

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50929; File No. SR-NYSE-2004-68)

December 23, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. to Amend Exchange Rules 440B (“Short Sales) and 440C (“Deliveries Against Short Sales”)

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“SEA” or the “Exchange Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on December 1, 2004, the New York Stock Exchange, Inc. (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 23, 2004, NYSE filed Amendment No. 1 to the proposed rule change.⁴ The proposed rule change, as amended, was filed by NYSE as a non-controversial filing, under Rule 19b-4(f)(6) of the Act.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a et seq.

³ 17 CFR 240.19b-4.

⁴ See letter from Mary Yeager, Assistant Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 23, 2004 (“Amendment No. 1”).

⁵ 17 CFR 240.19b-4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 22, 2004, the date NYSE filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The New York Stock Exchange, Inc. (“NYSE” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) proposed amendments to Rule 440B (“Short Sales”) and 440C (“Delivery Against Short Sales”), including Supplementary Material to conform Exchange rules to the requirements of recent Commission rule amendments regarding short sales, and adoption of Regulation SHO – Regulation of Short Sales (“Regulation SHO”).⁶ The text of the proposed amendments is available from the NYSE and the Commission.⁷ New language is italicized; deletions are in brackets.

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

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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

(1) Purpose

⁶ See Securities Exchange Act Release No. 50103 (July 28, 2004), 69 F.R. 48008 (August 6, 2004) (“Adopting Release”), available at <http://www.sec.gov/rules/final/34-50103.htm>.

⁷ Both Exhibits A and B are available at <http://www.nyse.com/regulation/> and <http://www.sec.gov/rules/sro.shtml>.

Background

On June 23, 2004, the SEC adopted new Regulation SHO, under the Exchange Act.⁸ Regulation SHO, which together with other concurrent Commission actions, provide for significant changes to SEC short sale⁹ rules that are referenced in, and apply to members and member organizations through, Exchange Rules 440B (“Short Sales”) and 440C (“Deliveries Against Short Sales”).¹⁰ These SEC amendments rescind Rules 3b-3 (“Definition of Short Sale”)¹¹ and 10a-2 (“Requirements for Covering Purchases”),¹² under the Exchange Act, and replace them with new Rules 200 (“Definition of Short Sale and Marking Requirements”)¹³ and 203 (“Borrowing and

⁸ U.S.C. 78a et seq.

⁹ A short sale is the sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller. In order to deliver the security to the purchaser, the short seller will borrow the security, typically from a broker-dealer or an institutional investor. The short seller later closes out the position by purchasing equivalent securities on the open market, or by using an equivalent security it already owned, and returning the security to the lender. In general, short selling is used to profit from an expected downward price movement, to provide liquidity in response to unanticipated demand, or to hedge the risk of a long position in the same, or related, security.

¹⁰ The “tick test” of Rule 440B, which limits short sales only to an advancing market, and delivery requirements of Rule 440C, which requires short sellers to “locate” the stock to deliver prior to making a trade, are designed to prevent abusive short selling activities, including “short squeezes” and “naked” short selling. Regulation SHO also seeks to reduce the number of “fails to deliver” in the Continuous Net Settlement (“CNS”) system.

¹¹ 17 CFR 240.3b-3.

¹² 17 CFR 240.10a-2.

¹³ 17 CFR 242.200.

Delivery Requirements”),¹⁴ to Regulation SHO. In addition, the Commission has amended Rule 10a-1¹⁵ (“Short Sales”) to conform to Regulation SHO.

New SEA Rule 202T

Regulation SHO includes new Rule 202T,¹⁶ which provides procedures for the SEC to temporarily suspend the application of the tick test and any short sale price test of any exchange or national securities association for designated securities.¹⁷ Concurrently with the adoption of Regulation SHO, the SEC issued a Pilot Order¹⁸ suspending the provisions of the tick test and any self-regulatory organization (“SRO”) price test for short sales in: (1) certain “designated securities” (identified in Appendix A of the Pilot Order); (2) any security included in the Russell 1000 index effected between 4:15 p.m. EST and the open of the consolidated tape on the following day; and (3) other security effected between the close of the consolidated tape (i.e., 8:00 p.m. EST) and the open of the tape on the following day. During the Pilot, all other provisions of Rule 10a-1

¹⁴ 17 CFR 242.203.

¹⁵ 17 CFR 240.10a-1.

¹⁶ 17 CFR 242.202T.

¹⁷ The SEC deferred consideration of their proposal to replace the current “tick test” with a new uniform bid test restricting short sales to a price above the consolidated best bid, and also deferred consideration of the proposed exceptions to the uniform bid test. The SEC will reconsider any further action on these proposals after the completion of the Pilot.

¹⁸ See Securities Exchange Act Release No. 50104 (July 28, 2004), 69 Fed. Reg. 48032 (August 6, 2004) (“Pilot Order”), available at <http://www.sec.gov/rules/other/34-50104.htm>. See also Securities Exchange Act Release No. 50747 (November 29, 2004)(Order Delaying Pilot Period for Suspension of the Operation of the Operation of Short Sale Price Provisions) (“Second Pilot Order”), available at <http://www.sec.gov/rules/other/34-50747.htm>.

and Regulation SHO – including the marking, locate and delivery requirements – remain in effect.

The Exchange proposes to amend Rule 440B by adding new paragraph (c), which suspends the requirements of the price test for the period that the Pilot remains in effect.

