

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64136; File No. SR-NYSE-2011-11)

March 28, 2011

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 440B to Modify the Exchange's Procedures for Handling Short Sale Orders During a Period When the Short Sale Price Test Restrictions of Rule 201 of Regulation SHO are In Effect

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 March 25, 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 amend NYSE Rule 440B (Short Sales) to modify the Exchange's procedures for handling short sale orders during a period when the short sale price test restrictions of Rule 201 of Regulation SHO ("Rule 201")⁴ are in effect ("Short Sale Period"). 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 17 CFR 242.201.

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 of Regulation SHO under the Act.⁵ In order to implement the provisions of revised Rule 201, the Exchange amended NYSE Rule 440B (Short Sales) to (1) establish procedures for the Exchange, as a listing market, to determine that the short sale price test restrictions of Rule 201 have been triggered for a covered security, (2) establish the protocols for the handling of short sale orders by the Exchange, as a trading center, in the event the short sale price test restrictions of Rule 201 are triggered, including establishing what types of short sale orders will be re-priced to achieve a "Permitted Price" (as defined and calculated in Rule 440B(e)), in accordance with Rule 201, during a Short Sale Period, (3) establish the Exchange's procedures regarding the execution and display of permissible orders during a Short Sale Period, and the execution and display of orders marked "short exempt" during such a period, (4) establish the Exchange's procedures

⁵ See Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010) (File No. S7-08-09; Amendments to Regulation SHO) ("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).

regarding the permissible execution price of short sale orders in single-priced opening, re-opening and closing transactions during a Short Sale Period, and (5) provide that, during a Short Sale Period, 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 (except as otherwise provided by Rule 440B and consistent with Rule 201).⁶

Under Rule 440B(e), during a Short Sale Period, short sale orders that are limited to the national best bid or lower and short sale market orders will be re-priced by Exchange systems one minimum price increment above the current national best bid to permit their execution at a price that is compliant with the short sale price test restrictions of Rule 201. Consistent with Rule 201,⁷ the Permitted Price for securities for which the national best bid is \$1 or more is \$.01 above the national best bid; the Permitted Price for securities for which the national best bid is below \$1 is \$.0001 above the national best bid.⁸

Among other things, Rule 440B(f) implements Rule 201(b)(1)(iii)(A), which provides that a trading center must have policies and procedures reasonably designed to permit the execution of a displayed short sale order of a covered security if, at the time of the initial display of the short sale order, the order was at a price above the current national best bid. Rule 440B(f) specifically provides that the Exchange will execute and

⁶ See Securities Exchange Act Release No. 63977 (February 25, 2011), 76 FR 12165 (March 4, 2011) (SR-NYSE-2011-05).

⁷ See Rule 201 Adopting Release at 11247.

⁸ 17 CFR 242.612.

display a short sale order without regard to price if, at the time of the initial display of the short sale order, the order was at a price above the then current national best bid.

The Exchange proposes to amend Rule 440B(e) to provide for how Exchange systems will treat short sale orders that are not marked “short exempt” during a Short Sale Period, i.e., displayed short sale orders pursuant to Rule 440B(f) or non-marketable displayable or non-displayed short sale orders that Exchange systems have not yet re-priced pursuant to Rule 440B(e), and that would be required to be routed to a protected bid pursuant to Regulation NMS, which, by definition, would be the national best bid or lower. An example of a situation where Exchange systems would otherwise be required to route to the national best bid includes the following: (1) a short sale order is displayed pursuant to Rule 440B(f), (2) the Exchange enters a “slow” state, for example, if the Exchange reaches a liquidity replenishment point pursuant to Exchange Rule 1000, and (3) when the Exchange resumes “fast” trading, the previously displayed short sale order crosses the national best bid.⁹ In such scenario, pursuant to Regulation NMS, the Exchange would be required to route such previously displayed short sale order to be executed against the national best bid.

The Exchange proposes to address how Exchange systems will treat short sale orders that have been displayed pursuant to Rule 440B(f) or that are not yet marketable and therefore have not yet been re-priced, and that would otherwise be required to be

⁹ The Exchange enters a “slow” trading state, or “Non-Firm Mode” when, pursuant to Rule 602(a)(3)(i) of Regulation NMS and Exchange Rule 60(c)(ii)(A) and (B), the Exchange quotation is not available for automatic execution. The Exchange resumes a “fast” trading state, or “Normal Mode” when the Exchange is open for trading and collects, processes, and makes available to quotation vendors the highest bid and the lowest offer, and the quotation size, in compliance with Rule 602(a) of Regulation NMS and Exchange Rule 60(c)(i).

routed to an away market. For such scenarios, the Exchange proposes that rather than route such short sale orders to the national best bid, the Exchange will instead re-price such short sale orders to a Permitted Price, as provided for in Rule 440B(e). In particular, the proposed amendment to Rule 440B would add new subparagraph (e)(2), which would provide that, during a Short Sale Period, Exchange systems will not route to an away market short sale orders that have been displayed pursuant to Rule 440B(f) or that have not yet been re-priced consistent with Rule 440B(e) and instead will re-price such orders to a Permitted Price. In addition, the proposed amendment would renumber existing subparagraph (e)(2) as (e)(3). The Exchange further proposes to amend Rule 440B(e)(3) to provide that Exchange systems will not route the DMM interest identified in that subparagraph and will instead cancel such interest. Accordingly, if Exchange systems would otherwise route such DMM interest to an away market in compliance with Regulation NMS, during a Short Sale Period, Exchange systems will instead cancel such DMM short sale interest rather than route it.

The Exchange also proposes a clarifying amendment to Rule 440B(g) to specify that if a short sale order has been marked “short exempt,” Exchange systems will display, execute, *and route* such order without regard to whether the order is at a Permitted Price.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

investors and the public interest. The proposal is designed to implement the provisions of Rule 201 of Regulation SHO by refining the Exchange's written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security in violation of the short sale price test restrictions established in that rule. To that end, the proposed rule change will establish the Exchange's procedures regarding handling of short sale orders during a Short Sale Period that might otherwise be routed to away markets.

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 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ 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

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ 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.¹⁶ Waiving the 30-day operative delay will allow the Exchange to handle short sale orders during a Short Sale Period that might otherwise be routed to an away market in a manner that is consistent with Rule 201. Therefore, the Commission believes that 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.

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

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ 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).

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-2011-11 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-2011-11. 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 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-2011-11 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.¹⁷

Cathy H. Ahn
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).