

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70881; File No. SR-NSX-2013-20)

November 14, 2013

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 11.11 Regarding the Entry and Execution of Zero Display Reserve Orders Marked “Sell Short”

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 4, 2013, National Stock Exchange, Inc. (“NSX<sup>®</sup>” 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 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 the Substance of the Proposed Rule Change.

The Exchange has filed the proposed rule change to amend subparagraph (c)(2)(E) of Rule 11.11 (Orders and Modifiers) regarding the manner in which the Exchange’s Trading System (the “System”)<sup>3</sup> handles Zero Display Reserve Orders<sup>4</sup> marked “sell short” entered by

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> NSX Rule 1.5 defines the term “System” to mean the electronic securities communications and trading facility designated by the Board through which orders of Users are consolidated for ranking and execution.

<sup>4</sup> Under Exchange Rule 11.11(c)(2), a Reserve Order is defined as a limit order with a portion of the quantity displayed (“display quantity”) and with a reserve portion of the quantity that is not displayed. Rule 11.11(c)(2)(A) provides, in relevant part, that a Reserve Order can be entered with a display quantity of zero, in which case the Reserve Order will be known as a “Zero Display Reserve Order.”

Exchange Users<sup>5</sup> in a security that is the subject of a short sale price test restriction under Rule 201 of Regulation SHO<sup>6</sup> pursuant to the Act. The proposed amendment removes a requirement that the System will reject all Zero Display Reserve Orders marked “sell short” entered by Users<sup>7</sup> and describes the System functionality for handling sell short Zero Display Reserve Orders during a short sale price test restriction.

The text of the proposed rule change is available on the Exchange’s website at [www.nsx.com](http://www.nsx.com), at the Exchange’s principal office, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory 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.

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<sup>5</sup> NSX Rule 1.5 defines the term “User” to mean any ETP Holder or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.9 (Access).

<sup>6</sup> 17 CFR 242.201. See Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010) and Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010).

<sup>7</sup> On June 27, 2013, the Exchange filed with the Commission, for immediate effectiveness, an amendment to Rule 11.11 to add subparagraph (c)(2)(E) and the Exchange implemented a System block to automatically reject all sell short Zero Display Reserve Orders. The amendment to add subparagraph (c)(2)(E) to Rule 11.11, and the accompanying technology change, addressed a System limitation that could allow a sell short Zero Display Reserve Order to be executed at or below the national best bid during the period that the security is subject to the short sale price test restriction under Rule 201 of Regulation SHO. See Exchange Act Release No. 34-69874 (June 27, 2013); 78 FR 40248 (July 3, 2013); SR-NSX-2013-13.

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

1. Purpose.

Rule 201(b)(1)(i) of Regulation SHO requires trading centers,<sup>8</sup> including the Exchange, to 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<sup>9</sup> at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from such security’s closing price on the listing market at the close of regular trading hours on the prior day. Rule 201(b)(1)(ii) of Regulation SHO requires trading centers to establish, maintain and enforce written policies and procedures reasonably designed to impose the short sale price test restriction for the remainder of the trading day and the following day, when a national best bid for the security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan. Rule 201(b)(1)(iii)(A) further requires that a trading center’s written policies and procedures must be reasonably designed to permit the execution of a displayed short sale order of a covered security if, at the

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<sup>8</sup> For purposes of Regulation SHO, the term “trading center” has the same meaning as in Rule 600(b)(78) of Regulation NMS, which 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 242.201(a)(9).

<sup>9</sup> Rule 201(a)(1) defines a “covered security” as any NMS stock as defined in Rule 600(b)(47) of Regulation NMS under the Act. 17 CFR 242.201(a)(1).

time of initial display of the short sale order, the order was at a price above the current national best bid.<sup>10</sup>

The Exchange amended Rule 11.11 to add subparagraph (c)(2)(E) to comply with the requirement of Rule 201(b)(1) that it 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 bid during the short sale price test restriction. Subparagraph (c)(2)(E) and accompanying changes to the System operate to automatically prevent the entry of all sell short Zero Display Reserve Orders and thereby prevent a subsequent execution of a sell short Zero Display Reserve Order at a price equal to or below the current national best bid during a short sale price test restriction in the subject security. These changes were implemented as temporary measures to address a System limitation that permitted the execution of a sell short Zero Display Reserve Order during a short sale price test restriction at a price equal to or below the current national best bid. No order or part of an order designated by a User as a Zero Display Reserve Order ever becomes displayed and, accordingly, a Zero Display Reserve Order marked “sell short” does not qualify for the exception under Rule 201(b)(1)(iii)(A) that would permit its execution at a price equal to or below the current national best bid if, at the time of initial display of the short sale order, the order was at a price above the current national best bid.

