

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63973; File No. SR-NYSE-2011-07]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 1600 (New York Block Exchange<sup>SM</sup>) To Add Provisions on Short Sales in Order To Implement the Provisions of Rule 201 of Regulation SHO Under the Securities Exchange Act of 1934

February 25, 2011.

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 February 24, 2011, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Exchange Rule 1600 (New York Block Exchange<sup>SM</sup>) (“NYBX” or the “Facility”) to add provisions on short sales in order to implement the provisions of Rule 201 of Regulation SHO (“Rule 201”)<sup>4</sup> under the Act which, if triggered, imposes a restriction on the prices at which 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 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.<sup>5</sup> The proposed rule amendment would 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 by a listing market (including the NYSE), 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”). Amended Rule 1600 would also establish the Facility’s 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 NYBX procedures for the execution, routing to the NYSE Display Book (“DBK”) or routing to other automated trading centers of orders, if the listing market has lifted the Short Sale Price Test before the Short Sale Period has ended.<sup>6</sup> The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <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 of Regulation SHO.<sup>7</sup> Among other things, the amendments establish a short sale-related circuit breaker that, if triggered with respect to a covered

security,<sup>8</sup> imposes a short sale price test.<sup>9</sup> Amended Rule 201 became effective on May 10, 2010 and the compliance date for the Rule is February 28, 2011.<sup>10</sup>

Rule 201(b) requires that trading centers,<sup>11</sup> including the NYSE, 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<sup>12</sup> if the price of that covered security decreases by 10% or more from the covered security’s closing price as determined by the listing market<sup>13</sup> for the covered security as of the end of regular trading hours on the prior day (“Trigger Price”).<sup>14</sup> In addition, Rule 201(b) requires that trading centers establish, maintain, and enforce written policies and procedures reasonably designed to impose the 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

<sup>8</sup> 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).

<sup>9</sup> 17 CFR 242.201(b).

<sup>10</sup> Rule 201 Adopting Release, 75 FR 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 FR 68702 (Nov. 9, 2010). The May 10th effective date and February 28th compliance date also apply to amended Rule 200(g).

<sup>11</sup> 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).

<sup>12</sup> 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); 17 CFR 242.600(b)(42).

<sup>13</sup> 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).

<sup>14</sup> 17 CFR 242.201(b)(1)(i).

<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.

<sup>5</sup> 17 CFR 242.201(b)(1)(i).

<sup>6</sup> The proposed rule amendment would establish the duration of the Short Sale Price Test. See *infra* note 21 and accompanying text. In addition, the proposed rule amendment would provide for an Exchange determination that a Short Sale Price Test has been triggered for covered securities for which the Exchange is the listing market.

<sup>7</sup> Amendments to Regulation SHO, Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 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).

pursuant to an effective national market system plan.<sup>15</sup>

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.<sup>16</sup> 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,<sup>17</sup> and as such, the Rule will help address the erosion of investor confidence in markets generally.<sup>18</sup> For these reasons, the Exchange seeks to amend its short sale rule to comply with the Commission's amendment of Rule 201.

Paragraph (d)(5)(B) of the proposed rule 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, the Facility 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, in accordance with NYSE Rule 440B(c),<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup> If the listing market lifts the Short Sale Price Test before the Short Sale Period ends pursuant to the listing market's rules,<sup>22</sup> the Facility will execute, route to the DBK or route to other automated trading centers<sup>23</sup> in accordance with Rule 1600(d)(1), without regard to the Short Sale Price Test.

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 the Facility 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 before being executed, routed to the DBK or rerouted to other automated trading centers,<sup>24</sup> unless, on an order-by-order basis, the NYBX User<sup>25</sup> has requested that an order be cancelled back to the User.<sup>26</sup> Consistent with Rule 201,<sup>27</sup> the Permitted Price for securities for which the national best bid is \$1 or more is \$.01 above the national best bid; the Permitted Price for securities for which the national best bid is below \$1 is

\$.0001 above the national best bid.<sup>28</sup> To reflect declines in the national best bid, the Facility will continue to re-price a short sale order at the lowest Permitted Price down to the order's original limit price.