New SEA Rule 200

Rule 200¹⁹ to Regulation SHO replaces Rule 3b-3,²⁰ which had defined ownership of securities for purposes of short sales. Rule 200 incorporates the substance of Rule 3b-3, with some modifications, and provides guidance to broker-dealers to calculate net positions within defined aggregation units rather than on a firm-wide basis. Rule 200 also requires broker-dealers to mark sales in all equity securities “long,” “short,” or “short exempt.” In this regard, an order can be marked “long” only when the seller owns the security being sold and the security is in the physical possession or control of the broker-dealer, or it is reasonably expected that the security will be in the physical possession or control of the broker-dealer prior to settlement. An order can be marked “short exempt” if the seller is entitled to rely on any exception from the tick test, under Rule 10a-1, or any SRO rule (e.g., Rule 440B). As a general matter, orders marked “short exempt” still need to comply with the locate requirement. Short sales of securities in the Pilot should be marked “short exempt.”

The Exchange is proposing to amend the Supplementary Material to Exchange Rule 440B to incorporate the marking requirements and ownership aspects of Regulation

¹⁹ 17 CFR 242.200.

²⁰ 17 CFR 240.3b-3.

SHO, Rule 200, to paragraphs 440B.13 (“Marking of Orders”), 440B.14 (“Ownership of Securities”) and 440B.20 (“Short Exempt Sell Orders”).

New SEA Rule 203

Rule 203²¹ provides various safeguards against “naked” short selling by consolidating and expanding stock “locate requirements,” and imposing new delivery requirements for securities in which a substantial number of fails have occurred (“threshold securities”²²). In this regard, Rule 203 requires broker-dealers, prior to effecting short sales in all equity securities, to locate securities available for borrowing. Specifically, Rule 203(b)²³ prohibits a broker-dealer from accepting a short sale in any equity security from another person, or effecting a short sale for the broker-dealer’s own account, unless the broker-dealer has: (1) borrowed the security, or entered into an arrangement to borrow the security; or (2) has “reasonable grounds” to believe that the security can be borrowed so that it can be delivered on the delivery date; and (3) has documented compliance with the rule.

The Commission has set forth two ways to show a broker-dealer has “reasonable grounds” to believe the security can be borrowed: (1) reliance on an “easy to borrow” list, provided the information used to generate the list is less than 24 hours old, and securities

²¹ 17 CFR 242.203.

²² Regulation SHO defines “threshold securities” as equity securities of reporting issuers, where: for five consecutive days the security has aggregate fails to deliver at a registered clearing agency of 10,000 shares or more; this figure is equal to at least 0.5% of the issue’s total shares outstanding; and a list of such threshold securities is calculated and disseminated daily by the SRO on which the security is listed or for which the SRO bears primary surveillance responsibility. The SEC has estimated that approximately 4% of all equity securities would meet this threshold.

²³ 17 CFR 242.203(b).

on the list are so readily available that fails to deliver are unlikely (reliance on the fact that a security is not on a “hard to borrow” list is not sufficient);²⁴ and (2) reliance on a customer’s assurance that a “locate” was received from another source (e.g., a prime broker), provided the broker-dealer documents the customer’s source, and prior assurances from such customer resulted in timely deliveries in settlement of the customer’s transactions.

The SEC also identified a number of exceptions to this locate requirement, including exceptions for transactions in security futures, and for broker-dealers that have accepted a short sale order from another registered broker-dealer required to comply with Rule 203(b), unless the broker-dealer contractually undertook responsibility for compliance. Rule 203(a)²⁵ replaces current Rule 10a-2²⁶ and incorporates its substantive requirements and extends them to all equity securities, as opposed to only exchange-listed securities. With certain exceptions, Rule 203(a) prohibits a broker-dealer from failing to deliver, or lending securities to prevent a fail to deliver, on a sale that it knows, or has reasonable grounds to believe, is marked “long.”

To conform with Regulation SHO, the Exchange is proposing to change the title of Rule 440C to “Short Sale Borrowing and Delivery Requirements,” delete paragraph

²⁴ In the Adopting Release, the SEC noted that “threshold securities” generally should not be included on “easy to borrow” lists. While the Commission has stated that easy to borrow lists could satisfy the “reasonable grounds” determination in Rule 203, it has also clearly stated that reliance on the fact that a security is not on a “hard to borrow” list cannot satisfy the “reasonable grounds test.

²⁵ 17 CFR 242.203(a).

²⁶ 17 CFR 240.10a-2.

.10 (“Failure to Deliver”), and incorporate by reference Rule 10a-1 and Regulation SHO, as if they were fully set forth therein. The Exchange expects additional interpretations to be added to the rule at a later date, after experience with the operation of Regulation SHO.

New SEA Rule 203(b)

Rule 203(b) of Regulation SHO requires clearing brokers to close-out any fail to deliver position in a threshold security that has remained open for 13 consecutive settlement days, by purchasing securities of like kind and quantity. A list of threshold securities will be disseminated daily by the Exchange prior to the opening bell.²⁷ In addition, certain restrictions are triggered if the clearing broker does not take action to close-out the open fail to deliver position.

The Exchange is proposing to amend paragraph .17 (“Covering Transactions”) to Rule 440B to delete aspects of the rule that do not conform with Regulation SHO, and to reference Rule 203(b)(3) to determine how to handle covering transactions.

Proposed Amendments to Exchange Rules

Currently, Exchange Rule 440B includes the complete text of Rule 10a-1, under the Exchange Act, and Rules 440B and 440C set forth many sections of repealed Rules 3b-3 and 10a-2, under the Exchange Act, respectively. The proposed amendments to Rules 440B and 440C, including Supplementary Material, conform to the changes in Rule 10a-1 and recently adopted Regulation SHO, under the Exchange Act. The changes remove the text of SEA Rule 10a-1 from Exchange Rule 440B, and instead incorporate

²⁷ As the exact means of conveying the list of threshold securities has not yet been determined, members and member organizations will be informed by a later Information Memo of the exact time, location and form of dissemination of the list prior to the launch of the Pilot.

both SEA Rule 10a-1 and Regulation SHO by reference, as though they were fully set forth therein.