The Exchange has completed the development of new System functionality that will ensure that a sell short Zero Display Reserve Order will not be executed at a price at or below the

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<sup>10</sup> Rule 201(b)(1)(iii)(B) further provides that a trading center’s written policies and procedures must be reasonably designed to permit the execution or display of a short sale order of a covered security marked “short exempt” without regard to whether the order is at a price that is less than or equal to the current national best bid. This provision of Rule 201 is not relevant here. 17 CFR 242.201(b)(1)(iii)(B).

current national best bid during the short sale price test restriction.<sup>11</sup> The Exchange proposes to amend subparagraph (c)(2)(E) of Rule 11.11 to describe the manner in which the System will handle sell short Zero Display Reserve Orders during the period in which the short sale price test restriction of Rule 201 of Regulation SHO is in effect with respect to a security traded on the Exchange. Proposed new subparagraph (c)(2)(E)(i) provides that a Zero Display Reserve Order, other than a Market Peg Zero Display Reserve Order (one of three types of “pegging” instructions that can be added to a Zero Display Reserve Order, the others being a Midpoint Peg and a Primary Peg),<sup>12</sup> entered by a User in such security and marked “sell short” will be matched for execution at a price above the current national best bid to the extent possible and any remaining unexecuted portion will be canceled by the System if at a price at or below the current national best bid.

A sell short Market Peg Zero Display Reserve Order tracks the Protected Best Bid, which is the better of the national best bid or the best bid on the NSX Book.<sup>13</sup> If executed at a price

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<sup>11</sup> The new System functionality was not released into production pending the filing of the proposed rule amendment to eliminate the requirement of Rule 11.11(c)(2)(E) that the System automatically block the entry of all sell short Zero Display Reserve Orders.

<sup>12</sup> Under Exchange Rule 11.11(c)(2)(A), a Zero Display Reserve Order may be set or “pegged” to: track the buy side of the Protected Best Bid or Offer (“PBBO”), which is defined in Exchange Rule 1.5 as the better of the protected national best bid or offer (“NBBO”) or the displayed Top of Book on the NSX; or the sell side of the PBBO, or the midpoint of the PBBO. A pegged Zero Display Reserve Order which tracks the inside quote on the opposite side of the market is defined as a Market Peg; a pegged Zero Display Reserve Order that tracks the midpoint is defined as a Midpoint Peg; and a pegged Zero Display Reserve Order that tracks the inside quote of the same side of the market is called a Primary Peg.

<sup>13</sup> Exchange Rule 1.5 defines the term “Protected NBBO” as “...the national best bid or offer that is a protected quotation.” The term “Protected BBO” is defined as “the better of... [t]he Protected NBBO or... [t]he Displayed Top of Book.” Thus, the Protected Best Bid to which a sell short Market Peg Zero Display Reserve Order tracks is the current protected national best bid or the best-ranked buy order on the NSX Book.

equal to or below the current national best bid during the short sale price test restriction, such an execution would violate Rule 201 of Regulation SHO which requires an execution to occur at a price above the current national best bid. Proposed subparagraph (c)(2)(E)(ii) states that a Market Peg Zero Display Reserve Order marked “sell short” entered in a security for which the short sale price test restriction is in effect will be rejected by the System. The Exchange has determined that it will not accept new sell short Market Peg Zero Display Reserve Orders in a security for which the short sale price test restriction of Rule 201 of Regulation SHO is in effect.

Proposed subparagraph (c)(2)(E)(iii) explains that a sell short Market Peg Zero Display Reserve Order resting on the NSX Book tracks the Protected Best Bid and, if matched for execution during a short sale price test restriction in that security, it will be executed only to the extent that the Protected Best Bid is above the current national best bid and the sell short order can be executed, in whole or in part, at a price above the current national best bid in compliance with Rule 201 of Regulation SHO. Any such order or portion of such order will be canceled by the System if at a price at or below the current national best bid.

Accordingly, upon this proposed rule amendment becoming effective, the Exchange will discontinue the automatic block to the entry of all Zero Display Reserve Orders marked “sell short” and release the System modifications that will enforce the Exchange’s written policies and procedures regarding the handling of sell short Zero Display Reserve Orders during the short sale price test restriction.

## 2. Statutory Basis.

The Exchange believes that the proposed amendment to Rule 11.11(c)(2)(E) to eliminate the requirement that the System will reject the entry of Zero Display Reserve Orders marked “sell short,” thereby allowing the removal of the automated block preventing the entry of such

orders, and describe the manner in which the System will process sell short Zero Display Reserve Orders, is consistent with the provisions of Section 6(b)<sup>14</sup> of the Act, with Section 6(b)(5)<sup>15</sup> thereunder, and with Rule 201.

