

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63971; File No. SR-NYSEARCA-2011-05)

February 25, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.16 (Short Sales) in Order to Implement the Provisions of Rule 201 of Regulation SHO Under the Securities Exchange Act of 1934

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 February 24, 2011, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 Arca Equities Rule 7.16 (Short Sales) in order to implement the provisions of Rule 201 of Regulation SHO (“Rule 201”)⁴ under the Act, which, if triggered, imposes a restriction on the prices at which covered securities may be sold short (“Short Sale Price Test”). Among other things, Rule 201 requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if

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.

the price of a covered security decreases by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. The proposed rule amendment would establish procedures for the Exchange, as a listing market, to determine that a Short Sale Price Test has been triggered for a covered security. The proposed rule amendment would also 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 is triggered, including establishing what types of short sale orders will be re-priced to achieve a permitted price, in accordance with Rule 201, during the period in which a Short Sale Price Test is in effect ("Short Sale Period").⁵ Amended Rule 7.16 would also establish Exchange procedures regarding the execution and display of permissible orders during the Short Sale Period, and the execution of orders marked "short exempt." Finally, the proposed rule amendment would also establish Exchange procedures for addressing situations where the Exchange determines that the Short Sale Price Test for a covered security was triggered by a "clearly erroneous" execution as that term is defined in NYSE Arca Equities Rule 7.10.⁶

The Exchange also proposes to amend NYSE Arca Equities Rule 7.65, which applies to the Exchange's Portfolio Crossing Service ("PCS"), to exempt PCS transactions from the short sale price test restrictions contained in NYSE Arca Equities Rule 7.16(f). PCS short sale transactions would, however, be subject to the order marking and securities lending provisions of Paragraphs (a)-(e) of NYSE Arca Equities

⁵ See notes 23-31 *infra* and accompanying text.

⁶ See *infra* note 22 and accompanying text regarding "clearly erroneous" trades and proposed Rule 7.16(f)(iv)(A). The proposed rule amendment would, among other things, establish the duration of the Short Sale Price Test. See *infra* note 21 and accompanying text.

Rule 7.16. 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

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 201.⁷

Among other things, the amendments establish a short sale-related circuit breaker that, if triggered with respect to a covered security,⁸ imposes a short sale price test.⁹ Amended

⁷ Amendments to Regulation SHO, Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 Fed. Reg. 11232 (Mar. 10, 2010) ("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).

⁸ The term "covered security" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(1) defines the term "covered security" to mean any "NMS stock" as defined under Rule 600(b)(47) of Regulation NMS. Rule 600(b)(47) of Regulation NMS defines an "NMS stock" as "any NMS security other than an option." Rule 600(b)(46) of Regulation NMS defines an "NMS security" as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(47); and 17 CFR 242.600(b)(46).

Rule 201 became effective on May 10, 2010 and the compliance date for the Rule is February 28, 2011.¹⁰

Rule 201(b) requires that trading centers,¹¹ including NYSE Arca, 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 bid¹² if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market¹³ for the covered security as of the end of regular trading hours on the prior day ("Trigger Price").¹⁴ In addition, Rule 201(b) requires that trading centers establish, maintain, and enforce written policies and procedures reasonably designed to impose the

⁹ 17 CFR 242.201(b).

¹⁰ Rule 201 Adopting Release, 75 Fed. Reg. 11232. The Rule 201 compliance date, originally set for November 10, 2010, was extended to February 28, 2011 in Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 Fed. Reg. 68702 (Nov. 9, 2010). The May 10th effective date and February 28th compliance date also apply to amended Rule 200(g).

¹¹ Rule 201(a)(9) states that the term "trading center" shall have the same meaning as in Rule 600(b)(78) of Regulation NMS. Rule 600(b)(78) defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

¹² The term "national best bid" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(4) states that such term shall have the same meaning as in Rule 600(b)(42) of Regulation NMS. 17 CFR 242.201(a)(4). *See also* 17 CFR 242.600(b)(42).

