the Restricted Market Maker holds an interest; (2) over which it has investment discretion; or (3) in which it shares in the profits and/or losses. In addition, a Restricted Market Maker may not have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account which has not been reported to the Exchange as required by this rule. Proposed EDGA Rule 14.1(c)(5)(C) provides that, in addition to the existing obligations under Exchange rules regarding the production of books and records, a Restricted Market Maker shall, upon request by the Exchange, make available to the Exchange any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Restricted Market Maker in which Related Instruments are traded. Proposed EDGA Rule 14.1(c)(5)(D) provides that a Restricted Market Maker shall not use any material, non-public information in connection with trading a Related Instrument.

Finally, existing Rule 14.1(c)(5) is proposed to be re-numbered as

[9] Defined in EDGA Rule 1.5(y) (as proposed to be re-lettered) as 9:30 a.m. to 4 p.m. Eastern Time.

[10] *See* EDGA Rule 1.5(aa).

[11] As defined in EDGA Rule 11.5(c)(5).

14.1(c)(6). The Exchange also proposes to replace the term ''components of the index or portfolio on which the UTP Derivative Security is based'' with ''Related Instruments'' in that rule.

Amendment to the Exchange's MRVP

The Exchange proposes to amend Rule 8.15, entitled ''Imposition of Fines for Minor Violation(s) of Rules,'' to add Proposed Rule 11.21(a)(1) to the list of rules which would be appropriate for disposition under the Exchange's MRVP.

The proposed addition of Rule 11.21(a)(1), which provides that a Market Maker must maintain continuous, two-sided quotations consistent with the requirements of paragraph (d) (*i.e.,* within a designated percentage of the NBBO (or, if there is no NBB or NBO, the last reported sale)), would allow the Exchange to impose a $100 fine for each violation of this rule. By promptly imposing a meaningful financial penalty for such violations, the MRVP focuses on correcting conduct before it gives rise to more serious enforcement action. The MRVP provides a reasonable means of addressing rule violations that do not necessarily rise to the level of requiring formal disciplinary proceedings, while also providing greater flexibility in handling certain violations. Adopting a provision that would allow the Exchange to sanction violators under the MRVP by no means minimizes the importance of compliance with Exchange Rule 11.21. The Exchange believes that the violation of any of its rules is a serious matter. The addition of a sanction under the MRVP simply serves to add an additional method for disciplining violators of Exchange Rule 11.21. The Exchange will continue to conduct surveillance with due diligence and make its determination, on a case by case basis, whether a violation of Exchange Rule 11.21 should be subject to formal disciplinary proceedings.

The Exchange proposes to implement this rule change, if approved by the Commission, on or about October 15, 2011.

2. Statutory Basis

Approval of the rule changes proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[12] In particular, the proposed changes are consistent with Section 6(b)(5) of the Act,[13] because they would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by promoting greater liquidity in the Exchange market. The proposed rule change is also designed to support the principles of Section 11A(a)(1)[14] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning minimum market maker quotation requirements. The Exchange believes that the proposed optional functionality to assist Exchange Market Makers in maintaining continuous, two-sided quotations in the securities in which they are registered will encourage Market Makers to remain registered with and trade on the Exchange, thus providing valuable liquidity to the Exchange. At the same time, the Exchange believes that the proposed functionality will keep Exchange-generated quotations within reasonable reach of the NBBO. In addition, the proposed addition of Rule 11.21(a)(1) to the Exchange's MRVP will give the Exchange the ability to promptly impose a meaningful financial penalty for such violations before there is a need for more serious enforcement action.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve or disapprove such proposed rule change; or

(b) institute proceedings to determine whether the proposed rule change should be 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 No. SR–EDGA–2011–29 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–EDGA–2011–29. 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. 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–EDGA–

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1).

2011–29 and should be submitted by October 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23774 Filed 9–15–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65319; File No. SR–NASDAQ–2011–073]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Instituting Proceedings To Determine Whether to Disapprove Proposed Rule Change To Adopt Additional Listing Requirements for Reverse Mergers

September 12, 2011.

I. Introduction

On May 26, 2011, 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 listing requirements for a company that has become public through a combination with a public shell, whether through a reverse merger, exchange offer, or otherwise (a ''Reverse Merger''). The proposed rule change was published for comment in the **Federal Register** on June 14, 2011.[3] On July 25, 2011, the Commission 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 September 12, 2011.[4] The Commission received two comment letters on the proposal.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to disapprove the proposed rule change.

