

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63976; File No. SR-NYSE-2011-06)

February 25, 2011

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting Supplementary Material .20 to Rule 123C to Provide for the Treatment of Short Sale Orders at the Close

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on February 24, 2011, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. 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 adopt Supplementary Material .20 to Rule 123C (The Closing Procedures) to provide for the treatment of short sale orders at the close, for purposes of execution priority, as orders subject to tick restrictions⁴ during a period when a restriction on the prices at which covered securities may be sold short is in effect (“Short Sale Price Test”) under NYSE Rule 440B⁵ (which implements the provisions of

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ Orders subject to tick restrictions are sell “plus” and buy “minus” orders. *See* NYSE Rule 13.

⁵ Amendments to NYSE Rule 440B to implement the short sale price test restriction requirements of Rule 201 are the subject of a separate rule filing. *See* SR-NYSE-2011-05.

Rule 201 of Regulation SHO (“Rule 201”) under the Act).⁶ The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

On February 26, 2010, the Commission adopted amendments to Rule 201.⁷

Among other things, the amendments establish a short sale-related circuit breaker that, if triggered with respect to a covered security,⁸ imposes a short sale price test.⁹ Amended

⁶ 17 CFR 242.201.

⁷ Amendments to Regulation SHO, Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 Fed. Reg. 11232 (Mar. 10, 2010) (“Rule 201 Adopting Release”). In the Rule 201 Adopting Release, the Commission also adopted amendments to Rule 200(g) of Regulation SHO to include a “short exempt” marking requirement. 17 CFR 242.200(g). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO (“T&M FAQs”).

⁸ The term “covered security” shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(1) defines the term “covered security” to mean any “NMS stock” as defined under Rule 600(b)(47) of Regulation NMS. Rule 600(b)(47) of Regulation NMS defines an “NMS stock” as “any NMS security other than an option.” Rule 600(b)(46) of Regulation NMS defines an “NMS

Rule 201 became effective on May 10, 2010 and the compliance date for the Rule is February 28, 2011.¹⁰

Rule 201(b) requires that trading centers,¹¹ including the NYSE, establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid¹² if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market¹³ for the covered security as of the end of regular trading hours on the prior day.¹⁴

security” as “any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.” 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(47); and 17 CFR 242.600(b)(46).

⁹ 17 CFR 242.201(b).

¹⁰ Rule 201 Adopting Release, 75 Fed. Reg. 11232. The Rule 201 compliance date, originally set for November 10, 2010, was extended to February 28, 2011 in Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 Fed. Reg. 68702 (Nov. 9, 2010). The May 10th effective date and February 28th compliance date also apply to amended Rule 200(g).

¹¹ Rule 201(a)(9) states that the term “trading center” shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) defines a “trading center” as “a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” 17 CFR 242.600(b)(78).

¹² The term “national best bid” shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(4) states that such term shall have the same meaning as in Rule 600(b)(42) of Regulation NMS. 17 CFR 242.201(a)(4); 17 CFR 242.600(b)(42).

¹³ The term “listing market” shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(3) defines the term “listing market” to have the same meaning as the term “listing market” as defined in the effective transaction reporting plan for the covered security. 17 CFR 242.201(a)(3). *See also* 17 CFR 242.201(a)(2).

In addition, Rule 201(b) requires that trading centers establish, maintain, and enforce written policies and procedures reasonably designed to impose the Short Sale Price Test for the remainder of the day and the following day (including the close on both days) when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.¹⁵

In order to implement the provisions of Rule 201, the Exchange has proposed amendments to NYSE Rule 440B to establish the protocols for determining when a Short Sale Price Test is to be triggered for a covered security where the NYSE is the listing market. The proposed Rule 440B amendments also provide that, except for certain permissible and short exempt orders,¹⁶ during the period a Short Sale Price Test is in effect for a covered security, Exchange systems will not execute or display a short sale order with respect to that security at a price that is less than or equal to the current national best bid.