The Exchange submits that these amendments further the purposes of Section 6(b)(5) of the Act in that they promote just and equitable principles of trade and operate to remove impediments to and perfect the mechanism of a free and open market and national market system. As a trading center, the Exchange is required by Rule 201 to 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 bid if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day; and to impose this requirement for the remainder of the day and the following day 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.

The Exchange submits that the permanent modifications it will make to the System upon this filing becoming effective will provide that, during a short sale price test restriction, sell short Zero Display Reserve Orders will be accepted and executed only to the extent that such orders can be executed at a price above the current national best bid, and will be rejected by the System if at a price at or below the current national best bid. The Exchange, however, has determined to

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<sup>14</sup> 15 U.S.C. 78f(b).

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

reject any new Market Peg Zero Display Reserve Orders marked “sell short” entered in a security for which the short sale price test restriction is in effect.

The Exchange’s proposal further provides that any sell short Zero Display Reserve Orders resting on the NSX Book, if matched for execution at a price at or below the current national best bid during the short sale price test restriction in that security, will only execute in whole or in part to the extent possible at a price or prices above the current national best bid and any remaining unexecuted portion will be canceled by the System if at a price at or below the current national best bid. The proposed amendment specifically states that, with respect to a sell short Market Peg Zero Display Reserve Order resting on the NSX Book, which tracks to the Protected Best Bid, such an order or portion of an order will be executed during a short sale price test restriction only to the extent that the Protected Best Bid is above the current national best bid and the sell short order can be fully or partially executed at a price above the current national best bid in compliance with Rule 201 of Regulation SHO.

The Exchange believes that this System functionality will assure that sell short Zero Display Reserve Orders, which are not displayed, will only be executed at a price above the current national best bid. The Exchange submits that the proposed amendment and the new System functionality are consistent with its obligations as a trading center pursuant to Rule 201 and that, in this regard, the proposed rule amendment will further the purposes of the Act and specifically Rule 201.

**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 for the furtherance of the Act. The proposed amendment will remove a System block to the entry of all Zero Display Reserve Orders marked

“sell short.” The implementation of the automatic block was necessitated by a limitation in the System that did allow the execution of a sell short Zero Display Reserve Order in a covered security at a price at or below the current national best bid during the short sale price test restriction. This System limitation was not consistent with the Exchange’s obligations as a trading center to establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution of a short sale order of a covered security at a price that is less than or equal to the current national best bid during the short sale price restriction.

By determining to automatically block the entry of all sell short Zero Display Reserve Orders until permanent modifications to the System could be made, the Exchange was limiting the use of an approved order type to fulfill its obligations as a trading center under Rule 201 of Regulation SHO.

In its proposal to amend subparagraph (c)(2)(E) of Rule 11.11 to permit the removal of the automatic block, the Exchange submits that it is restoring the ability of Users to fully use the Zero Display Reserve Order, including entering such orders marked “sell short.” Moreover, the Exchange’s proposed amendment to subparagraph (c)(2)(E) to describe the new System functionality with respect to sell short Zero Display Reserve Orders provides transparency to Users, their customers and the investing public as to how these orders will be processed by the System. The Exchange believes that these factors do not represent any burden on competition that is not necessary or appropriate for purposes of the Act and, in fact, can operate to enhance competition by restoring full functionality to the use of Zero Display Reserve Orders.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.

The Exchange has neither solicited nor received written comments on 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 19(b)(3)(A)(iii) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder<sup>17</sup> to be immediately effective because the proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition,; and (iii) does not 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; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.<sup>18</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>19</sup> normally does not become operative prior to 30 days from the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>20</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

<sup>19</sup> Id.

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

operative upon filing with the Commission pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(6) thereunder.

In support of its request, the Exchange has stated that, as a trading center, it is required under Regulation SHO to establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution or display of sell short orders of covered securities at prices at or below the current national best bid if the short sale price restriction is in effect for the covered security. A waiver of the 30-day operative delay period will enable the Exchange to immediately deploy the System changes to ensure that a sell short Zero Display Reserve Order will not be executed at a price at or below the current national best bid during the short sale price test restriction. The Exchange submits that, under these circumstances, the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the Exchange, as a trading center, to comply with its requirements under Rule 201 of Regulation SHO. For this reason, the Commission waives the 30-day operative delay and designates the proposal effective upon filing.<sup>21</sup>

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 Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning

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<sup>21</sup> For purposes of only waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2013-20 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, D.C. 20549-1090.

All submissions should refer to File No. SR-NSX-2013-20. This file number should be included in the subject line if e-mail is used. To help the Commission process and review 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also 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-NSX-2013-20 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 the delegated authority.<sup>22</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).