¹³ The term "listing market" shall have the same meaning as in Rule 201 of Regulation SHO. Rule 201(a)(3) defines the term "listing market" to have the same meaning as the term "listing market" as defined in the effective transaction reporting plan for the covered security. 17 CFR 242.201(a)(3). *See also* 17 CFR 242.201(a)(2).

¹⁴ 17 CFR 242.201(b)(1)(i).

Short Sale Price Test 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.¹⁵

In the Rule 201 Adopting Release, the Commission stated that it was appropriate to adopt a short sale-related circuit breaker because, when triggered, it will prevent short selling, including potentially manipulative or abusive short selling, from driving down further the price of a security that has already experienced a significant intra-day price decline, and will facilitate the ability of long sellers to sell first upon such a decline.¹⁶ The Commission further stated that this approach establishes a narrowly-tailored Rule that strikes an appropriate balance between its goal of preventing potential short sale abuses and the need to limit impediments to the normal operations of the market,¹⁷ and as such, the Rule will help address the erosion of investor confidence in markets generally.¹⁸ For these reasons, the Exchange seeks to amend its short sale rule to comply with the Commission's amendment of Rule 201.

¹⁵ 17 CFR 242.201(b)(1)(ii). In addition, if the price of a covered security declines intra-day by at least 10% on a day on which the security is already subject to the short sale price test restriction of Rule 201, the restriction will be re-triggered and, therefore, will continue in effect for the remainder of that day and the following day. *See* Rule 201 Adopting Release, 75 Fed. Reg. 11232, 11253, n. 290. Rule 201 does not place any limit on the frequency or number of times the circuit breaker can be re-triggered with respect to a particular stock. Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, at Q&A 2.2 (“T&M FAQs”).

¹⁶ Rule 201 Adopting Release, 75 Fed. Reg. 11232.

¹⁷ Rule 201 Adopting Release, 75 Fed. Reg. 11232, 11252.

¹⁸ *See id.*

Paragraph (f)(ii) of Rule 7.16, as proposed to be amended, makes clear that, in compliance with Rule 201, in the event a covered security experiences a decrease in price of 10% or more, as determined by the listing market for the security, from the security's closing price on the listing market as of the end of regular trading hours on the prior day, except for certain permissible and "short exempt" orders,¹⁹ 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.

Where 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.*, whether a transaction in a covered security has occurred at a Trigger Price) and will notify the single plan processor responsible for consolidation of information for the covered security pursuant to Rule 603(b) of Regulation NMS.²⁰ The Trigger Price of a covered security will not be calculated until the Exchange opens trading for that security. In circumstances where a covered security did not trade on the Exchange on the prior trading day (for example, due to a trading halt, trading suspension, or otherwise), the Exchange will base its determination of the Trigger Price on the last sale price on the Exchange for that security on the most recent day on which the security did trade.

¹⁹ See paragraphs (vi) and (vii) of proposed Rule 7.16(f) regarding the treatment of permissible and "short exempt" orders.

²⁰ 17 CFR 242.201(b)(3). 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).

Once a Short Sale Price Test is triggered by the listing market, the Short Sale Price Test will remain in effect until the close of trading on the next trading day.²¹ If, however, the Exchange determines that the Short Sale Price Test for a covered security was triggered because of a clearly erroneous execution,²² the Exchange may lift the Short Sale Price Test before the Short Sale Period ends for securities for which the Exchange is the listing market or, for securities listed on another market, notify the other market of the Exchange's determination that the triggering transaction was a clearly erroneous execution. Similarly, if the Exchange determines that the prior day's closing price for a covered security for which the Exchange is the listing market is incorrect in Exchange systems and resulted in an incorrect determination that the short sale price test restriction had been triggered, the Exchange may correct the prior day's closing price and lift the Short Sale Price Test before the Short Sale Period ends.