NYSE Rule 123C prescribes the method for determining the closing print to be reported to the Consolidated Tape for each security at the close of trading. Interest executed in the closing transaction is allocated pursuant to NYSE Rule 72 and consistent

¹⁴ 17 CFR 242.201(b)(1)(i).

¹⁵ 17 CFR 242.201(b)(1)(ii). In addition, if the price of a covered security declines intra-day by at least 10% on a day on which the security is already subject to the short sale price test restriction of Rule 201, the restriction will be re-triggered and, therefore, will continue in effect for the remainder of that day and the following day. *See* Rule 201 Adopting Release, 75 Fed. Reg. 11232, 11253, n. 290. Rule 201 does not place any limit on the frequency or number of times the circuit breaker can be re-triggered with respect to a particular stock. *See* T&M FAQs, at Q&A 2.2.

¹⁶ *See* paragraphs (f) and (g) of proposed Rule 440B regarding the treatment of permissible and short exempt orders. *See* SR-NYSE-2011-05.

with the hierarchy of allocation of trading interest in Rule 123C(7). In the hierarchy of allocation, better priced interest¹⁷ must receive an execution in whole or in part (“must execute interest”)¹⁸ in order for the security to close. Included in this category are MOC orders without tick restrictions, MOC orders with tick restrictions that are eligible to be executed at a price better than the closing price,¹⁹ better priced limit orders, better priced limit on close (“LOC”) orders with or without tick restrictions that are eligible for execution at a better price than the closing price and Crowd interest.²⁰

After the “must execute interest” is satisfied, then any limit orders represented in the Display Book²¹ at the closing price may be used to offset the remaining imbalance.²² Next eligible for execution in the hierarchy of allocation for the closing transaction are LOC orders without tick restrictions limited to the closing price, then MOC orders that

¹⁷ Better priced interest means an order that is priced lower than the closing price (in the case of an order to sell) or priced higher than the closing price (in the case of an order to buy).

¹⁸ A market on close (“MOC”) order without tick restrictions must be executed in its entirety at the closing price. Marketable limit orders receive an execution subject to the availability of contra side volume.

¹⁹ References in Rule 123C(7) to orders with tick restrictions mean sell “plus” or buy “minus” orders, as defined in Rule 13.

²⁰ Crowd interest means verbal floor broker interest at the market entered by the designated market maker (“DMM”) to interact with orders in the Display Book. *See note 21 infra.*

²¹ The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMM, contains order information, and provides a mechanism to execute and report transactions and published reports to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

²² DMM interest, including better priced DMM interest entered into the Display Book prior to the closing transaction that is eligible to participate in the closing transaction is always included in the hierarchy of execution as if it were interest equal to the price of the closing transaction.

have tick restrictions which limit the order's price to the price of the closing transaction,²³ followed by LOC orders limited to the price of the closing transaction that have tick restrictions, "G" orders,²⁴ and finally closing offset orders.

The Exchange proposes to establish the execution priority for short sale orders at the close during a period when the Short Sale Price Test is in effect. As provided for in proposed Rule 440B(h)(3), when the Short Sale Price Test is in effect, Exchange systems will, in connection with the closing transaction, re-price all short sale market orders and short sale orders limited to the last published Exchange bid or lower to one minimum price increment above the last published Exchange bid. If the closing price will be at or below the last published Exchange bid, such re-priced short sale orders will not participate in the close. If the closing price is above the last published Exchange bid, the re-priced short sale orders may participate in the closing transaction, depending on whether the proposed closing price is the same as the re-priced order, or if the re-priced order is priced better than the closing price. If the re-priced order is priced better than the closing price, such re-priced short sale order will participate in the closing transaction.²⁵ If the re-priced order is priced at the same price as the closing price, such re-priced short

²³ For example, the last sale on the Exchange was at a price of \$46.00 on a minus tick, the closing price is \$46.01, all sell plus MOC orders are limited to the closing price of \$46.01 because the closing transaction would be the next plus tick.