The amendments to Exchange Rule 440B conform to Regulation SHO and also include a revised Explanatory Note, which generally describes the recent changes to short sale regulation and implementation dates. The Exchange proposes to amend the Supplementary Material to Rule 440B to delete references to repealed rules and incorporate amendments to conform to and reference amended Rule 10a-1 and Regulation SHO. In addition, the Exchange proposes to amend .10 (“General Rule”), .12 (“Place of Transaction”) and .15 (“Price At Which Short Sales May Be Made”) to make clear, consistent with the Adopting Release of Regulation SHO, that the Exchange short sale regulations apply to all trades in listed securities: (a) whenever they occur, including the after-hours market, and (b) which have been agreed to in the US, regardless of where the transaction is executed or “booked.”

(2) Statutory Basis

The statutory basis for the proposed rule change is Sections 6(b)(5) and 17A of the Exchange Act²⁸ which require, among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and national market system, and in general to protect investors and the

²⁸ 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78q-1, respectively.

public interest; and the prompt and accurate clearance and settlement of securities transactions.

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 not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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 proposed rule change is filed pursuant to paragraph (A) of Section 19(b)(3)²⁹ and Rule 19b-4(f)(6).³⁰ Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act and Rule 19b-4(f)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission

²⁹ 15 U.S.C. 78s(b)(3)(A).

³⁰ 17 CFR 240.19b-4(f)(6).

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 Exchange Act.³¹

The Exchange requests the Commission waive the five-day notification period and the 30-day pre-operative delay specified in Rule 19b-4(f)(6)(iii).³² Waiver of these periods will allow the Exchange to have the proposed rule change in place at the same time as the Commission's compliance date for Regulation SHO. The Exchange expects to make the proposed rule change operative on January 3, 2005.

The Commission believes that waiving both the 5-day notification period and the 30-day pre-operative delay requirements is consistent with the protection of investors and the public interest. The Commission believes that waiving these requirements does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. Additionally, The Commission notes that the operative date of this proposed rule change, January 3, 2004, is the same date as the compliance date of Regulation SHO.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange Act.

Electronic Comments:

³¹ For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Exchange Act, the Commission considers that period to commence on December 23, 2004, the date NYSE filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

³² 17 CFR 240.19b-4(f)(6)(iii).

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2004-68 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-68. 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 inspection and copying 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 NYSE. 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-2004-68 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³³

Margaret H. McFarland
Deputy Secretary

³³ 17 CFR 200.30-3(a)(12).

New York Stock Exchange

* * * * *

Rule 440B Short Sales

[Explanatory Note re Rule 440B: On June 12, 1975, the Securities and Exchange Commission adopted amendments to Rule 10a-1 governing short sales. (See also Regulations §240.3b-3 and §240.10a-2 of Securities and Exchange Commission.)]

[Paragraph (a)(2) of the Rule permits an exchange to make an election as to whether short sales are to be governed by a "tick" test referenced to the last sale reported from any market pursuant to an effective transaction reporting plan or one referenced to the last sale in that exchange's market. Paragraph (e)(5) of the Rule also permits an exchange to foreclose use of the equalizing exemption by its specialists and market makers. The Exchange has elected to adopt rules pursuant to these exemptive provisions (cf. Rule 440B, paragraphs (a) and (b) below).]

[For ease of reference, the complete text of Securities and Exchange Commission Rule 10a-1 is reproduced below.]

[SEC Rule 10a-1. Short Sales]

[(a)(1)(i) No person shall, for his own account or for the account of any other person, effect a short sale of any security registered on, or admitted to unlisted trading privileges on, a national securities exchange, if trades in such security are reported pursuant to an "effective transaction reporting plan" as defined in §240.11Aa3-1 (Rule 11Aa3-1 under the Act), and information as to such trades is made available in

accordance with such plan on a real-time basis to vendors of market transaction information, (A) below the price at which the last sale thereof, regular way, was reported pursuant to an effective transaction reporting plan; or (B) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was reported pursuant to an effective transaction reporting plan.]

[(ii) The provisions of paragraph (a)(1)(i) hereof shall not apply to transactions by any person in NASDAQ securities as defined in §240.11Aa3-1(Rule 11Aa3-1 under the Act) except for those NASDAQ securities for which transaction reports are collected, processed, and made available pursuant to the plan originally submitted to the Commission pursuant to Rule 17a-15 (subsequently amended and redesignated as Rule 11Aa3-1) under the Act, which was declared effective as of May 17, 1974.]

[(2) Notwithstanding subparagraph (1) of this paragraph (a), any exchange, by rule, may require that no person shall, for his own account or the account of any other person, effect a short sale of any such security on that exchange (i) below the price at which the last sale thereof, regular way, was effected on such exchange or (ii) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was effected on such exchange, if that exchange determines that such action is necessary or appropriate in its market in the public interest or for the protection of investors, and, if an exchange adopts such a rule, no person shall, for his own account or for the account of any other person, effect a short sale of any such security on such exchange otherwise than in accordance with such rule, and compliance with any such rule of an exchange shall constitute compliance with this paragraph (a).]

[(3) In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-right, or ex-any other distribution, all sale prices prior to the "ex" date may be reduced by the value of such distribution.]