During the 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 ("Permitted Price") to permit their execution at a price that is compliant with the Short Sale Price Test. Consistent with Rule 201,²³ the Permitted Price for securities for which the national best

²¹ The Short Sale Price Test will remain in effect at all times when quotation information and the national best bid is collected, processed and disseminated. This may extend beyond regular trading hours. T&M FAQs, *supra* note 15, at Q&A 2.1.

²² Determination of a "clearly erroneous" transaction will be made in accordance with Rule 7.10.

²³ Rule 201 Adopting Release, 75 Fed. Reg. 11232, 11247.

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.²⁴

For displayed orders, the Exchange will continue to re-price a short sale order downward as the national best bid moves down but will not re-price upwards. For non-displayed orders, the Exchange will continue to re-price short sale orders both downward and upwards to reflect changes in the national best bid. The following are the pricing protocols during the Short Sale Period for specific order types that are not marked “short exempt”:

(A) **Reject Option**—Individual short sale orders may be marked to be rejected back if entered while a symbol is subject to the Short Sale Price Test.

(B) **MPL Orders**—Mid-Point Passive Liquidity (“MPL”) orders²⁵ will continue to be priced at the mid-point of the national best bid and national best offer, including situations where the mid-point is not one minimum price increment above the national best bid.²⁶

(C) **Re-pricing of Marketable Orders**—All other marketable short sale orders will be re-priced at the Permitted Price. To reflect declines in the national best bid, the Exchange will continue to re-price a short sale order at the lowest Permitted Price down to the order’s original limit price, or if a market order, until the order is filled.

(D) **Undisplayed Orders**—Short sale orders that are not displayable upon entry will be handled as follows by Exchange systems:

²⁴ See 17 CFR 242.612.

²⁵ NYSE Arca Equities Rule 7.31(h)(5). These orders will not be displayed or executed at the national best bid in locked markets.

²⁶ Exchange system handling of orders will comply with the pricing increment provisions of Rule 612 of Regulation NMS. See 17 CFR 242.612.

(i) Market orders and Passive Liquidity (“PL”) orders²⁷ will be re-priced at a Permitted Price. Market orders and PL orders will continuously re-price at a Permitted Price as the national best bid moves both up and down.

(ii) PNP (“Post No Preference”) Blind (“PNPB”) orders²⁸ will be re-priced at a Permitted Price. PNPB orders are displayed once they are re-priced. PNPB orders will re-price down when the national best bid moves down but will not move up in price if the national best bid moves up and will instead remain at the price displayed.

(E) **IOC Orders**—Immediate or Cancel (IOC”) orders,²⁹ requiring that all of part of the order be executed immediately, will be executed to the extent possible at a Permitted Price and higher and then cancelled, and will not be re-priced.

(F) **PNP ISO Orders**—PNP Inter-market Sweep orders³⁰ are rejected if the price is at or below the current national best bid.

(G) **Short Sale Cross Orders**—Short sale cross orders³¹ priced at or below the current national best bid will be rejected.

During the Short Sale Period, Exchange systems will execute and display a short sale order without regard to price if, at the time of initial display of the short sale order, the order was at a price above the then current national best bid.³² Un-displayed short sale orders that are entered into the Exchange’s systems prior to the Short Sale Period will be re-priced as described above.

²⁷ NYSE Arca Equities Rule 7.31(h)(4).

²⁸ NYSE Arca Equities Rule 7.31(mm).

²⁹ NYSE Arca Equities Rule 7.31(e).

³⁰ NYSE Arca Equities Rule 7.31(w) and (jj).

³¹ NYSE Arca Equities Rule 7.31(s).

³² 17 CFR 242.201(b)(1)(iii)(A).

As permitted by Rule 201, during the Short Sale Period, Exchange systems will execute and display orders marked “short exempt” without regard to whether the order is at a Permitted Price. Exchange systems will also accept orders marked “short exempt” at any time when such systems are open for order entry, regardless of whether the Short Sale Price Test has been triggered.³³

During the Short Sale Period, re-priced PNP Blind, PL and MPL discretion orders will be ranked in the NYSE Arca Book³⁴ in time order. Market orders have priority over all other order types.