²⁴ See Section 11(a)(1)(G) of the Act. G orders are orders for an Exchange member's own account where the member meets a business mix test that requires it to be primarily engaged in the business of underwriting and distributing securities, selling securities to customers, and /or acting as a broker and provided more than 50% of its gross revenues is derived from such businesses and related activities. G orders on the NYSE are required to yield priority, parity and precedence to non-G orders.

²⁵ See Rule 123C(7)(a).

sale order plus all other short sale orders limited at that price²⁶ may (but are not required to) participate in the closing transaction consistent with how Rule 123C(7)(b) treats market or limit orders with tick restrictions.

The Exchange therefore proposes to add new Supplementary Material .20 to Rule 123C providing that short sale orders for a covered security during a period when a Short Sale Price Test is in effect will be treated, for purposes of execution at the close under Rule 123C(7)(b), as orders that have tick restrictions.²⁷ Thus, short sale orders that are eligible to participate in the closing transaction and that are priced at the same price as the closing transaction will be treated in the same manner as sell “plus” and buy “minus” tick restrictive orders priced at the closing price.²⁸ As a result, re-priced short sale orders priced at the closing price will be eligible for participation at the close following limit orders represented in the Display Book with a price equal to the closing price and LOC orders with a price equal to the closing price.

2. Statutory Basis

²⁶ These would include short sale orders that were already priced above the last published Exchange bid.

²⁷ The Exchange will not be making any changes in its opening and re-opening procedures in connection with the implementation of the short sale price test restrictions of Rule 201. The presence of short sale price test restrictions will have no impact on the priority of orders eligible to participate in openings and re-openings.

²⁸ *See* NYSE Rule 13 (defining Sell “Plus” – Buy “Minus” Orders). A sell “plus” order is an order to sell a specified amount of stock as long as the price of the trade is not lower than the price of the last sale if the last sale was a plus or zero plus tick, and is not lower than the last sale plus the minimum change in the price if the last sale was a minus or zero minus tick. A buy “minus” order is an order to buy a specified amount of stock as long as the price to be executed is not higher than the price of the last sale if the last sale was a minus or zero minus tick, and is not higher than the price of the last sale less than the minimum change in the price of the stock if the last sale was a plus tick or zero plus tick.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,³⁰ in particular, in that it is designed to, among other things, 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 proposal is designed to implement the provisions of Rule 201 of Regulation SHO by establishing, maintaining and enforcing written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at the close in violation of the Short Sale Price Test established in that rule. To that end, the proposed rule change will, among other things, amend the Exchange's procedures for determining the closing price by treating short sale orders as orders subject to tick restrictions during a period when a Short Sale Price Test is in effect.

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

The Exchange does not believe that the proposed rule change will 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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section

²⁹ 15 U.S.C. 78f(b).

³⁰ 15 U.S.C. 78f(b)(5).

19(b)(3)(A)(iii) of the Act³¹ and Rule 19b-4(f)(6) thereunder.³² Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act³³ and Rule 19b-4(f)(6)(iii) thereunder.³⁴

A proposed rule change filed under Rule 19b-4(f)(6)³⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission hereby grants the request. Waiving the 30-day operative delay will allow the Exchange to implement the proposed amendments by February 28, 2011, which, as noted by the Exchange, is the compliance date for amendments to Regulation SHO under the Act. By waiving the operative delay, the Exchange will be able to comply with the amendments to Regulation SHO by

³¹ 15 U.S.C. 78s(b)(3)(A)(iii).

³² 17 CFR 240.19b-4(f)(6).

³³ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁴ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Exchange has satisfied this requirement.

³⁵ 17 CFR 240.19b-4(f)(6).

³⁶ 17 CFR 240.19b-4(f)(6)(iii).

February 28, 2011. Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designates the proposal as operative upon filing.³⁷

At any time within 60 days of the filing of such 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.

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-NYSE-2011-06 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-NYSE-2011-06. This file number should be included on the subject line if e-mail is used. To help the Commission

³⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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 website viewing and printing in the Commission's Public Reference Room 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at

www.nyse.com. 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-NYSE-2011-06 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Cathy H. Ahn
Deputy Secretary

³⁸ 17 CFR 200.30-3(a)(12).