[(b) No person shall, for his own account or for the account of any other person, effect on a national securities exchange a short sale of any security not covered by paragraph (a) of this rule, (1) below the price at which the last sale thereof, regular way, was effected on such exchange, or (2) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was effected on such exchange. In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-right or ex-any other distribution, all sale prices prior to the "ex" date may be reduced by the value of such distribution.]

[(c) No broker or dealer shall, by the use of any facility of a national securities exchange, or any means or instrumentality of interstate commerce, or of the mails, effect any sell order for a security registered on, or admitted to unlisted trading privileges on, a national securities exchange unless such order is marked either "long" or "short".]

[(d) No broker or dealer shall mark any order to sell a security registered on, or admitted to unlisted trading privileges on, a national securities exchange "long" unless (1) the security to be delivered after sale is carried in the account for which the sale is to be effected, or (2) such broker or dealer is informed that the seller owns the security ordered to be sold and, as soon as is possible without undue inconvenience or expense, will deliver the security owned to the account for which the sale is to be effected.]

[(e) The provisions of paragraphs (a) and (b) hereof (and of any exchange rule adopted in accordance with paragraph (a) hereof) shall not apply to-]

[(1) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense;]

[(2) Any broker or dealer in respect of a sale, for an account in which he has no interest, pursuant to an order to sell which is marked "long";]

[(3) Any sale by an odd-lot dealer on an exchange with which it is registered for such security, or any over-the-counter sale by a third market maker to offset odd-lot orders of customers;]

[(4) Any sale by an odd-lot dealer on an exchange with which it is registered for such security, or any over-the-counter sale by a third market maker to liquidate a long position which is less than a round lot, Provided, such sale does not change the position of such odd-lot dealer or such market maker by more than the unit of trading;]

[(5) Any sale of a security covered by paragraph (a) of this section (except a sale to a stabilizing bid complying with §240.10b-7) by a registered specialist or registered exchange market maker for its own account on any exchange with which it is registered for such security, or by a third market maker for its own account over-the-counter]

[(i) Effected at a price equal to or above the last sale, regular way, reported for such security pursuant to an effective transaction reporting plan; or]

[(ii) Effected at a price equal to the most recent offer communicated for the security by such registered specialist, registered exchange market maker or third market maker to an exchange or a national securities association ("association") pursuant to §240.11Ac1-1, if such offer, when communicated, was

equal to or above the last sale, regular way, reported for such security pursuant to an effective transaction reporting plan;]

[Provided, however, that any exchange, by rule, may prohibit its registered specialists and registered exchange market makers from availing themselves of the exemptions afforded by this paragraph (e)(5) if that exchange determines that such action is necessary or appropriate in its market in the public interest or for the protection of investors;]

[(6) Any sale of a security covered by paragraph (b) hereof on a national securities exchange (except a sale to a stabilizing bid complying with Securities Exchange Act Rule 10b-7, effected with the approval of such exchange which is necessary to equalize the price of such security thereon with the current price of such security on another national securities exchange which is the principal exchange market for such security;]

[(7) Any sale of a security for a special arbitrage account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided, such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any class of securities of the issuer;]

[(8) Any sale of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such

security on a securities market not within or subject to the jurisdiction of the United States and on a securities market subject to the jurisdiction of the United States; provided, the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him in such foreign securities market and intends to accept such offer immediately;]

[(9) [Reserved.]]

[(10) Any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights pursuant to §240.10b-8 or a standby underwriting commitment; or]

[(11) Any sale of a security covered by paragraph (a) of this section (except a sale to a stabilizing bid complying with §240.10b-7) by any broker or dealer, for his own account or for the account of any other person, effected at a price equal to the most recent offer communicated by such broker or dealer to an exchange or association pursuant to §240.11Ac1-1 in an amount less than or equal to the quotation size associated with such offer, if such offer, when communicated, was (i) above the price at which the last sale, regular way, for such security was reported pursuant to an effective transaction reporting plan; or (ii) at such last sale price, if such last sale price is above the next preceding different price at which a sale of such security, regular way, was reported pursuant to an effective transaction reporting plan.]

[(12) For the purpose of paragraph (e)(8) of this section, a depositary receipt of a security shall be deemed to be the same security as the security represented by such receipt. For the purposes of paragraphs (e)(3), (4) and (5) of this section, the term "third market maker" shall mean any broker or dealer who holds itself out as being willing to buy and sell a reported security for its own account on a regular and continuous basis otherwise than on an exchange in amounts of less than block size.]

[(13) A broker-dealer that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of §240.3b-3 and of this section notwithstanding that such broker-dealer may not have a net long position in such security if and to the extent that such broker-dealer's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.]

[(f) This rule shall not prohibit any transaction or transactions which the Commission, upon written request or upon its own motion, exempts, either unconditionally or on specified terms and conditions.]

Explanatory Note re Rule 440B: On June 23, 2004, the Securities and Exchange Commission ("SEC") adopted new Regulation SHO – Regulation of Short Sales ("Regulation SHO"), under the Securities Exchange Act of 1934 ("Exchange Act"). The Commission action also rescinded Rules 3b-3 ("Definition of Short Sale"), and 10a-2 ("Requirements for Covering Purchases") and replaced them with new Regulation SHO Rules 200 ("Definition of Short Sale and Marking Requirements") and 203 ("Borrowing and Delivery Requirements"). In addition, the SEC amended Rule 10a-1 ("Short Sales") to remove those sections of the rule that are now part of Regulation SHO.