In addition, at any time sell orders may be cancelled and replaced as follows; (1) sell to sell short, (2) sell to sell short exempt, (3) sell short to sell, (4) sell short to sell short exempt, (5) sell short exempt to sell, and (6) sell short exempt to sell short. Orders modified will retain their priority in the NYSE Arca Book provided they are not increasing in volume or changing price.³⁵

The Exchange is also proposing to amend 7.16(a) to define “short exempt” orders and to amend 7.16(b) and 7.16(c) to add language providing for “short exempt” marking in accordance with Rule 200(g) of Regulation SHO.³⁶

³³ Exchange systems will also follow the guidance in the T&M FAQs. *See supra* note 15.

³⁴ NYSE Arca Equities Rule 1.1 (definition of NYSE Arca Book).

³⁵ Cancelled and replaced orders that have been re-priced will not retain their priority in the NYSE Arca Book.

³⁶ 17 CFR 242.200(g)(2). Under Rule 200(g)(2), an order may be marked “short exempt” if the broker-dealer had a reasonable basis for believing that the order meets one of the exceptions specified in Rule 201(d) of Regulation SHO or if it is entered during a Short Sale Period and meets the conditions specified in Rule 201(c) of Regulation SHO. *See* 17 CFR 242.201(d); 17 CFR 242.201(c); T&M FAQs, *supra* note 15, at Q&As 4.2, 5.4 and 5.5.

Finally, the Exchange also proposes to amend NYSE Arca Equities Rule 7.65, which applies to the Exchange's PCS, to exempt PCS transactions from the short sale price test contained in NYSE Arca Equities Rule 7.16(f). PCS transactions occur after the 8:00 pm (Eastern time) close of the consolidated transaction reporting system and consolidated quotation dissemination. Accordingly, PCS transactions would not be subject to the short sale price test restrictions of Rule 201, as reflected in NYSE Arca Equities Rule 7.16, which apply only when the national best bid is calculated and disseminated.³⁷ PCS short sale transactions would, however, be subject to the order marking and securities lending provisions of Paragraphs (a)-(e) of NYSE Arca Equities Rule 7.16.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,³⁹ 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 implement the provisions of Rule 201 of Regulation SHO by establishing, maintaining and enforcing 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 restrictions established in that rule. To that end, the proposed rule change will, among other things, establish the

³⁷ See T&M FAQs, *supra* note 15, at Q&A 2.1.

³⁸ 15 U.S.C. 78f(b).

³⁹ 15 U.S.C. 78f(b)(5).

Exchange's procedures regarding the execution and display of permissible orders during the Short Sale Period, and the execution of orders marked "short exempt."

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 Act⁴⁰ and Rule 19b-4(f)(6) thereunder.⁴¹ 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 Act⁴² and Rule 19b-4(f)(6)(iii) thereunder.⁴³

⁴⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴¹ 17 CFR 240.19b-4(f)(6).

⁴² 15 U.S.C. 78s(b)(3)(A)(iii).

⁴³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file

A proposed rule change filed under Rule 19b-4(f)(6)⁴⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁴⁵ 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.⁴⁶ Waiving the 30-day operative delay will allow the Exchange to implement the proposed amendments by February 28, 2011, which, as noted by the Exchange, is the compliance date for amendments to Regulation SHO under the Act. By waiving the operative delay, the Exchange will be able to comply with the amendments to Regulation SHO by February 28, 2011. Therefore, the Commission believes 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

the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁴⁴ 17 CFR 240.19b-4(f)(6).

⁴⁵ 17 CFR 240.19b-4(f)(6)(iii).

⁴⁶ 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).

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. Please include File Number SR-NYSEARCA-2011-05 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-NYSEARCA-2011-05. 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 Exchange'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-NYSEARCA-2011-05 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.⁴⁷

Cathy H. Ahn
Deputy Secretary

⁴⁷ 17 CFR 200.30-3(a)(12).