

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64350; File No. SR-NYSEAmex-2011-29)

April 27, 2011

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 440B (Short Sales) to Modify the Exchange's Procedures for Early Termination of the Short Sale Price Test Restrictions of Rule 201 of Regulation SHO Based on a Triggering Transaction that Another Exchange or a Self-Regulatory Organization Has Determined Was a Clearly Erroneous Execution

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on April 25, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 Amex Equities Rule 440B (Short Sales) to modify the Exchange's procedures for early termination of the short sale price test restrictions of Rule 201 of Regulation SHO ("Rule 201")<sup>4</sup> under the Act based on a triggering transaction that another exchange or a self-regulatory organization ("SRO") has determined was a clearly erroneous execution pursuant to the rules of that exchange

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 17 CFR 242.201.

or SRO. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

On February 26, 2010, the Commission adopted amendments to Rule 201.<sup>5</sup> In order to implement the provisions of revised Rule 201, the Exchange amended NYSE Amex Equities 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 NYSE

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<sup>5</sup> 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).

Amex Equities Rule 440B(e)), in accordance with Rule 201, during a period when the short sale price test restrictions of Rule 201 are in effect (“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 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 NYSE Amex Equities Rule 440B and consistent with Rule 201.<sup>6</sup>

Under NYSE Amex Equities Rule 440B(c), when the Exchange is the listing market for a covered security, Exchange systems will determine whether the short sale price test restrictions of Rule 201 have been triggered (*i.e.*, that a covered security has experienced a decrease in price of 10% or more from the security’s closing price as of the end of regular trading hours on the prior day) and will notify the single plan processor responsible for consolidation of information for the covered security pursuant to Rule 603(b) of Regulation NMS.<sup>7</sup> Once the short sale price test restrictions of Rule 201 are triggered by the listing market, those restrictions will remain in effect until the close of

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<sup>6</sup> See Securities Exchange Act Release No. 63974 (February 25, 2011), 76 FR 12198 (March 4, 2011) (SR-NYSEAmex-2011-09).

<sup>7</sup> See 17 CFR 242.201(b)(3); 17 CFR 242.603(b). See also Rule 201(a)(6) of Regulation SHO, which defines the term “plan processor” to have the same meaning as in Rule 600(b)(55) of Regulation NMS. 17 CFR 242.600(b)(55). The single plan processors are “exclusive processors” as defined under Section 3(a)(22) of the Act. See 15 U.S.C. 78c(a)(22).

trading on the next trading day.<sup>8</sup>

If, however, the Exchange determines that the short sale price test for a covered security was triggered because of a clearly erroneous execution on the Exchange,<sup>9</sup> pursuant to NYSE Amex Equities Rule 440B(d)(1), the Exchange may lift the short sale price test restrictions before the Short Sale Period ends for a security for which the Exchange is the listing market or, for a security listed on another market, notify the other market of the Exchange's determination that the triggering transaction was a clearly erroneous execution.

For securities for which the Exchange is the listing market, Exchange Rule 440B currently addresses only clearly erroneous triggering transactions deemed to be clearly erroneous executions under the Exchange's rules, and does not address situations where another exchange or a SRO determines, under its respective rules, that a triggering transaction was a clearly erroneous execution. To address this scenario, the Exchange proposes to amend NYSE Amex Equities Rule 440B(d)(1) to provide that the Exchange may also lift the short sale price test restrictions before the Short Sale Period ends, for covered securities for which the Exchange is the listing market, if the Exchange has been informed by another exchange or a SRO that a transaction in the covered security that occurred at the Trigger Price<sup>10</sup> was a clearly erroneous execution, as determined by that

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<sup>8</sup> The short sale price test restrictions will remain in effect at all times when quotation information and the national best bid is collected, processed and disseminated pursuant to a national market system plan. This may extend beyond regular trading hours. Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, at Q&A 2.1.

<sup>9</sup> Determination of a "clearly erroneous" execution will be made in accordance with NYSE Amex Equities Rule 128.

<sup>10</sup> The term "Trigger Price" is used in NYSE Amex Equities Rule 440B to refer to a decrease of 10% or more in a security's price from the security's closing price on

exchange or SRO under its rules.<sup>11</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</sup> in particular, in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal is designed to refine 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 Rule 201. To that end, the proposed rule change expands the ability of the Exchange, as a listing market, to lift short sale price test restrictions to include situations where another exchange or a SRO has determined that a triggering transaction was a clearly erroneous execution under the rules of that exchange or SRO.

### 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.

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the listing market as of the end of regular trading hours on the prior day. Under NYSE Amex Equities Rule 440B(c), the short sale price test restrictions of Rule 201 are triggered if a transaction in a covered security occurs at a Trigger Price.

<sup>11</sup> The Exchange will only lift the short sale price test restrictions before the Short Sale Period ends under these circumstances when informed by another exchange or a SRO that a triggering transaction has been determined to be a clearly erroneous execution under the rules of the exchange or SRO, consistent with the authority of that exchange or SRO for making such determinations.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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 Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>17</sup> 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.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

The Commission has considered the Exchange's request to waive the 30-day operative delay, and hereby grants the request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will permit the Exchange to lift Rule 201's short sale price test restrictions, in a covered security for which the Exchange is the listing market, when such restrictions were triggered by a transaction that another exchange or a SRO has determined to be a clearly erroneous execution, pursuant to the rules of that exchange or SRO.<sup>18</sup> For this reason, the Commission designates the proposed rule change to be 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 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-NYSEAmex-2011-29 on the subject line.

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<sup>18</sup> For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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-NYSEAmex-2011-29. 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 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-NYSEAmex-2011-29 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.<sup>19</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).