Regulation SHO includes new Rule 202T, which provides procedures for the SEC to temporarily suspend the application of the tick test and any short sale price test of any exchange or national securities association for securities the Commission designates by order. Concurrently with the adoption of Regulation SHO, the SEC issued the Pilot Order, as amended, suspending the provisions of the NYSE tick test and any self-regulatory organization (“SRO”) price test for short sales in: (1) certain “designated securities” (identified in Appendix A of the Pilot Order); (2) any security included in the Russell 1000 index effected between 4:15 p.m. EST and the open of the consolidated tape on the following day; and (3) any other security effected between the close of the consolidated tape (i.e., 8:00 p.m. EST) and the open of the tape on the following day. (Exchange Act Release No. 50104 (July 28, 2004), 69 Fed. Reg. 48032 (August 6, 2004) (“Pilot Order”). The Pilot was reset on November 29, 2004 (Exchange Act Release No. 50747 (November 29, 2004)) to commence on May 2, 2005 and end on April 28, 2006 (“Second Pilot Order”).

The Exchange incorporates by reference Rule 10a-1 (17 CFR 240.10a-1) and Rules 200 (17 CFR 242.200), and 203 (17 CFR 242.203) of Regulation SHO, to Exchange Rule 440B, as if they were fully set forth herein.

Regulation SHO Rules 200, 202T and 203, as well as amendments to Rule 10a-1, are effective September 7, 2004. The compliance date for Rules 200 and 203 is January 3, 2005, with Rule 202T set to expire on August 6, 2007. The Second Pilot Order has been established for a one-year period – commencing on May 2, 2005 and terminating on April 28, 2006.

Rule 440B. (a) Pursuant to the authority granted by Rule 10a-1(a)(2), under the Exchange Act, [N] no member shall, for his own account or for the account of any other person, effect on the Exchange a short sale of any security (i) below the price at which the last sale thereof, regular way, was effected on the Exchange, or (ii) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was effected on the Exchange.

(b) No specialist shall effect on the Exchange a short sale of any security in which such specialist is registered for his own account or for the account of any other person in reliance upon the exemption afforded by paragraph (e)(5) of Rule 10a-1 [of the Securities and Exchange Commission] under the [Securities] Exchange Act [of 1934], as amended.

(c) Paragraph (a) set forth above, is suspended for such time and as to such securities as are designated in the SEC Order Suspending the Operation of Short Sale Price Provisions for Designated Securities and Time Period (“Pilot Order”) (Exchange Act Release No. 50104 (July 28, 2004)), as amended by the SEC Order Delaying Pilot Period for Suspension of the Operation of Short Sale Price Provisions (“Second Pilot Order”) (Exchange Act Release No. 50747 (November 29, 2004)), including any further orders affecting the Pilot’s operation.

Supplementary Material:

.10 General rule. - The discussion of short selling regulations in the Supplementary Material of this rule relates to [securities reported on a real-time basis pursuant to a consolidated transaction reporting system.] all trades in listed securities, whenever they occur, including in the after-hours market and after a

consolidated transaction reporting system (e.g., the “consolidated tape” of the Consolidated Tape Association) ceases to operate. Members and member organizations also should familiarize themselves with the provisions of [SEC] Rule 10a-1, as amended, and Regulation SHO, under the Exchange Act. [which relate to securities that are not reported on a real-time basis pursuant to such a system, particularly paragraphs (b) and (e)(6) of the rule above].

In general, [SEC] Rule 10a-1, under the Exchange Act, prohibits any "short sale" of any security, [registered on, or admitted to unlisted trading privileges on, a national securities exchange,] except those noted in Exchange Rule 440B(c), if trades in such security are reported on a real-time basis pursuant to a consolidated transaction reporting system (a "consolidated system"); (i) below the price at which the last sale thereof, regular way, was reported in such consolidated system, or (ii) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was reported in a consolidated system. However, any exchange, by rule, may base the permissibility of short sales on the last sale, regular way, effected on such exchange rather than the last sale, regular way reported pursuant to the consolidated system. The Exchange has adopted Rule 440B to base the permissibility of short sales on the last sale, regular way, effected on the Exchange.

A "short sale" [is defined as] means any sale of a security, which the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller. [(1) any sale of a security which the

seller does not own; or (2) any sale which is consummated by the delivery of a security borrowed by or for the account of the seller. Thus, a sale of a security which is owned by the seller becomes a "short sale" if delivery to the purchaser is made by the use of borrowed securities. This may often be the case if the original security is not available at the place at which delivery is to be made in negotiable form.] (See .14 below, which refers to Regulation SHO, Rule 200(b)-(f) to determine ownership of securities).

[Although the term "short sale" may thus include many sales which would ordinarily be regarded as long sales, the prohibition of the general rule does not apply to (1) any person, whether a member or a non-member, selling a security which he owns and intends to deliver as soon as is possible without undue inconvenience or expense; or (2) any broker or dealer, whether or not a member or member organization, executing for an account in which it has no interest a sell order marked "long" (see .13 below).] Certain additional transactions are exempted by paragraph (e) of [Regulation §-240.] Rule 10a-1, under the Exchange Act, and the Commission is authorized to grant other exemptions under paragraph (f) of [the] Rule 10a-1[Regulation].

[Regulation §-240.] Rule 10a-1 and Regulation SHO, under the Exchange Act, and Rule 440B apply to short sales of odd-lots as well as to short sales of round lots (except as to transactions exempted under paragraph (e) or (f) of the [Regulation] Rule). Consequently, no short sale of a stock in an amount less than the unit of trading shall be effected on the Exchange unless such sale is based upon a sale, in the unit of trading, the price of which (1) is higher than the price of

the last "regular way" sale on the Exchange of such stock in the unit of trading or (2) is the same as the price of such last sale and such price was higher than the last different price of a "regular way" sale on the Exchange of such stock in the unit of trading.