II. Description of the Proposal

The Exchange proposes to adopt additional listing standards for companies that become public through a Reverse Merger,[6] to address significant regulatory concerns, including accounting fraud allegations that have recently arisen with respect to Reverse Merger companies. In its filing, Nasdaq noted, among other things, that there have been widespread allegations of fraudulent behavior by certain Reverse Merger companies, leading to concerns that their financial statements cannot be relied upon.[7] Nasdaq also stated that it was aware of situations where it appeared that promoters and others intended to manipulate prices of Reverse Merger companies' securities higher to help meet Nasdaq's initial listing bid price requirement, and where companies have gifted stock to artificially satisfy Nasdaq's public holder listing requirement.[8] As a result of these concerns, Nasdaq believes certain ''seasoning'' requirements in connection with the listing of Reverse Merger companies are appropriate.

Specifically, Nasdaq proposes to prohibit a Reverse Merger company from applying to list until the combined entity has traded in the U.S. over-the-counter market, on another national securities exchange, or on a foreign exchange for at least six months following the filing of all required information about the Reverse Merger transaction, including audited financial statements, to the Commission.[9] Further, Nasdaq proposes to require that the Reverse Merger company maintain a minimum of a $4 bid price on at least 30 of the 60 trading days immediately prior to submitting the listing application. Finally, under the proposed rule, Nasdaq would not approve any Reverse Merger company for listing unless the company has timely filed its two most recent financial reports with the Commission if it is a domestic issuer or comparable information if it is a foreign private issuer.

III. Comment Letters

The Commission received two comment letters on the proposal.[10] One commenter[11] objects broadly to the proposed ''seasoning'' requirement,[12] while the other supports the objectives of the proposed rule change, but believes it should include a particular exception.[13]

One commenter expressed the view that the proposal could have a ''chilling effect of discouraging exciting growth companies from pursuing all available techniques to obtain the benefits of a public listed stock and greater access to capital.''[14] The commenter further noted, in response to Nasdaq's justifications for the proposed rule change, that virtually all of the suggestions of wrongdoing involve Chinese companies that completed reverse mergers, but that a number of other Chinese companies that completed full traditional initial public offerings face the very same allegations, so that focusing on the manner in which these companies went public may not be appropriate. Rather than imposing a seasoning requirement, the commenter suggests Nasdaq review regulatory histories and financial arrangements with promoters, and refrain from listing companies where the issues are great. In any event, he recommends an exemption from the seasoning requirement for a company coming to the exchange with a firm commitment underwritten public offering. In addition, the commenter expressed concern that the requirement to maintain a $4 trading price for 30 days prior to the listing application is unfair, and unrealistic to expect companies to achieve in the over-the-counter markets, and suggests it be eliminated.

Another commenter expressed support for the proposed rule change's objective to protect investors from potential accounting fraud, manipulative trading, abusive practices

[15] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64633 (June 8, 2011), 76 FR 34781 (''Nasdaq Notice'').

[4] *See* Securities Exchange Act Release No. 64956 (July 25, 2011), 76 FR 45636 (July 29, 2011).

[5] *See* Letter from David Feldman dated August 30, 2011 (''Feldman Letter'') and letter from Richard Rappaport, Chief Executive Officer, WestPark Capital, Inc. to Elizabeth M. Murphy, Secretary, Commission dated September 2, 2011 (WestPark Letter'').

[6] For purposes of the Nasdaq proposal, Nasdaq would treat as a Reverse Merger any transaction whereby an operating company becomes public by combining with a public shell, whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger would not include the acquisition of an operating company by a listed company satisfying the requirements of IM–5101–2 (relating to companies whose business plan is to complete one or more acquisitions) or a business combination described in Rule 5110(a) (relating to a listed company that combines with a non-Nasdaq entity, resulting in a change of control of the company and potentially allowing the non-Nasdaq entity to obtain a Nasdaq listing, sometimes called a ''back-door listing''). A reverse merger would also not include a Substitution Listing Event, as defined in Rule 5005(a)(39) (proposed to be renumbered as Rule 5005(a)(40)), such as the formation of a holding company to replace the listed company or a merger to facilitate a re-incorporation, because in these cases the operating company is already a listed entity.

[7] *See* Nasdaq Notice.

[8] *Id.*

[9] According to the Nasdaq proposal, the six month period would not begin to run until the filing of a Form 8–K. A company must file a Form 8–K within four days of completing a reverse merger. The Form 8–K must contain audited financial statements and information comparable to the information provided in a Form 10 for the registration of securities. *See* Form 8–K Items 2.01, 5.06, and 9.01(c).

[10] *See,* note 5, *supra.*

[11] *See* Feldman Letter.

[12] *Id.*

[13] *See* WestPark Letter.

[14] *See* Feldman Letter.