With respect to NYBX pegging orders during the Short Sale Period, New York Block Exchange Market Pegging Orders, as defined in Rule 1600(c)(2)(A)(iii), to sell short at the national best bid will be re-priced, as described above, one minimum price increment above the current national best bid. In addition, during the Short Sale Period, any type of NYBX pegging order, as defined in Rule 1600(c)(2)(A) or Rules 1600(c)(2)(A)(i)–(iii), to sell short that contains an instruction to peg plus or minus the Exchange's minimum price variation will be rejected by Exchange systems.

As permitted by Rule 201, during the Short Sale Period, the Facility will execute, route to the DBK or route to other automated trading centers, in accordance with Rule 1600(d)(1), orders marked "short exempt" without regard to whether the order is at a Permitted Price.<sup>29</sup> The Facility 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.<sup>30</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>31</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>32</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 implement the provisions of Rule 201 of Regulation SHO with respect to the operation of the Facility 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 test restrictions established in that rule. To

<sup>15</sup> 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 FR 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").

<sup>16</sup> Rule 201 Adopting Release, 75 FR 11232.

<sup>17</sup> Rule 201 Adopting Release, 75 FR 11232, 11252.

<sup>18</sup> *Id.*

<sup>19</sup> References are to revised Exchange Rule 440B, as proposed to be amended in a separate rule filing to, among other things, establish procedures for determining when the Short Sale Price Test is triggered for covered securities for which the Exchange is the listing market. *See* SR-NYSE-2011-05.

<sup>20</sup> 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 242.201(a)(6); 17 CFR 242.600(b)(55). The single plan processors are "exclusive processors" as defined under Section 3(a)(22) of the Act. 15 U.S.C. 78c(a)(22).

<sup>21</sup> Proposed Rule 1600(d)(5)(D). 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.

<sup>22</sup> For example, Exchange Rule 440B, as proposed to be amended in SR-NYSE-2011-05, provides that the Exchange may lift the Short Sale Price Test if it determines that the Test was triggered by a "clearly erroneous" transaction. *See* proposed NYSE Rule 440B(d)(1).

<sup>23</sup> Exchange Rule 1600(b)(2)(A) provides that the term "automated trading center" shall have the meaning set forth in Rule 600(b)(4) of Regulation NMS. 17 CFR 242.600(b)(4).

<sup>24</sup> The price of such orders, as re-priced, will be used as the limit order price for purposes of calculating any Minimum Triggering Volume Quantity ("MTV") applicable to such orders. *See* Exchange Rule 1600(b)(2)(E) and (c)(3)(B)(ii)(I). *See* proposed Rule 1600(d)(5)(H).

<sup>25</sup> Exchange Rule 1600(b)(2)(J) (defining the term "User").

<sup>26</sup> *Id.*

<sup>27</sup> Rule 201 Adopting Release, 75 FR 11232, 11247.

<sup>28</sup> *See* 17 CFR 242.612.

<sup>29</sup> 17 CFR 242.201(b)(1)(iii)(B).

<sup>30</sup> 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.

<sup>31</sup> 15 U.S.C. 78f(b).

<sup>32</sup> 15 U.S.C. 78f(b)(5).

that end, the proposed rule change will, among other things, establish the Facility's procedures regarding the execution, routing to the DBK and routing to other automated trading centers 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 Act<sup>33</sup> and Rule 19b-4(f)(6) thereunder.<sup>34</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<sup>35</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>36</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>37</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>38</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. The Commission hereby grants the request.<sup>39</sup> 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**

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-NYSE-2011-07 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2011-07. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at <http://www.nyse.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2011-07 and should be submitted on or before March 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>40</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63975; File No. SR-BX-2011-010]

### **Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt New Rule 4763 Regarding Short Sales**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on February 18, 2011, NASDAQ OMX BX LLC ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>40</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b4.

<sup>33</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>34</sup> 17 CFR 240.19b-4(f)(6).

<sup>35</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>36</sup> 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 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.

<sup>37</sup> 17 CFR 240.19b-4(f)(6).

<sup>38</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>39</sup> 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).