By virtue of [Regulation §-240.] Regulation SHO and Rule 10a-1(a)(2) a short sale in violation of Rules 440B and 440C is a short sale in violation of a rule or regulation under the [Securities] Exchange Act [of 1934]. Consequently, any person, including any member or any customer, who effects for his own account or for any other account any "short sale" in violation of Rules 440B and 440C may be guilty of a criminal offense.

.11 Securities subject to the rules.- [The rules] Regulation SHO Rules 200 and 203, and Rule 10a-1, under the Exchange Act, apply, generally [speaking], to all equity securities [dealt in upon any national securities exchange], other than U.S. Government or municipal securities and except those noted in Exchange Rule 440B(c).

.12 Place of transaction.-[Regulation §240.] Rule 10a-1 applies to any short sale of any equity security [reported pursuant to the consolidated transactions reporting system which is registered on or admitted to unlisted trading privileges on any national securities exchange,], except those noted in Exchange Rule 440B(c), whether that sale takes place on an exchange or in the over-the-counter market. Rule 440B which has been adopted by the Exchange pursuant to paragraphs (a)(2) and (e)(5) of [the Regulation] Rule 10a-1, which applies [, of course, only] to short sales effected on the Exchange, Exchange-

listed securities transactions effected after the close of the consolidated tape, and Exchange-listed securities transactions, which have been agreed to in the US, regardless of where the transaction is executed or “booked.”

.13 Marking of orders: customer's written agreement regarding designation of sell orders.- Every sell order (including odd lots) in a security subject to the rule, which is executed on any exchange or by means of any instrumentality of interstate commerce, whether originated or handled by a member, must be marked to indicate whether it is "long," [or] "short [.]" or “short exempt.” The abbreviation "LS," [or] "SS" or “SSE” may be used. A member (including any Floor broker) or any employee of a member organization may mark an order "long" only if (1) [the customer's account is "long" the security involved; or (2) the member or employee is informed that the seller owns the security and will deliver it as soon as is possible without undue inconvenience or expense. If a sell order is to be marked "long" pursuant to (2) above, the information prescribed therein must actually be obtained in some manner. To obviate the necessity of hurriedly obtaining the information specified in Regulation §240.10a-2, it is advisable for the member when he receives the order also to obtain information from the seller as to the practicability of then delivering the security. As a method of obtaining such information with respect to an order to sell, a member (including any Floor broker) may enter any bona fide written agreement with his customer that the customer, when placing "short" sell orders, will designate them as such, and that the designation of a sell order as "long" is a representation by the customer to the member that the customer owns the security,

that it is then impracticable to deliver the security to such member and that the customer will deliver it as soon as is possible without undue inconvenience or expense.] the seller is deemed to own the security being sold pursuant to Regulation SHO, Rule 200(a)-(f), under the Exchange Act and either: (i) the security to be delivered is in the physical possession or control of the broker or dealer; or (ii) it is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction.

[The Exchange is advised that in the opinion of the Securities and Exchange Commission's staff a member is not justified in marking a sell order "long" on the basis of an agreement with the customer that the absence of any designation of a sell order constitutes a representation by him to the member that the conditions described in Regulation §240.10a-1(d)(2) obtain; the mere omission of any designation of the order whatsoever may not be considered as effectively conveying the required information. Therefore, in order to accomplish its purpose, namely, to avoid the necessity of obtaining the required information with each individual order to sell a security "long" which is not in the customer's account, a written agreement with the customer must provide not only that all "short" sell orders will be designated as "short" but also that "long" sell orders will be specifically designated as "long." In addition, the agreement should further provide that the actual designation "long" is to be taken as a representation that the conditions specified in the rules as described above actually obtain.]

[For the information of members there is given below a form of written agreement which is considered by the staff of the Securities and Exchange Commission to provide a suitable method of obtaining the information required in connection with the rules under discussion. This is, of course, not the only form which a proper agreement may take but is given here merely as one example of a suitable form.]

["Having in mind the rules promulgated by the Securities and Exchange Commission under Section 10(a) of the Securities Exchange Act of 1934, which you have called to our attention, we hereby undertake and agree to designate all sell orders as either `long' or `short,' unless the security to be delivered after sale is carried in the account for which the sale is to be effected, and that the designation by us of an order as a `long' sell order shall be a certification by us that the security ordered to be sold is owned by the seller and that either (1) such security has been forwarded to such account or (2) it is then impracticable to deliver such security to such account, but that the seller will deliver such security to such account as soon as is possible without undue inconvenience or expense. If there is carried in the account for which the sale is to be effected a security which can be delivered in satisfaction of the sale, you are authorized and directed to deliver such security from such account.]

["Will you kindly evidence your concurrence in this understanding and arrangement by signing and returning to us the enclosed carbon copy of this letter."]

[In the case of a member who executes selling orders for a foreign customer with whom he communicates in a code which does not employ words having normal meanings, the Exchange is informed that in the opinion of the Commission's staff it would be appropriate to include in the written agreement with such a customer, in addition to the material quoted above, the following arrangement in regard to the code, or its equivalent:]

["We desire hereby also to agree with you that in addition to the meanings assigned to the respective words relating to sales on pages of the, code book which we use in communicating with each other, said words shall, unless otherwise noted, be interpreted to include a certification by us that the security ordered to be sold is owned by the seller and that either (1) such security has been forwarded to such account or (2) it is then impracticable to deliver such security to such account, but that the seller will deliver such security to such account as soon as is possible without undue inconvenience or expense.]

