

# **SECURITIES AND EXCHANGE COMMISSION**

## **17 CFR PART 242**

**[Release No. 34-63247; File No. S7-08-09]**

**RIN 3235-AK35**

### **Regulation SHO**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; extension of compliance date.

**SUMMARY:** The Commission is extending for a limited period of time the compliance date for the amendments to Rule 201 and Rule 200(g) of Regulation SHO under the Securities Exchange Act of 1934 (“Exchange Act”). Rule 201 adopts a short sale-related circuit breaker that, if triggered, will impose a restriction on the prices at which securities may be sold short (“short sale price test restriction”). The amendments to Rule 200(g) provide that a broker-dealer may mark certain qualifying short sale orders “short exempt.” The Commission is extending the compliance date for the amendments to Rule 201 and Rule 200(g) to give certain exchanges additional time to modify their current procedures for conducting single-priced opening, reopening, and closing transactions for covered securities that have triggered Rule 201’s circuit breaker in a manner that is consistent with the goals and requirements of Rule 201. Further, the extended compliance period will give industry participants additional time for programming and testing for compliance with the requirements of the Rule.

**DATES:** The effective date for Rule 201 (17 CFR 242.201) and Rule 200(g) (17 CFR 242.200(g)) remains March 10, 2010. The compliance date for both Rules has been extended from November 10, 2010 to February 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Josephine Tao, Assistant Director, or Angela Moudy, Attorney-Advisor, Division of Trading and Markets, at (202) 551-5720, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-6628.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

On February 26, 2010, the Commission adopted amendments to Rule 201 and Rule 200(g) of Regulation SHO.<sup>1</sup> Rule 201 requires that a trading center 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 its closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day.<sup>2</sup> In addition, the Rule requires that the trading center establish, maintain, and enforce written policies and procedures reasonably designed to impose this short sale price test restriction 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.<sup>3</sup> The amendments to Rule 200(g) provide that broker-dealers may mark certain short sale orders “short exempt.”<sup>4</sup>

Commission staff has been working with the markets and their participants since Rule 201 was adopted to resolve operational issues relating to implementation of the Rule. As part of these efforts, we have become aware that certain exchanges require additional time to address

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<sup>1</sup> Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010) (“Rule 201 Adopting Release”).

<sup>2</sup> See 17 CFR 242.201(b)(1)(i).

<sup>3</sup> See 17 CFR 242.201(b)(1)(ii).

<sup>4</sup> See 17 CFR 242.200(g)(2).

their procedures for conducting single-priced opening, reopening, and closing transactions (“single-priced transactions”) for covered securities that have triggered the Rule’s circuit breaker. Specifically, we have been advised that certain exchanges may encounter difficulties in applying Rule 201, which uses the national best bid as a reference point, to their single-priced transactions. These transactions involve the queuing and ultimate execution of multiple orders at a single price, and the single equilibrium price determined through this process is based on orders on the exchange, without any reference to the national best bid at the time of execution. Due to potential operational concerns, we are providing additional time for exchanges that currently conduct single-priced transactions through a formalized and transparent process to address this issue in a manner that would be consistent with the requirements and goals of Rule 201’s short sale price test restriction.<sup>5</sup>

In addition, we believe that an extended compliance period may benefit industry participants by providing more time for programming and testing for compliance with the Rule’s requirements. We have been informed that there have been some delays in the programming process, due in part to certain information, which was necessary to effectively program for compliance with Rule 201, being provided by various parties, including exchanges and data vendors, on dates that were later than originally anticipated. As a result, we have been informed that there may be an increased risk of technical or market problems if full implementation of Rule 201 is required by November 10, 2010.

As a result of these considerations, and in order to avoid any potential adverse effects on the markets from implementation of Rule 201 under the circumstances, we have determined to extend the compliance date to February 28, 2011 because we understand that this would provide

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<sup>5</sup> A significant percentage of total trading volume can be executed in single-priced transactions. For example, one exchange executes approximately 25% of its total trading volume in its opening and closing transactions.

the exchanges and other industry participants with sufficient time to resolve the issues surrounding implementation of Rule 201.

## **II. Conclusion**

For the reasons cited above, the Commission, for good cause, finds that notice and solicitation of comment regarding the extension of the compliance date set forth herein are impractical, unnecessary, or contrary to the public interest.<sup>6</sup> The Commission notes that the compliance date is a few days away, and that a limited extension of the compliance date will facilitate the orderly implementation of Rule 201. In light of this time constraint, full notice and comment could not be completed prior to the November 10, 2010 compliance date. All industry participants will receive additional time to comply with Rule 201 and Rule 200(g) beyond the compliance date originally set forth in the Rule 201 Adopting Release. Further, the Commission recognizes that it is imperative for industry participants to receive notice of the extended compliance date, and providing immediate effectiveness upon publication of this release will allow industry participants to adjust their implementation plans accordingly.<sup>7</sup>

The Commission identified certain costs and benefits associated with the amendments to Rule 201 and Rule 200(g) of Regulation SHO in the Rule 201 Adopting Release. The extension of the compliance date for the amendments to Rule 201 and Rule 200(g) of Regulation SHO will

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<sup>6</sup> See Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (stating that an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are “impractical, unnecessary, or contrary to the public interest”). This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are “impractical, unnecessary or contrary to the public interest,” a rule “shall take effect at such time as the federal agency promulgating the rule determines”). Also, because the Regulatory Flexibility Act (5 U.S.C. 601 – 612) only requires agencies to prepare analyses when the Administrative Procedures Act requires general notice of rulemaking, that Act does not apply to the actions that we are taking in this release.

<sup>7</sup> The compliance date extensions set forth in this release are effective upon publication in the Federal Register. Section 553(d)(1) of the Administrative Procedure Act allows effective dates that are less than 30 days after publication for a “substantive rule which grants or recognizes an exemption or relieves a restriction.” 5 U.S.C. 553(d)(1).

delay the benefits of the Rules, but the Commission believes that the limited extension is necessary and appropriate because it will provide (1) certain exchanges additional time to modify their current procedures for conducting single-priced transactions for covered securities that have triggered Rule 201's circuit breaker in a manner that is consistent with the goals and requirements of Rule 201, and (2) industry participants additional time for programming and testing for compliance with the requirements of Rule 201 and Rule 200(g). The extension also will delay the costs of complying with the amendments.<sup>8</sup> The Commission believes that the extension does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, because, as noted above, the extension will give exchanges additional time to modify certain of their current procedures, and industry participants additional time for programming and testing, in a manner that is consistent with the goals and requirements of the amendments to Rule 201 and Rule 200(g) of Regulation SHO.

By the Commission.

Elizabeth M. Murphy  
Secretary

Date: November 4, 2010

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<sup>8</sup> The Commission identified in the Rule 201 Adopting Release certain ongoing costs associated with the amendments to Rule 201 and Rule 200(g) of Regulation SHO. Because of the extension of the compliance date, such costs could be avoided from November 10, 2010 to February 28, 2011.