["For the purpose of further evidencing the additional meanings hereby assigned to the said code words, you and we will affix to the said pages of the said code book in our respective possession an appropriate endorsement or legend expressly setting forth the aforesaid additional meanings. The text of such legend is:]

[In addition to the meanings assigned on this page to the respective words relating to sales, said words shall, unless otherwise noted, also mean that the security ordered to be sold is owned by the seller and that either (1) such security has been forwarded to such account or (2) it is then impracticable to deliver such

security to such account, but that the seller will deliver such security to such account as soon as is possible without undue inconvenience or expense.' "]

[Paragraph (c) of the Securities and Exchange Commission's Regulation §240.10a-1 provides that "No broker or dealer shall, by the use of any facility of a national securities exchange, or any means or instrumentality of interstate commerce, or of the mails, effect any sell order for a security registered on, or admitted to unlisted trading privileges on, a national securities exchange unless such order is marked either `long' or `short'."]

[Therefore, members on the Floor who receive sell orders from other members, whether in full or odd lots of stock, or in bonds are required to take particular care to see whether such orders are marked either "long" or "short," and whenever any member on the Floor receives from another member or member organization any sell order which is not marked either "long" or "short" such order should not be filled or executed but should be returned for proper marking to the member or organization from whom it was received.]

.14 Ownership of securities.- [A person is deemed to own a security if (1) he or his agent has title to it; or (2) he has purchased or has entered into an unconditional contract, binding on both parties, to purchase it but has not yet received it; or (3) he owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or (4) he has an option to purchase or acquire it and has exercised such option; or (5) he has rights or warrant to subscribe to it and has exercised such rights or warrants. He is not deemed to own a security if he owns securities convertible into or exchangeable

for it but has not tendered such securities for conversion or exchange, or if he has an option or owns rights or warrants entitling him to such security, but has not exercised them.]

[Within the meaning of the rules a person "owns" securities only to the extent that he has a net long position in such securities. Thus, if a person maintains two accounts and is short 1000 shares of a security in one and long 1000 shares of the same security in another, any sales of such security by such person are "short sales" and are subject to the provisions of the rules.] Ownership of securities shall be determined in accordance with Rule 200(a)-(f) of Regulation SHO, under the Exchange Act.

.15 Price at which short sales may be made on the Exchange.-(Note: All sales and prices referred to in this Paragraph .15, relate to sales and prices on the Exchange, and do not apply to those short sales noted in Exchange Rule 440B(c).) A short sale may not be made below the price of the last regular way sale, but may be made at the price of the last regular way sale, provided that the previous different regular way sale price was lower than the price of the last sale, irrespective of whether such prices were established on the same day or some earlier day. If the previous different price was higher than the price of the last sale, a short sale may be made only at a price which is higher than the price of the last sale. Therefore, a member with an order to sell short must ascertain the price of the last regular way sale and (unless the bid is above the price of such last sale) also the previous different regular way price, regardless of when the transactions occurred, in order to determine the price at which a short sale may be made. A

member with an order to sell 500 shares short may either sell the entire quantity in one lot at a price permitted by the rule, or sell 500 shares in smaller lots at such price, provided no intervening sales occur which change the price basis as above described. In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-right, or ex- any other distribution, all sales prices prior to the "ex" date may be reduced by the value of such distribution; i.e., the value of a dividend, right or other distribution may be deducted from all last sale prices made in securities prior to the "ex" date to determine the price at which a short sale in such "ex" securities may be effected.

When a security is dealt in on two or more national securities exchanges, or on one or more national securities exchanges and in the over-the-counter market, the controlling price as to short sales on the Exchange is always the last regular way sale price on the Exchange, but the controlling price on any other national securities exchange on which the security is dealt may be the price at which the last sale thereof, regular way, was reported in the consolidated transaction reporting system or the price at which the last sale thereof, regular way, was effected on such exchange, depending upon whether last sale prices of the security involved are reported in such consolidated transaction reporting system on a real-time basis and whether the other national securities exchange has adopted the rule permitted by [Regulation §240.] Rule 10a-1(a)(2). The controlling price as to short sales effected in the over-the-counter market of securities subject to the short selling rules shall, if last sale prices in such security are reported pursuant to the consolidated transaction reporting system on a real-

time basis, be the price at which the last sale thereof, regular way, was reported in such consolidated transaction reporting system. The Exchange's last sale price test applies to all trades in listed securities, whenever they occur, including in the after-hours market and after a consolidated transaction reporting system, such as the consolidated tape, ceases to operate. After the consolidated system ceases to operate, the last sale price test prevents any person from effecting a short sale at a price that is lower than the last sale reported to the consolidated system. [and if last sale prices of such security are not reported pursuant to such a system, Regulation §240.10a-1 does not apply to the short sale of such security in the over-the-counter market.]

Initial sale may be short sale.-An [ruling] interpretation has been made by the Staff of the Securities and Exchange Commission that the initial sale of a security newly listed on the Exchange may be a short sale. Subsequent sales on the Exchange at the same price may also be short sales provided there is no intervening transaction on the Exchange at a different price. Once a transaction on the Exchange at a different price takes place the regular operation of the short selling rules becomes effective.

The price at which short sales may be made under the rules are determined by the minimum variation permitted; e.g., if a bond is dealt in at variations of $1/32$ or, for stocks 0.01, the last sale having been 100 and the previous different price $100 \frac{2}{32}$ or, for stocks 100.10, a short sale may be made at or above $100 \frac{1}{32}$ or, 100.01.

.16 "When issued" and "when distributed" securities.-The rules apply to the sale of "when issued" and "when distributed" securities in the same manner as issued securities. In the case of a sale of a "when issued" or "when distributed" security, the last "regular way" sale price means the last price at which the "when issued" or "when distributed" security has sold and the "next preceding different price" means the last previous different price at which a sale of such "when issued" or "when distributed" security took place. A person is deemed to be the owner of a "when issued" or "when distributed" security if he has entered into a contract to purchase the same binding on both parties and subject only to the condition of issuance or distribution or, by virtue of his ownership of an issued security, will be entitled to receive, without the payment of consideration, the "when issued" or "when distributed" security, to the extent that he has not already disposed of such "when issued" or "when distributed" security.

.17 Covering transactions.- [If on the due date of delivery of a security sold pursuant to an order marked "long," the member has not received the security from the customer, he must cover the open position unless he knows or has been informed by the seller either (1) that the security is in transit to him; or (2) that the seller owns the security, that it is then impracticable to deliver it and that it will be delivered as soon as is possible without undue inconvenience or expense. If the member has received the security at his main or branch office, or if he knows or has been informed by the seller that either (1) or (2) is the case, he may at his option either fail to deliver or make delivery with borrowed securities. If, however, he neither knows nor is informed by the seller that either of these

situations exists, and has not received the security, either he must cover the transaction by buying in for "cash," for the account of the customer, the security sold, or if such buy-in for "cash" is rendered necessary by the discovery, after the sale took place, of a bona fide error, he must make application for an exemption from the provisions of Regulation §240.10a-2(a) to the exchange upon which the sale was effected or the NASD if the sale took place in the over-the-counter market. Information concerning the method to be used in submitting requests for exemptions and the circumstances under which such requests may be favorably acted upon is contained in .19 below.]

[Buy-ins on the Exchange for the purpose of obviating violations of Regulation §240.10a-2(a) are not to be sent to The Market Surveillance Division for execution, but are to be effected by the member directly or through an agent of his own choosing. If on the date when delivery upon the original contract is due, the member receives the security so bought in, or knows that it is in transit to him, he may make delivery upon the original contract with the security so received, or with borrowed securities, or may fail to make delivery thereon.] Any covering transactions made shall be consistent with Rule 203(a) of Regulation SHO.

.18 Loans of securities between members.-Any broker or dealer may, [without regard to the restrictions imposed by Regulation §-240.10a-2 and] without inquiry as to the purpose of the loan, lend a security to another broker or dealer. The lending broker or dealer may none the less be criminally liable for a violation of the short selling rules if he knows that the borrower intends to violate such rules.

.19 Reserved [Exemptions from the requirements of Regulation §-240.10a-2(a).-Under amended Regulation §-240.10a-2, if a broker discovers prior to delivery date that a sale was effected pursuant to an order which through error was incorrectly marked "long," the requirements of Regulation §-240.10a-2(a) will not apply provided the exchange on which the transaction took place or the NASD as to a sale which took place in the over-the-counter market is satisfied as to the existence of the conditions described in (i), (ii) and (iii) of Regulation §-240.10a-2(b)(2).]

[Members should submit all requests to the Exchange for exemptions to the BoE Floor Representatives as promptly as possible after discovery of the errors involved. Such requests may be made in writing, or by telephone or telegraph provided they are promptly confirmed in writing by the member or member organization. Out-of-town organizations may submit their requests through their New York correspondents.]

[In order that the Exchange may make a proper determination in each case, it is imperative that all requests contain sufficient information to indicate clearly that the conditions described in (i), (ii) and (iii) of Regulation §-240.10a-2(b) (2) actually obtain.]

.20 "Short-exempt" sell orders.- A short sale order shall be marked "short exempt" if the seller is relying on an exception from the tick test of Rule 10a-1, or any short sale price test of any exchange or national securities association, or in accordance with Rule 200 to Regulation SHO.

[The Commission's short selling rules require, in effect, that all sell orders must be marked either "long" or "short." A member may not mark a sell order "long" except in the circumstances described in paragraph (d) of Regulation §-240.10a-1. Although the Commission's short selling rules do not specifically prescribe a special marking of short selling orders which are subject to any exemption provided by paragraph (e) of Regulation §-240.10a-1,] In addition, the Exchange understands that it is appropriate for a member to mark as "short exempt" any short selling order which properly comes within the provisions of clause (3), (4), (5), (6), (7), (8), (9), or (10) of paragraph (e) of [Regulation §-240.] Rule 10a-1.

When members or member organizations transmit for execution sell orders which are originated by their customers or themselves and which are entitled to the exemption provided in clause (3), (4), (5), (6), (7), (8), (9), or (10) of paragraph (e) of [Regulation §-240.] Rule 10a-1, such members and organizations [should, for their own protection,] must make a record of the clause which is applicable to each such order, and should preserve such record [at the point of origin of such order for a period of at least twelve months.] consistent with Rules 17a-3 and 17a-4, under the Exchange Act.

[Any order which falls in any category other than the above should not be marked "short-exempt."]

New York Stock Exchange

* * * * *

Rule 440C [Deliveries Against] Short Sale[s] Borrowing and Delivery Requirements

Borrowing and deliveries shall be effected in accordance with Rule 203 of Regulation SHO, under the Exchange Act.

The Exchange incorporates by reference Rule 10a-1 (17 CFR 240.10a-1) and Rules 200 (17 CFR 242.200), and 203 (17 CFR 242.203) of Regulation SHO, to Exchange Rule 440C, as if they were fully set forth herein.

Supplementary Material:

[**10 Failure to deliver.**-No member or member organization should "fail to deliver" against a short sale of a security on a national securities exchange until a diligent effort has been made by such member or organization to borrow the necessary securities to make delivery.]